

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

In the Matter of:

Government of the District of Columbia  
Department of General Services  
2000 14<sup>th</sup> Street, NW  
Washington, DC 20009

Respondent

Robert F. Kennedy Memorial Stadium  
2400 East Capitol Street, SE  
Washington, DC 20003

Facility.

Docket No. RCRA-03-2015-0233

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

CONSENT AGREEMENT

REGIONAL AIR QUALITY DISTRICT  
EPA REGION III OFFICE  
PHILADELPHIA

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**CONSENT AGREEMENT**

**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”) and the Government of the District of Columbia, by and through its Department of General Services, (“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 22.18(b)(2) and (3).
2. This CA and the accompanying Final Order (collectively, “CAFO,”) resolve alleged violations of Subtitle I of RCRA, 42 U.S.C. §§ 6991-6991m, and the District of Columbia’s federally authorized underground storage tank program by Respondent in connection with the underground storage tank at Robert F. Kennedy Memorial Stadium, 2400 East Capitol Street, SE, Washington, DC 20003 (“Facility”).
3. 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 underground storage tank program *in lieu* of the Federal underground storage tank program established under Subtitle I of RCRA, 42 U.S.C. §§ 6991-6991i. 63 *Fed. Reg.* 24,453 (May 4, 1998); 62 *Fed. Reg.* 36,698 (July 9, 1997). The provisions of the District of Columbia's underground storage tank program, through this final authorization, have become requirements of Subtitle I of RCRA and are, accordingly, enforceable by the U.S. Environmental Protection Agency ("EPA") pursuant to Section 9006 of RCRA, 42 U.S.C. § 6991e. The District of Columbia's authorized underground storage tank program regulations are administered by the District of Columbia Department of Energy & the Environment and are set forth in the District of Columbia Municipal Regulations, Title 20, Chapter 55 *et seq.* and will be cited as "20 DCMR" followed by the applicable section of the regulations.

#### General Provisions

4. For purposes of this proceeding only and to the extent required by 40 C.F.R. § 22.18(b)(2), Respondent admits the jurisdictional allegations set forth in this CAFO.
5. Except as provided in Paragraph 4 herein, for purposes of this proceeding, Respondent neither admits nor denies EPA's factual allegations and conclusions of law set forth in Paragraphs 14 through 28 herein.
6. Respondent agrees not to contest the jurisdiction of EPA with respect to the execution of this CA, the issuance of the attached Final Order, or the enforcement of this CAFO.
7. For 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 attached Order.
8. Respondent consents to the issuance of this CA and attached Order and agrees to comply with the terms and conditions therein.
9. Each Party to this CA shall bear its own costs and attorney's fees in connection with this proceeding.
10. The provisions of this CAFO shall be binding upon Respondent and its officers, directors, employees, successors and assigns.
11. 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.
12. 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. 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 EPA's Findings of Fact and Conclusions of Law are false or, in any material respect, inaccurate.

13. 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).

**EPA's Factual Allegations and Conclusions of Law**

14. In accordance with 40 C.F.R. §§ 22.13(b), 22.18(b)(2) and (3), Complainant alleges and adopts the Factual Allegations and Conclusions of Law set forth immediately below.

15. EPA, Region III, 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).

16. At all times relevant to this CAFO, Respondent has been an "owner" or "operator" within the meaning of Section 9001(3) and (4) of RCRA, 42 U.S.C. § 6991(3) and (4), and 20 DCMR § 6899.1 (40 C.F.R. § 280.12) of the underground storage tank ("UST") and UST system within the meaning of Section 9001(10) of RCRA, 42 U.S.C. § 6991(10), and 20 DCMR § 6899.1 (40 C.F.R. § 280.12) located at the Facility.

17. Respondent is a "person" within the meaning of Section 9001(5) of RCRA, 42 U.S.C. § 6991(5), and 20 DCMR § 6899.1 (40 C.F.R. § 280.12).

18. On April 3, 2014, a duly authorized representative of EPA conducted a compliance evaluation inspection ("CEI") of the Facility pursuant to Section 9005 of RCRA, 42 U.S.C. § 6991d.

19. At the time of the CEI, and at all times relevant to the violations alleged herein, the following UST was located at the Facility: A 1000-gallon double-walled fiberglass reinforced plastic tank that was installed in July 1988. Such UST was permanently closed by removal from the ground on January 8, 2015, in accordance with 20 DCMR § 6101.5 (40 C.F.R. § 280.71(b)).

20. At all times relevant to the applicable violations alleged in this CA, the Facility's tank and its associated piping routinely contained and was used to store gasoline, which is a "regulated substance" within the meaning of Section 9001(7) of RCRA, 42 U.S.C. § 6991(7), and 20 DCMR § 6899.1 (40 C.F.R. § 280.12).

21. At all times relevant to the violation alleged herein, the Facility's tank and its associated piping ("RFK UST") was a "petroleum UST system" and an "existing tank system" within the meaning of 20 DCMR § 6899.1 (40 C.F.R. § 280.12).

Count 1

22. The preceding paragraphs of this CA are incorporated by reference as if fully set forth herein.
23. Pursuant to 20 DCMR § 6003.2 (40 C.F.R. § 280.41(a)) owners and operators of petroleum USTs are required to monitor such USTs for releases at least every thirty days, with exceptions not applicable here.
24. At the time of the CEI, no records of release detection of the RFK UST were available at the Facility.
25. Subsequent to the CEI, Respondent provided some records of passing release detection tests of the RFK UST, but none for the periods of October 20, 2010, through December 5, 2010, and January 6, 2011, through August 26, 2014.
26. Pursuant to 20 DCMR § 6003.2 (40 C.F.R. § 280.41(a)), Respondent was required to monitor the RFK UST for releases at least every thirty days from October 20, 2010, through December 5, 2010, and from January 6, 2011, through August 26, 2014.
27. From October 20, 2010, through December 5, 2010, and from January 6, 2011, through August 26, 2014, Respondent did not monitor the RFK UST for releases at least every thirty days as required by 20 DCMR § 6003.2 (40 C.F.R. § 280.41(a)).
28. Respondent's acts or omissions as alleged in paragraph 27 herein constitute violations of 20 DCMR § 6003.2 (40 C.F.R. § 280.41(a)), for which a penalty may be assessed pursuant to Section 9006 of RCRA.

Civil Penalty

29. 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 by 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*, 40 C.F.R. Part 19, the maximum civil penalty was increased to an amount not to exceed \$16,000 for each tank for each day of violation occurring after January 12, 2009.
30. In settlement of Complainant's claims for civil penalties assessable for the violations alleged herein, Respondent consents to the assessment of a civil penalty in the amount of \$10,000 (Ten Thousand Dollars) which Respondent shall pay in accordance with the terms set forth below.
31. Payment of \$10,000 is due and payable within thirty (30) days after Respondent's receipt of a true and correct copy of this CAFC and shall be paid in accordance with Paragraph 33 herein.

32. The aforesaid settlement amount was based upon Complainant's consideration of a number of factors, including, but not limited to, the seriousness of the violation, any good faith efforts to comply with the applicable requirements, compliance history of the owner or operator and any other factors that EPA considers appropriate as provided in Section 9006(c) and (e) of RCRA, 42 U.S.C. § 6991e(c) and (e). Complainant 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* (November 1990) and 40 C.F.R. Part 19.

33. Payment of the civil penalty amount as required by Paragraph 31 herein shall be made in the following manner:

a. By mailing via *First Class U.S. Postal Service Mail* a certified or cashier's check payable to the "United States Treasury" to:

U.S. Environmental Protection Agency  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO, 63197-9000.  
Contact: Craig Steffen 513-487-2091  
Molly Williams 513-487-2076

b. By sending via Overnight Delivery a certified or cashier's check payable to the "United States Treasury" to:

U.S. Environmental Protection Agency  
Government Lockbox 979077  
1005 Convention Plaza  
SL-MO-C2-GL  
St. Louis, MO 63101  
314-418-1028

c. All payments made by check in any currency drawn on banks with no U.S. branches shall be addressed for delivery to:

Cincinnati Finance  
US EPA, MS-NWD  
26 W. M.L. King Drive  
Cincinnati, OH 45268-0001

d. By electronic funds transfer ("EFT") to the following account:

Federal Reserve Bank of New York  
ABA 021030004  
Account No. 68010727  
SWIFT Address FRNYUS33  
33 Liberty Street  
NY, NY 10045

(Field tag 4200 of Fedwire message should read "D 68010727 Environmental Protection Agency")

e. By automatic clearinghouse ("ACH") to the following account:

U.S. Treasury REX/Cashlink ACH Receiver  
 ABA 051036706  
 Account No. 310006  
 Environmental Protection Agency  
 CTX Format  
 Transaction Code 22 – checking  
 Contact: John Schmid  
 202-874-7026

f. Online payments can be made at WWW.PAY.GOV by entering "sfo 1.1" in the search field, and opening the form and completing the required fields.

g. Additional payment guidance is available at:  
<http://www2.epa.gov/financial/makepayment>

h. The payment shall also reference the Respondent's name and address and the docket number of this action (RCRA-03-2015-0233). At the same time that payment is made, Respondent shall also mail a copy of any corresponding check, or, as appropriate, provide written notification confirming any electronic wire transfer, automated clearinghouse or online payment to:

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

Janet E. Sharke (3RC50)  
 Senior Asst. Regional Counsel  
 U.S. EPA, Region III  
 1650 Arch Street  
 Philadelphia, PA 19103-2029

34. 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 and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below. Accordingly, Respondent's failure to make timely payment or to comply with the conditions in this CAFO shall result in the assessment of late payment charges including interest, penalties, and/or administrative costs of handling delinquent debts.

35. Interest on the civil penalty assessed in this CAFO will begin to accrue on the date that a true and correct copy of this CAFO is mailed or hand-delivered to Respondent. However, EPA will not seek to recover interest on any amount of the civil penalty that is paid within one hundred twenty (120) 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).

36. 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.

37. A late payment penalty of six percent (6%) per year will be assessed monthly on any portion of the civil penalty that remains delinquent more than ninety (90) calendar days. 40 C.F.R. § 13.11(c). The late payment penalty on any portion of the civil penalty that remains delinquent more than ninety days shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).

#### Effect of Settlement

38. 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 herein. 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. This CA and the accompanying Final Order resolve only EPA's claims for civil monetary penalties for the specific violations alleged herein.

#### Reservation of Rights

39. EPA reserves the right to commence action against any person, including 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.

#### Other Applicable Laws

40. 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.

#### Authority to Bind the Parties

41. The undersigned representative of Respondent certifies that s/he is fully authorized to enter into the terms and conditions of this CA and bind each Respondent hereto.

#### Effective Date

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

Entire Agreement

43. This CA and the accompanying 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 CAFO.

For Respondent:

Date: \_\_\_\_\_

\_\_\_\_\_  
Jonathan Kayne  
Interim Director  
Government of the District of Columbia  
Department of General Services

For Complainant:

Date: 9/15/2015

\_\_\_\_\_  
Janet E. Sharke  
Senior Assistant Regional Counsel  
U.S. EPA, Region III

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: 9.17.15

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



**Entire Agreement**

43. This CA and the accompanying 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 CAFO.

For Respondent:

Date: 9/3/15

  
\_\_\_\_\_

Jonathan Kayne  
Interim Director  
Government of the District of Columbia  
Department of General Services

For Complainant:

Date: \_\_\_\_\_

\_\_\_\_\_

Janet E. Sharke  
Senior Assistant Regional Counsel  
U.S. EPA, Region III

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: \_\_\_\_\_

\_\_\_\_\_

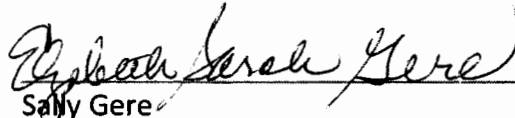
John A. Armstead, Director  
Land and Chemicals Division  
U.S. EPA Region III

Docket No. RCRA-03-2015-0233

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

For Respondent:

Date: September 11, 2015

  
\_\_\_\_\_

Sally Gere

Acting Deputy Attorney General

Public Interest Division

Office of the Attorney General for the District of  
Columbia

441 Fourth Street, N.W., Suite 630 South  
Washington, D.C. 20001

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

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In the Matter of:	:	
	:	
Government of the District of Columbia	:	Docket No. RCRA-03-2015-0233
Department of General Services	:	
2000 14 <sup>th</sup> Street, NW	:	
Washington, DC 20009	:	
	:	
<b>Respondent</b>	:	<b>FINAL ORDER</b>
	:	
Robert F. Kennedy Memorial Stadium	:	
2400 East Capitol Street, SE	:	
Washington, DC 20003	:	Proceeding under Section 9006 of the
	:	Resource Conservation and Recovery
<b>Facility.</b>	:	Act, as amended, 42 U.S.C. § 6991e

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**FINAL ORDER**

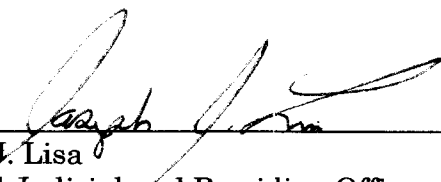
Complainant, the Director of the Land and Chemicals Division, U.S. Environmental Protection Agency, Region III, and Respondent, the Government of the District of Columbia, have executed a document entitled "Consent Agreement," which I hereby ratify as a Consent Agreement in accordance with the Consolidated 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 (with specific reference to Sections 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*, "U.S. EPA's Penalty Guidance for Violations of UST Regulations" (November 1990) and the statutory factors set forth in Section 9006(c) and (e) of the Resource Conservation and Recovery Act ("RCRA"), as amended, 42 U.S.C. § 6991e(c) and (e).

**NOW, THEREFORE, PURSUANT TO** Section 9006 of RCRA, 42 U.S.C. § 6991e, and Section 22.18(b)(3) of the Consolidated Rules of Practice, **IT IS HEREBY ORDERED** that Respondent pay a civil penalty in the amount of **TEN THOUSAND DOLLARS (\$10,000.00)**, 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 this Final Order is filed with the Regional Hearing Clerk.

Sept. 29, 2015  
Date

  
\_\_\_\_\_  
Joseph J. Lisa  
Regional Judicial and Presiding Officer  
U.S. EPA Region III

**CERTIFICATE OF SERVICE**


I hereby certify that on the date set forth below, I filed the original and one copy of the Consent Agreement and Final Order (CAFO), Docket No. RCRA-03-2015-0233, via hand-delivery with:

Lydia Guy, Regional Hearing Clerk  
U.S. EPA, Region III  
Mail Code 3RC00  
1650 Arch Street  
Philadelphia, PA 19103

I further certify that on the same date, I sent a true and correct copy of the above-referenced CAFO via UPS overnight delivery and certified mail, return receipt requested, to:

Camille D. Sabbakhan, General Counsel  
Government of the District of Columbia  
Department of General Services  
2000 14<sup>th</sup> Street, NW  
Washington, DC 20009

9/30/2015  
Date

  
\_\_\_\_\_  
Janet E. Sharke  
Counsel for Complainant  
U.S. EPA, Region III  
1650 Arch Street (3RC50)  
Philadelphia, PA 19103-2029  
[sharke.janet@epa.gov](mailto:sharke.janet@epa.gov)  
(215) 814-2689 (tel.)  
(215) 814-2601 (fax)