

EPA ENFORCEMENT ACCOUNTS RECEIVABLE CONTROL NUMBER FORM

TO BE FILLED OUT BY ORIGINATING OFFICE:

(Attach a copy of the final order and transmittal letter to Defendant/Respondent)

This form was originated by: Natalie Katz
Name of Contact person

3/4/09
~~11/18/08~~
Date

in the EPA Region III, ORC
Office

at 215-814-2615
Phone number

Non-SF Jud. Order/Consent Decree. DOJ COLLECTS

Administrative Order/
Consent Agreement
FMD COLLECTS PAYMENT

SF Jud. Order/Consent Decree. FMD COLLECTS

This is an original debt

This is a modification

Name of Person and/or Company/Municipality making the payment
District of Columbia Water and Sewer Authority

The Total Dollar Amount of Receivable \$ 21,373.00

(If in installments, attach schedule of amounts and respective due dates)

The Case Docket Number RCRA - 03-2009-0035

The Site-Specific Superfund Acct. Number -

The Designated Regional/HQ Program Office ICD

TO BE FILLED OUT BY LOCAL FINANCIAL MANAGEMENT OFFICE:

The IFMS Accounts Receivable Control Number _____

If you have any questions call:
Name of Contact _____ Date _____

in the Financial Management Office, phone number: _____

JUDICIAL ORDERS: Copies of this form with an attached copy of the front page of the final judicial order should be mailed to:

- 1. U.S. Environmental Protection Agency
Cincinnati Finance Center
26 W. Martin Luther King Drive (MS-002)
Cincinnati, OH 45268
- 2. Originating Office (ORC)
- 3. Designated Program Office

Attn: Lori Weidner

ADMINISTRATIVE ORDERS: Copies of this form with an attached copy of the front page of the administrative order should be sent to:

- 1. Originating Office
- 2. Designated Program Office
- 3. Regional Hearing Clerk
- 3. Regional Counsel

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

In the Matter of:)	
)	
District of Columbia Water and Sewer Authority)	
5000 Overlook Avenue, SW)	U.S. EPA Docket Number
Washington DC 20032)	RCRA-03-2009-0035
)	
RESPONDENT,)	Proceeding Under Section 9006 of the
)	Resource Conservation and Recovery Act,
)	as amended, 42 U.S.C. Section 6991e
)	
Anacostia Pump Station)	
1801 Minnesota Avenue, SE)	
Washington DC 20020)	
)	
FACILITY.)	
)	
)	

RECEIVED
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 REGION III OFFICE
 EPA HEADQUARTERS PHILA, PA

CONSENT AGREEMENT

This Consent Agreement (“CA”) is entered into by the Director, Land and Chemicals Division, U.S. Environmental Protection Agency, Region III (“EPA” or “Complainant”) and District of Columbia Water and Sewer Authority (“Respondent” or “DC WASA”), 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 alleged 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 tank at Respondent’s facility, known as the Anacostia Pump Station, located at 1801 Minnesota Avenue, SE, Washington, DC 20020 (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. § 6991e. 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.*

EPA has given the District of Columbia 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

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. Each party shall bear its own costs and attorney's fees.
7. The person signing this CA on behalf of the Respondent certifies to EPA to the best of his/her knowledge and belief by his/her 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 Anacostia Pump Station 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.

FACTUAL ALLEGATIONS AND CONCLUSIONS OF LAW

12. 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).
13. At all times relevant to the violations alleged in this Consent Agreement, DC WASA ("Respondent") has been an independent authority created by District of Columbia, doing business in the District of Columbia.
14. Respondent is a "person" as defined in Section 9001(5) of RCRA, 42 U.S.C. § 6991(5), and 20 DCMR § 6899.1.
15. At all times relevant to the violations alleged in this Consent Agreement, Respondent has been the "owner" and/or "operator," of the "underground storage tank" ("UST") and "UST system" located at the Facility, as those terms are defined in Section 9001(3), (4) and (10) of RCRA, 42 U.S.C. § 6991(3), (4) and (10), and 20 DCMR § 6899.1.
16. On November 29, 2007, an EPA representative conducted a Compliance Evaluation Inspection ("CEI") of the Facility pursuant to Section 9005 of RCRA, 42 U.S.C. § 6991d.
17. At the time of the November 29, 2007 CEI, and at all times relevant to the violations alleged in this Consent Agreement, one UST was located at the Facility. This UST was a six thousand (6,000) gallon single-walled fiberglass reinforced plastic tank that was installed in or about 1979, 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. Respondent excavated and removed the UST on or about June 12, 2008.

18. At all times relevant to the violations alleged in this Consent Agreement, the UST located at Respondent's Facility has been a "petroleum UST system" and "existing UST system" as these terms are defined in 20 DCMR § 6899.1, respectively.
19. At all times relevant to the violations alleged in this Consent Agreement, the UST at Respondent's Facility was used to store a "regulated substance," 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.
20. Pursuant to RCRA Section 9005, 42 U.S.C. § 6991d, on November 29, 2007, EPA issued an Information Request to Respondent concerning its petroleum UST system at the Facility.
21. Respondent has removed the UST at its Facility. Respondent has also provided EPA with a tank closure report and letter prepared on behalf of Respondent by an environmental consulting firm, Total Environmental Concepts, Inc. The letter accompanying the tank closure report states: "There was no field evidence that the tank leaked (i.e., no visual staining of soils or petroleum odors), and no holes were seen in the tank. . . . Based on the soil sample analytical results, there is no indication of a product release or of any environmental hazard." EPA has not evaluated the report or the letter and has not verified the data or conclusions therein.

COUNT I

(Failure to provide a spill prevention system on the UST)

22. The allegations of Paragraphs 1 through 21 of this CAFO are incorporated herein by reference.
23. 20 DCMR §§ 5705.1 and 5803.1 provide that each owner and operator of a new or existing UST system shall provide a method, or combination of methods, of spill prevention that meets the requirements described therein.
24. From June 13, 2003 through June 12, 2008, Respondent failed to provide a method, or combination of methods, of spill prevention on its UST.
25. Respondent's acts and/or omissions as alleged in Paragraph 24, above, constitute violations by Respondent of 20 DCMR §§ 5705.1 and 5803.1.

COUNT II

(Failure to provide overfill prevention on the UST)

26. The allegations of Paragraphs 1 through 25 of this CAFO are incorporated herein by reference.
27. 20 DCMR §§ 5705.2 and 5803.1 provide that each owner and operator of a new or existing UST system shall provide a method, or combination of methods, of overfill prevention that meets the requirements described therein.
28. From June 13, 2003 through June 12, 2008, Respondent failed to provide a method, or combination of methods, of overfill prevention on its UST at the Facility.
29. Respondent's acts and/or omissions as alleged in Paragraph 28, above, constitute violations by Respondent of 20 DCMR §§ 5705.2 and 5803.1.

COUNT III

(Failure to provide cathodic protection on the UST system piping)

30. The allegations of Paragraphs 1 through 29 of this CAFO are incorporated herein by reference.
31. 20 DCMR §§ 5704.3, 5704.4, 5802.1 and 5802.2 provide that each owner and operator of a new or existing UST system shall provide, operate and maintain a method, or combination of methods, of cathodic protection on metal piping associated with USTs that meets the requirements described therein.
32. From June 13, 2003 through June 12, 2008, Respondent failed to provide, operate and maintain a method, or combination of methods, of cathodic protection on the metal piping associated with its UST at the Facility.
33. Respondent's acts and/or omissions as alleged in Paragraph 32, above, constitute violations by Respondent of 20 DCMR §§ 5704.3, 5704.4, 5802.1 and 5802.2.

CIVIL PENALTY

34. 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 \$21,373.00. 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 \$21,373.00 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).

35. 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.
36. 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).
37. 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.
38. 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).
39. 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.
40. Respondent shall remit the full penalty, pursuant to Paragraph 34, above, and/or any interest, administrative fees and late payment penalties, in accordance with Paragraphs 35 through 39, above, via one of the following methods:
 - a. Via U.S. Postal Service regular mail of a certified or cashier's check, made payable to the "United States Treasury," sent to the following address:

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

- b. Via overnight delivery of a certified or cashier's check, made payable to the "United States Treasury," sent to the following address:

US Environmental Protection Agency
Fines and Penalties
U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101

The U.S. Bank customer service contact for regular and overnight delivery is Natalie Pearson, who may be reached at 314-418-4087.

- c. Via electronic funds transfer ("EFT") to the following account:

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")

- d. Via automatic clearinghouse ("ACH"), also known as Remittance Express ("REX"), to the following account:

PNC Bank
ABA No. 05136706
Environmental Protection Agency
Account 310006
CTX Format
Transaction Code 22 - checking
808 17th Street NW
Washington, D.C. 20074.

The PNC Bank customer service contact, Jesse White, may be reached at 301-887-6548.

- e. Via on-line payment (from bank account, credit card, debit card), access “www.pay.gov” and enter “sfo 1.1” in the search field. Open the form and complete the required fields.
41. Payment by the Respondent shall include Respondent’s full name and address and the EPA Docket Number of this CAFO (RCRA-03-2009-0035).
42. A copy of Respondent’s check or a copy of Respondent’s electronic transfer shall be sent simultaneously to:

Regional Hearing Clerk (3RC00)
U.S. Environmental Protection Agency, Region III
1650 Arch Street
Philadelphia, Pennsylvania 19103 - 2029

and

Natalie Katz (3RC30)
Senior Assistant Regional Counsel
U.S. Environmental Protection Agency, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

FULL AND FINAL SATISFACTION

43. 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 CAFO.

RESERVATION OF RIGHTS

44. 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

45. 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

46. 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

47. 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

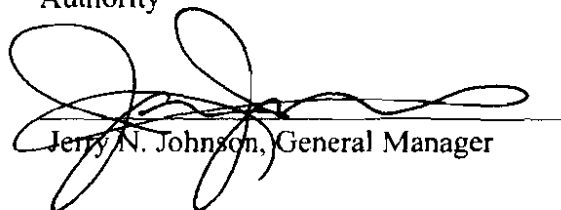
48. This CAFO shall become effective upon filing with the Regional Hearing Clerk.

FOR RESPONDENT:

District of Columbia Water and Sewer
Authority

2/17/09
Date

By:



Jerry N. Johnson, General Manager

FOR COMPLAINANT:

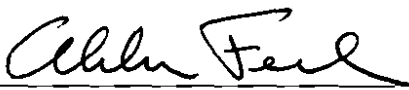
U.S. Environmental Protection Agency,
Region III

2/17/09
Date

By: 
Natalie L. Katz
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.

2/26/09
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:)	
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RESPONDENT,)	Proceeding Under Section 9006 of the
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 1650 ARCH STREET
 PHILADELPHIA, PA

FINAL ORDER


Complainant, the Director, Land and Chemicals Division, U.S. Environmental Protection Agency, Region III, and Respondent, District of Columbia Water and Sewer Authority, 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) and (d) of RCRA, 42 U.S.C. § 6991e(c) and (d), **IT IS HEREBY ORDERED** that Respondent pay a civil penalty of \$21,373.00 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 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: 3/3/09


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

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

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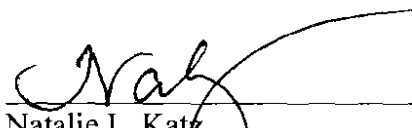
CERTIFICATE OF SERVICE

I hereby certify that on this date I filed and served copies of the attached Consent Agreement and Final Order, as follows:

Original and One Copy filed: (via hand delivery)	Lydia Guy (3RC00) Regional Hearing Clerk U.S. Environmental Protection Agency, Region III 1650 Arch Street Philadelphia, PA 19103
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Copy to: (via Certified Mail, Return Receipt Requested)	Jerry N. Johnson, General Manager Avis Russell, General Counsel District of Columbia Water and Sewer Authority 5000 Overlook Avenue, SW Washington DC 20032
---	---

Date: 3/4/09



 Natalie L. Katz
 Senior Assistant Regional Counsel
 EPA, Region III