

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

In Re: :
: :
Department of the Army : **Docket No. RCRA-03-2015-0228**
: **CONSENT AGREEMENT**
RESPONDENT :
: Proceeding under 9006 and
U.S. Army Garrison Fort Belvoir : 9007 of the Resource Conservation and
Fort Belvoir Government Fuel Yard : Recovery Act, *as amended*, 42 U.S.C.
6000 16th Street, Building 1124 : §§ 6991e and 6991f
Fort Belvoir, Virginia 22060 :
: :
U.S. Army Garrison Fort Belvoir :
Fort Belvoir Humphreys Engineering Ctr.: :
200 Main Road, Building 2592 :
Fort Belvoir, VA 22060 :
: :
FACILITIES :

RECEIVED
2015 AUG 20 PM 3:41
REGIONAL HEARING OFFICE
EPA REGION III PHOENIX, PA

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 Department of the Army (“Respondent”) pursuant to Sections 9006 and 9007 of the Resource Conservation and Recovery Act (“RCRA”), as amended, 42 U.S.C. §§ 6991e and 6991f, 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 Virginia’s federally authorized underground storage tank program by Respondent in connection with its underground storage tanks at Respondent’s Fort Belvoir Government Fuel Yard facility located at 6000 16th Street, Building 1124, Fort Belvoir, Virginia, and Respondent’s Fort Belvoir Humphreys Engineering Center located at 200 Main Road, Building 2592, Fort Belvoir, Virginia (the “Facilities”).

Effective October 28, 1998, pursuant to Section 9004 of RCRA, 42 U.S.C. § 6991c, and 40 C.F.R. Part 281, Subpart A, the Commonwealth of Virginia was granted final authorization to 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. §§ 6991-6991i. The provisions of the Virginia UST management program, through these final authorizations, have become requirements of Subtitle I of RCRA and are, accordingly, enforceable by EPA pursuant to Section 9006 of RCRA, 42 U.S.C. § 6991e. Virginia’s authorized UST program regulations are set forth in the Virginia Administrative Code as Underground Storage Tanks: Technical Standards and Corrective Action Requirements (“VA UST Regulations”), 9 VAC § 25-580-10 *et seq.*

GENERAL PROVISIONS

1. For purposes of this proceeding only, Respondent admits to the jurisdictional allegations set forth in this CAFO.
2. Respondent neither admits nor denies the specific factual allegations, the alleged violations, 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 Consent Agreement ("CA"), the issuance of the attached Final Order ("FO"), or the enforcement thereof.
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, and any right to confer with the Administrator pursuant to Section 6001(b)(2) of RCRA, 42 U.S.C. § 6961(b)(2).
5. Respondent consents to the issuance of this CAFO, and agree to comply with its terms and conditions set forth therein. The settlement agreed to by Respondent in this CAFO reflects the desire of the Respondent to resolve this matter without litigation. This CAFO resolves whatever liability for civil penalties Respondent may have for the violations alleged in the Factual Allegations and Conclusions of Law.
6. Respondent shall bear its own costs and attorney's fees.
7. The provisions of this CAFO shall be binding upon EPA, Respondent, and Respondent's officers, directors, employees, successors and assigns.
8. 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.
9. 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. Respondent reserves all available rights and defenses it may have, consistent with the terms of this CAFO, to defend itself in any such action.

10. EPA has given the Commonwealth of Virginia 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

11. 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).
12. Respondent U.S. Army is a department, agency, or instrumentality of the executive branch of the United States federal government as referred to in Section 9007 of RCRA, 42 U.S.C. § 6991f, and is a "person" as defined in Section 9001(5) of RCRA, 42 U.S.C. § 6991(5), and VAC § 25-580-10.
13. At all times relevant to this CA/FO, the Respondent has been the "owner" and "operator," as those terms are defined in Section 9001(3) and (4) of RCRA, 42 U.S.C. § 6991(3) and (4), and 9 VAC § 25-580-10, of "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 9 VAC § 25-580-10, located at the Facility.
14. On September 17, 2014, EPA performed a Compliance Evaluation Inspection ("CEI") at Facilities. At the time of the CEI, and at all times relevant to the violations alleged herein, the following USTs were located at the Facility as described in the following subparagraphs:

Government Fuel Yard (Building 1124)

- (i) A twelve thousand (12,000) gallon double-walled fiberglass reinforced plastic tank that was installed in or about 1997, and that, at all times relevant hereto, routinely contained and was used to store used oil, a "regulated substance" as that term is defined in Section 9001(7) of RCRA, 42 U.S.C. § 6991(7), and VAC § 25-580-10(hereinafter "UST No. 1");
- (ii) A twelve thousand (12,000) gallon double-walled fiberglass reinforced plastic tank that was installed in or about 1986, and that, at all times relevant hereto, routinely contained and was used to store E85 gasoline fuel, a "regulated substance" as that term is defined in Section 9001(7) of RCRA, 42 U.S.C. § 6991(7), and VAC § 25-580-10(hereinafter "UST No. 2"); and

Humphreys Engineering Center (Building 2592)

- (iii) A five thousand (5,000) gallon double-walled fiberglass reinforced plastic tank that was installed in or about 1996, 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 VAC § 25-580-10(hereinafter "UST No. 3").

15. At all times relevant to the violations alleged herein, USTs Nos. 1 and 3, have been "petroleum UST systems" and "new tank systems" as these terms are defined in 9 VAC § 25-580-10.
16. At all times relevant to the violations alleged herein, UST No. 2 has been "petroleum UST systems" and an "existing tank system" as these terms are defined in 9 VAC § 25-580-10.

COUNT I

(Failure to provide corrosion protection on the metal/steel piping for UST No. 3)

17. The allegations of Paragraphs 1 through 16 of the CA are incorporated herein by reference.
18. 9 VAC § 25-580-50 provides, in pertinent part, that all owners and operators of new UST systems shall meet certain requirements in order to prevent releases due to structural failure, corrosion, or spills and overfills for as long as the UST system is used to store a regulated substance.
19. 9 VAC § 25-580-50.2. provides, *inter alia*, that piping that routinely contains regulated substance and is in contact with the ground must be properly designed, constructed and protected from corrosion in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory as specified in 9 VAC § 25-580-50.2.a-c.
20. The requirements set forth at 9 VAC § 25-580-50.2., above, have been incorporated by reference into 9 VAC § 25-580-60.3., and are therefore applicable to existing UST systems as well as new UST systems.
21. The piping for the UST No. 3 is, and at all times relevant to the violations alleged herein, was made of metal/steel in contact with ground and used to store regulated substances.
22. From June 30, 2010 until May 1, 2015, Respondent failed to provide corrosion protection for the metal/steel piping associated with UST No. 3 as required by 9 VAC § 25-580-50.2.a-c.
23. Respondent's act and/or omission as alleged in Paragraph 22, above, constitutes a violation by Respondent of 9 VAC § 25-580-50.2.

COUNT II

(Failure to Notify Implementing Agency of the Existence of UST. No 3)

24. The allegations in Paragraphs 1 through 23, above, of the CA are incorporated herein by reference as though fully set forth at length herein.
25. 9 VAC § 25-580-70 provides, in pertinent part, that any owner who brings an underground storage tank system into use after May, 8, 1986, must within 30 days of bringing such tank

into use, submit a notice of existence of such tank system to the Virginia Department of Environmental Quality ("VADEQ").

26. From June 30, 2010 until May 1, 2015, Respondent failed to notify VADEQ that it had brought UST No. 3 into use at its Facility.
27. Respondent's act and/or omission as alleged in Paragraph 26, above, constitutes a violation by Respondent of 9 VAC § 25-580-70.

COUNT III

(Failure to operate and maintain corrosion protection system continuously on USTs Nos. 1 and 2)

28. The allegations in Paragraphs 1 through 27, above, of the CA are incorporated by reference as if fully set forth herein.
29. 9 VAC § 25-580-90. provides that all owners and operators of steel UST systems with corrosion protection shall comply with certain requirements to ensure that releases due to corrosion are prevented for as long as the UST system is used to store regulated substances.
30. 9 VAC § 25-580-90.1. provides that all corrosion protection systems shall be operated and maintained by owners and operators of UST systems to continuously provide corrosion protection to the metal components of that portion of the tank and piping that routinely contains regulated substances and are in contact with the ground.
31. USTs Nos. 1 and 2 are and were, at the time of the violations alleged herein, "steel UST systems with corrosion protection" within the meaning of 9 VAC § 25-580-90.
32. From November 14, 2012 until November 15, 2013, Respondent failed to continuously provide corrosion protection to the metal components of those portions of USTs Nos. 1 and 2 that routinely contain regulated substances and are in contact with the ground as required by 9 VAC § 25-580-90.1.
33. Respondent's act and/or omission as alleged in Paragraph 32, above, constitute violations by Respondent of 9 VAC § 25-580-90.1.

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 Eighteen Thousand Three Hundred Thirty Dollars (\$18,330.00).

35. 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) and (e), 42 U.S.C. § 6991e(c) and (e), and with EPA's Penalty Guidance for Violations of UST Regulations ("UST Guidance") dated November 4, 1990.

36. Respondent shall pay the civil penalty set forth in Paragraph 34, above, by sending either a 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-03-2015-0228;

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 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 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:

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

A copy of Respondents' check or a copy of Respondents' 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.

37. In accordance with 40 C.F.R. § 13.3, any debt owed to EPA as a result of Respondent's failure to timely pay the civil penalty set forth in Paragraph 34, above, shall be resolved by negotiation between EPA and Respondents or by referral to the General Accounting Office (since 2004, referred to as the Government Accountability Office (PL-188-271)).

FULL AND FINAL SATISFACTION

38. 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

39. 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. Respondent reserves all available rights and defenses it may have, consistent with the terms of this CAFO, to defend itself in any such action. This CAFO and any provision herein shall not be construed as an admission of liability in any criminal or civil action or other administrative proceeding, except in an action of proceeding to enforce or seek compliance with this CA and accompanying FO.

40. Failure to obtain adequate funds or appropriations from Congress does not release Respondent from its obligation to comply with RCRA, the applicable regulations thereunder, or with this CAFO.

OTHER APPLICABLE LAWS

41. Nothing in this CA shall be interpreted to require obligation or payment of funds in violation of the Anti-Deficiency Act, 31 U.S.C. § 1341, or other applicable law.

CERTIFICATION

42. The person signing this CA on behalf of Respondent certifies to EPA by his or her signature herein that Respondent, as of the date of execution of this CA, is in compliance with the provisions of RCRA, Subtitle I, 42 U.S.C. §§ 6991-6991m, and the Commonwealth of Virginia's federally authorized underground storage tank program set forth at 9 VAC § 25-580-10 *et seq.* at the Facility referenced herein. This certification is based on the personal knowledge of the signer or based on an inquiry of the person or persons responsible for the Facility's compliance with Subtitle I of RCRA.

AUTHORITY TO BIND THE PARTIES

43. 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

44. 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.

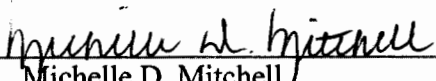
EFFECTIVE DATE

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

For the Respondent:

United States Army


Date: August 4, 2015

By: 
Michelle D. Mitchell
Colonel, U.S. Army

For Complainant:

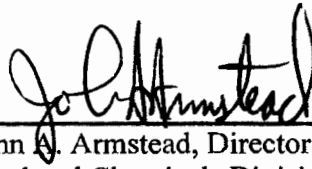
**U.S. Environmental Protection Agency,
Region III**

8-12-15
Date

By: 
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.

8.19.15
Date

By: 
John A. Armstead, Director
Land and Chemicals Division
EPA Region III

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

In Re:	:	
	:	
Department of the Army	:	Docket No. RCRA-03-2015-0228
	:	
RESPONDENT	:	FINAL ORDER
	:	
	:	Proceeding under 9006 and
U.S. Army Garrison Fort Belvoir	:	9007 of the Resource Conservation and
Fort Belvoir Government Fuel Yard	:	Recovery Act, <i>as amended</i> , 42 U.S.C.
6000 16th Street, Building 1124	:	§§ 6991e and 6991f
Fort Belvoir, Virginia 22060	:	
	:	
	:	
U.S. Army Garrison Fort Belvoir	:	
Fort Belvoir Humphreys Engineering Ctr.:	:	
200 Main Road, Building 2592	:	
Fort Belvoir, VA 22060	:	
	:	
	:	
FACILITIES	:	

REGIONAL HEARING CLERK
EPA REGION III, PHILA. PA
2015 AUG 20 PM 3:41

RECEIVED

FINAL ORDER

Complainant, the Director of the Land and Chemicals Division, U.S. Environmental Protection Agency - Region III, and Respondent, Department of the Army (“Respondent”), have executed a document entitled “Consent Agreement” which I 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 (with specific reference to 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3)). The terms of the foregoing Consent Agreement are accepted by the undersigned and incorporated into this Final Order as if fully set forth at length herein.

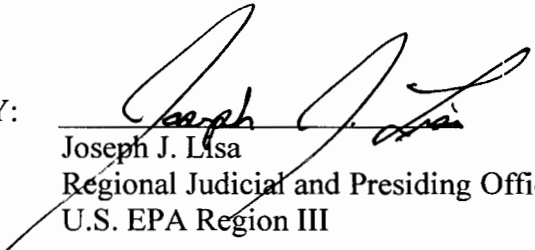
Based upon the representations of the parties in the attached Consent Agreement, the penalty agreed to therein is based upon consideration of, *inter alia*, EPA’s U.S. Penalty Guidance for Violation of UST Regulations” dated November, 1990, and the statutory factors set forth in Section 9006(c) and (e) of RCRA, 42 U.S.C. § 6991e(c) and (e).

NOW, THEREFORE, PURSUANT TO Sections 9006 and 9007 of the Resource Conservation and Recovery Act ("RCRA"), as amended, 42 U.S.C. §§ 6991e and 6991f, and Section 22.18(b)(3) of the Consolidated Rules of Practice, **IT IS HEREBY ORDERED** that Respondents pay a civil penalty in the amount of **EIGHTEEN THOUSAND THREE-HUNDRED THIRTY DOLLARS (\$18,330.00)** in accordance with the payment provisions set forth in the Consent Agreement, and comply with the terms and conditions of the Consent Agreement.

The effective date of the attached Consent Agreement and this Final Order is the date on which the Final Order is filed with the Regional Hearing Clerk.

Date: Aug. 20, 2015

BY:



Joseph J. Lisa
Regional Judicial and Presiding 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, **Docket No. RCRA-03-2015-0228**, 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 to the following party:

Karen S. Gillett
Environmental Law Attorney
OSJA, Fort Belvoir
Fort Belvoir, VA 22060
703.805.4389

Date 8/20/15



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

REGIONAL HEARING CLERK
EPA REGION III, PHILA, PA

2015 AUG 20 PM 3:41

RECEIVED