

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

In the Matter of: )  
 )  
 Philadelphia Gas Works )  
 800 Montgomery Avenue )  
 Philadelphia, PA 19122 )  
 )  
 RESPONDENT, )  
 )  
 Philadelphia Gas Works )  
 1849 N. 9<sup>th</sup> Street )  
 Philadelphia, PA 19122 )  
 )  
 FACILITY. )  
 )

Docket Number: RCRA-3-2012-0242

Proceeding Under Section 9006 of the  
 Resource Conservation and Recovery Act  
 as amended, 42 U.S.C. § 6991e.

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 EPA REGION III PHILA. PA

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**CONSENT AGREEMENT**

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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 Philadelphia Gas Works (“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 Commonwealth of Pennsylvania’s federally authorized underground storage tank program by Respondent in connection with its underground storage tank located at 1849 N. 9<sup>th</sup> Street, Philadelphia, PA 19122 (the “Facility”).

Effective September 11, 2003, pursuant to Section 9004 of RCRA, 42 U.S.C. § 6991c, and 40 C.F.R. Part 281, Subpart A, the Commonwealth of Pennsylvania 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 Commonwealth of Pennsylvania’s UST management program, through this

final authorization, are enforceable by EPA pursuant to Section 9006 of RCRA, 42 U.S.C. § 6991e. The Commonwealth of Pennsylvania's authorized UST program regulations are set forth in Chapter 245 of Title 25 of the Pennsylvania Code.

### **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. Further, nothing in this CA shall be construed as a determination by EPA that there has been any release of regulated substances from the UST located at the Facility
3. Respondent agrees not to contest EPA's jurisdiction with respect to the execution of this CA, the issuance of the attached 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/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 Commonwealth of Pennsylvania's federally authorized underground storage tank program set forth at 25 PA Code §§ 245 *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 this 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. 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).

**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. Respondent is a "person" as defined in Section 9001(5) of RCRA, 42 U.S.C. § 6991(5), and 25 PA Code § 245.1.
14. At all times relevant to 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 25 PA Code § 245.1, 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 25 PA Code § 245.1, located at the Facility.
15. On June 15, 2011, an EPA representative conducted a Compliance Evaluation Inspection ("CEI") of the Facility pursuant to Section 9005 of RCRA, 42 U.S.C. § 6991d.
16. At the time of the June 15, 2011 CEI, and at all times relevant to the applicable violations alleged herein, the following UST was located at the Facility:
  - (A) a ten thousand (10,000) gallon double walled fiberglass reinforced plastic tank that was installed in or about January 1, 1990, 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 25 PA Code § 245.1 (hereinafter "UST No. 1").

17. At all times relevant to the applicable violations alleged herein, UST No. 1 has been a “petroleum UST system” and “new tank system” as those terms are defined in 25 PA Code § 245.1, respectively.
18. UST No. 1 was, at all times relevant to the applicable violations alleged in this CAFO, used to store a “regulated substance” at Respondent’s Facility, as defined in Section 9001(7) of RCRA, 42 U.S.C. § 6991(7), and 25 PA Code § 245.1, and has not been “empty” as that term is defined at 25 PA Code § 245.451.

**COUNT 1**  
**(Failure to perform release detection )**

19. The allegations contained in Paragraphs 1 - 18, above, are incorporated herein by reference.
20. Pursuant to 25 PA Code § 245.441(a) and (c), owners and operators of new and existing UST systems must provide a method or combination of methods of release detection monitoring that meets the requirements described therein.
21. 25 PA Code § 245.442(1) provides, in pertinent part, that USTs shall be monitored at least every 30 days for releases using one of the methods listed in 25 PA Code § 245.444(4)-(9), except that:
  - (i) UST systems that meet the performance standards in §§ 245.421 (Performance Standards for New UST Systems) and .422 (Upgrading of Existing UST Systems), and the monthly inventory control requirements in § 245.444(1) or (2) (Inventory Control or Manual Tank Gauging) shall use tank tightness testing, conducted in accordance with § 245.444(3) (Tank Tightness Test), at least every 5 years until December 22, 1998, or until 10 years after the UST is installed or upgraded under § 245.422(b) (Tank Upgrading Requirements); and
  - (ii) UST systems that do not meet the performance standards in §§ 245.421 (Performance Standards for New UST Systems) and .422 (Upgrading of Existing UST Systems), may use monthly inventory controls, conducted in accordance with § 245.444(1) or (2) (Inventory Control or Manual Tank Gauging) and annual tank tightness testing, conducted in accordance with § 245.444(3) (Tank Tightness Test) until December 22, 1998, when the tank must be upgraded under § 245.422 (Tank Upgrading Requirements) or permanently closed under § 245.452; and

(iii) Tanks with a capacity of 550 gallons or less and not metered may use weekly tank gauging, conducted in accordance with § 245.444(2).

22. Respondent's UST No. 1 at the Facility has not been monitored in compliance with any of the methods set forth in 25 PA Code § 245.442(1)(i)-(iii) and/or § 245.444(4)-(9).
23. Respondent's acts and/or omissions as alleged in Paragraph 22, above, constitutes a violation of 25 PA Code §§ 245.441 and .442.

**COUNT 2**

(Failure to investigate a suspected release)

24. The allegations of Paragraphs 1 through 23 of the CA are incorporated herein by reference.
25. 25 PA Code § 245.304(a) provides, in pertinent part, that owners or operators of UST systems shall initiate and complete an investigation of a suspected release of a regulated substance as soon as practicable, but no later than 7 days after the indication of a release.
26. 25 PA Code § 245.304(a)(5) provides, in pertinent part, that owners and operators shall initiate and complete an investigation of a suspected release in accordance with the procedures set forth in 25 PA Code § 245.304(b) as soon as practicable, but no later than 7 days after the indication of a release, to confirm whether a release of regulated substance occurred from the UST system if the monitoring results from a release detection method required under 25 PA Code § 245.441 (Requirements for Petroleum UST Systems) indicate a release of regulated substance.
27. On August 12, 2010, the monthly interstitial alarm report provided a fail test result indicating that a release may have occurred from UST No. 1, and Respondent did not initiate and complete an investigation of a suspected release in accordance with the procedures set forth in 25 PA Code § 245.304(b) within 7 days after the indication of a release from the monitoring device occurred for UST No. 1.
28. The incident described in Paragraph 27, above, was a suspected release which required the owner and/or operator to initiate and complete an investigation under 25 PA Code § 245.304(b).
29. Respondent failed to initiate and complete an investigation of the suspected release of regulated substances from UST No. 1 within the time and manner prescribed by 25 PA Code § 245.304(a).

30. Respondent's acts and/or omissions as alleged in Paragraph 29, above, constitute a violation by Respondent of 25 PA Code § 245.304(a) and 25 PA Code § 245.304(b).

**CIVIL PENALTY**

31. 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 **Eight Thousand Ninety Dollars (\$8,090.00)**. The civil penalty amount is due and payable immediately upon Respondent's receipt of a true and correct copy of this CA and attached FO. If Respondent pays the entire civil penalty of \$8,090.00 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).
32. 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.
33. 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).
34. 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.
35. 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).

36. 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.

37. Respondent shall pay the amount described in Paragraph 31 above, by sending a certified or cashier's check payable as follows:

- a. All payments by Respondent shall reference Respondent's name and address, and the Docket Number of this action, *i.e.*, **RCRA-03-2012-0242**;
- 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. EPA - Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000

Contact: Eric Volck, 513-487-2105 or  
Craig Steffen 513-487-2091

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

U.S. EPA - Fines and Penalties  
U.S. Bank  
Government Lockbox 979077  
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

38. Respondent may also pay the amount described in Paragraph 31, above, electronically or on-line as follows:

a. 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 wire transfer message should read:  
"D 68010727 Environmental Protection Agency")

b. 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  
Environmental Protection Agency, Account No. 310006  
CTX Format Transaction Code 22 - checking

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

Contact: Jessie White 301-887-6548 or  
REX 1-866-234-5681

c. On-Line Payment Option:

[WWW.PAY.GOV/PAYGOV](http://WWW.PAY.GOV/PAYGOV)

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



- d. Additional payment guidance is available at:

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

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

Donzetta Thomas (3RC50)  
Senior Assistant Regional Counsel  
U.S. Environmental Protection Agency - Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029.

**FULL AND FINAL SATISFACTION**

39. 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**

40. 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**

41. 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**

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

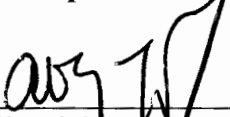
**ENTIRE AGREEMENT**

43. This CA and the attached FO 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 CA and the attached FO.

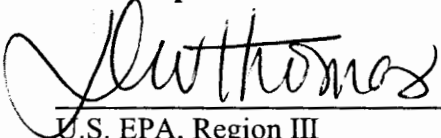
**EFFECTIVE DATE**

44. This CA and attached FO shall become effective upon filing with the Regional Hearing Clerk.

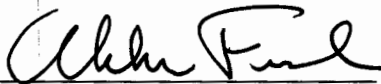
**For Respondent:**

  
\_\_\_\_\_  
Philadelphia Gas Works  
Abby Pozefsky  
General Counsel

**For Complainant:**

  
\_\_\_\_\_  
U.S. EPA, Region III  
Donzetta Thomas (3RC50)  
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.

By:   
\_\_\_\_\_  
Abraham Ferdas, Director  
Land and Chemicals Division,  
U.S. EPA, Region III

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

In the Matter of:	)	
	)	
Philadelphia Gas Works	)	Docket Number: RCRA-3-2012-0242
800 Montgomery Avenue	)	
Philadelphia, PA 19122	)	Proceeding Under Section 9006 of the
	)	Resource Conservation and Recovery Act,
RESPONDENT,	)	as amended, 42 U.S.C. § 6991e.
	)	
	)	
Philadelphia Gas Works	)	
1849 N. 9 <sup>th</sup> Street	)	
Philadelphia, PA 19122	)	
	)	
FACILITY.	)	

**FINAL ORDER**

Complainant, the Director of the Land and Chemicals Division, U.S. Environmental Protection Agency - Region III, and Respondent, Philadelphia Gas Works, 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 **Eight Thousand Ninety Dollars (\$8,090.00)** 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: 9/20/12



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

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CERTIFICATE OF SERVICE

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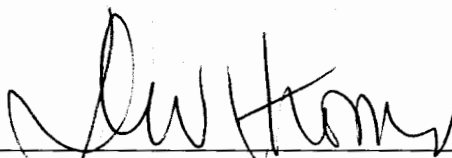
I hereby certify that, on the date listed below, the original and one copy of the foregoing Consent Agreement and Final Order, Docket No. RCRA-03-2012-0242 was filed with the EPA Region III Regional Hearing Clerk, and that a correct copy of the same was sent in the following manner to the person listed below:

Via United Parcel Service to:

Dennis Yuen  
Assistant City Solicitor  
City of Philadelphia Law Dept.  
One Parkway  
1515 Arch Street  
Philadelphia, PA 19102-1595

Date

9/20/12



Donzetta W. Thomas (3RC50)  
Counsel for Complainant  
U.S. Environmental Protection Agency, Region III  
(215) 814-2474