

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

In the Matter of:)
Kyung B. Gam and Sin J. Gam)
15201 Shady Grove Road 6227 Sandstone Way)
Suite 105)
Rockville, MD 20850 Clifton, VA 20124)

Docket Number: RCRA-3-2008-0402

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

RESPONDENT)

Florida Market Chevron)
400 Florida Avenue, NE)
Washington, D.C. 20007)

FACILITY)

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 Kyung B. Gam and Sin J. Gam (“Respondents”), 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 District of Columbia’s federally authorized underground storage tank program by Respondents in connection with their former ownership of underground storage tanks located at 400 Florida Avenue, NE, Washington, D.C. (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.*

GENERAL PROVISIONS

1. For purposes of this proceeding only, Respondents admit the jurisdictional allegations set forth in this CAFO.
2. Respondents neither admit nor deny the specific factual allegations and conclusions of law set forth in this CAFO, except as provided in Paragraph 1, above.
3. Respondents agree 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, Respondents hereby expressly waive their 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. Respondents consent to the issuance of this CAFO and agree to comply with its terms and conditions.
6. Respondents shall bear their own costs and attorney's fees.
7. The persons signing this CA on behalf of the Respondents certify to EPA by his/her signature herein that, to the best of his/her information and belief, Respondents, as of the date of this CA, are in compliance with the provisions of RCRA, Subtitle I, 42 U.S.C. §§ 6991-6991*m*, and the District of Columbia's federally authorized underground storage tank program set forth at 20 DCMR §§ 5500 *et seq.* at the Facility referenced herein.
8. The provisions of this CAFO shall be binding upon Respondents.
9. This CAFO shall not relieve Respondents of their 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. §§ 6991-6991*m*, 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 Respondents to EPA regarding matters at issue in this CAFO are false or, in any material respect, inaccurate. Respondents are aware that the submission of false or misleading information to the United States government may subject Respondents to separate civil and/or criminal liability.
11. Respondents agree not to deduct for civil taxation purposes the civil penalty specified in this Consent Agreement and the attached Final Order.

12. EPA has given the District of Columbia 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

13. EPA- 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).
14. Each 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 this CAFO, Respondents have been the “owners,” as that term is defined in Section 9001(3) of RCRA, 42 U.S.C. § 6991(3), and 20 DCMR § 6899.1, 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 20 DCMR § 6899.1, located at the Facility.
16. On May 17, 2007, EPA representatives attempted to conduct a Compliance Evaluation Inspection (“CEI”) of the Facility pursuant to Section 9005 of RCRA, 42 U.S.C. § 6991d; however the Facility was closed.
17. Since EPA was unable to conduct an on-site inspection of the Facility, a letter dated June 11, 2007 and entitled *Request for Information pursuant to Section 9005 of the Resource Conservation and Recovery Act (“RCRA”), as amended, 42 U.S.C. § 6991d, regarding Underground Storage Tanks Systems (“UST Systems”)* was sent to both Mr. Gam and Mr. Negussie requesting information relating to the tanks, their associated equipment, contents, and compliance with the applicable requirements of the District of Columbia Municipal Regulations (“DCMR”) Title 20. Responses to these requests were prepared by Mid-Atlantic Petroleum Properties and submitted to EPA on or about June 25, 2007.
18. At all times relevant to the applicable violations alleged herein, three (3) USTs, as described in the following subparagraphs, were located at the Facility:
- A. a six thousand (6,000) gallon fiberglass reinforced plastic tank that was installed in or about 1981 and that, at all times relevant hereto, routinely contained and was used to store gasoline, 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(hereinafter “UST No. 1”);

- B. a ten thousand (10,000) gallon fiberglass reinforced plastic tank that was installed in or about 1981 and that, at all times relevant hereto, routinely contained and was used to store gasoline, 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 (hereinafter “UST No. 2”); and
 - C. a six thousand (6,000) gallon fiberglass reinforced plastic tank that was installed in or about 1981 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 (hereinafter “UST No.3).
19. At all times relevant to the applicable violations alleged herein, USTs 1, 2, and 3 have been “existing tank systems” and “petroleum UST systems” as those terms are defined in 20 DCMR § 6899.1, respectively.
20. At all times relevant to the applicable violations alleged in this CAFO, USTs 1, 2, and 3 were used to store “regulated substance(s)” at Respondents’ Facility, as defined in Section 9001(7) of RCRA, 42 U.S.C. § 6991(7), and 20 DCMR § 6899.1 and have not been “empty” as that term is defined at 20 DCMR § 6100.7.

COUNT 1

(Failure to perform automatic line leak detector testing annually
on piping for UST Nos. 1, 2, and 3)

21. The allegations of Paragraphs 1 through 20 of this CAFO are incorporated herein by reference.
22. 20 DCMR § 6000.1 provides that each owner and operator of a new or existing UST system shall provide a method, or combination of methods, of release detection that meets the requirements described therein.
23. 20 DCMR § 6000.2 provides that the owner and operator of each UST system, regardless of the date of installation, shall immediately comply with the release detection requirements for all pressurized piping as set forth in 20 DCMR §§ 6004.2 and 6004.3.
24. 20 DCMR § 6004.1 provides that the owner and operator of a petroleum UST system shall regularly monitor all underground piping that contains or conveys regulated substances for releases in accordance with 20 DCMR § 6004.

25. 20 DCMR § 6004.2 provides that underground piping that conveys regulated substances under pressure shall be equipped with an automatic line leak detector, in accordance with § 6013.2 of this chapter.
26. 20 DCMR § 6013.2 provides, in pertinent part, that the owner or operator shall conduct an annual test of the operation of the leak detector, in accordance with the manufacturer's requirements.
27. From at least October 1, 2003 until the tanks were removed on June 11, 2007, the piping for USTs Nos.1, 2 and 3 was underground and routinely conveyed regulated substances under pressure.
28. Respondents never conducted a testing of the automatic line leak detector for the piping associated with USTs Nos.1, 2, or 3.
29. Respondents failed to perform an annual test of the automatic line leak detectors for the underground piping associated with USTs Nos. 1, 2 and 3 from at least October 1, 2003 until the tanks were removed on or about June 11, 2007.
30. Respondents's acts and/or omissions as alleged in Paragraph 29, above, constitute violations by Respondents of 20 DCMR § 6004.2 and 20 DCMR § 6013.2.

COUNT 2

(Failure to perform line tightness testing or monthly monitoring
on piping for UST Nos.1, 2, and 3)

31. The allegations of Paragraphs 1 through 30 of this CAFO are incorporated herein by reference.
32. 20 DCMR § 6000.1 provides that each owner and operator of a new or existing UST system shall provide a method, or combination of methods, of release detection that meets the requirements described therein.
33. 20 DCMR § 6000.2 provides that the owner and operator of each UST system, regardless of the date of installation, shall immediately comply with the release detection requirements for all pressurized piping as set forth in §§ 6004.2 and 6004.3.
34. 20 DCMR § 6004.1 provides that the owner and operator of a petroleum UST system shall regularly monitor all underground piping that contains or conveys regulated substances for releases in accordance with 20 DCMR § 6004.

35. 20 DCMR § 6004.3 provides that underground piping that conveys regulated substances under pressure shall have an annual line tightness test conducted in accordance with § 6013.3 or have monthly monitoring conducted in accordance with § 6013.4.
36. From at least October 1, 2003 until the tanks were removed on June 11, 2007, the piping for USTs Nos.1, 2 and 3 was underground and routinely conveyed regulated substances under pressure.
37. Respondents never conducted a testing of the piping associated with USTs Nos.1, 2, or 3.
38. Respondents failed to perform an annual line tightness testing in accordance with 20 DCMR § 6013.3 or have monthly monitoring conducted in accordance with 20 DCMR § 6013.4 from October 1, 2003 until the tanks were removed on June 11, 2007 for the underground piping associated with USTs Nos.1, 2 and 3.
39. Respondents' acts and/or omissions as alleged in Paragraph 38, above, constitute violations by Respondents of 20 DCMR § 6004.3.

CIVIL PENALTY

40. In settlement of Complainant's claims for civil penalties for the violations alleged in this CA, Respondents agrees to pay a civil penalty in the amount of Thirty-One Thousand Two Hundred Twenty-Nine Dollars (\$31,229.00). The civil penalty amount is due and payable immediately upon Respondents' receipt of a true and correct copy of this CA and attached FO.
 - A. Respondents may pay the entire civil penalty of Thirty-One Thousand Two Hundred Twenty-Nine Dollars (\$31,229.00) within thirty (30) calendar days of the date on which this CAFO is mailed or hand-delivered to Respondents and no interest will be assessed against Respondents pursuant to 40 C.F.R. § 13.11(a)(1).
 - B. Alternatively, Respondents may pay the civil penalty of Thirty-One Thousand Two Hundred Twenty-Nine Dollars (\$31,229.00) in three (3) installments with interest at the rate of three percent (3%) per annum on the outstanding principal balance in accordance with the following schedule:
 - (i) 1st Payment: The first payment in the amount of Ten Thousand Four Hundred Nine Dollars and Sixty-Seven Cents (\$10,409.67) which does not include any interest payment, shall be paid

within thirty (30) days of the date on which this SCAFO is mailed or hand-delivered to Respondent;

- (ii) 2nd Payment: The second payment in the amount of Ten Thousand Five Hundred Sixty-Three Dollars and Sixty-Eight Cents (\$10,563.68), which includes interest payment of \$154.00, shall be paid within sixty (60) days on which this SCAFO is mailed or hand-delivered to Respondent; and
- (iii) 3rd Payment: The third payment in the amount of Ten Thousand Four Hundred Eighty-Six Dollars and Sixty-Six Cents (\$10,486.66), which includes an interest payment of \$77.00, shall be paid within ninety (90) days of the date on which this SCAFO is mailed or hand-delivered to Respondent.

Pursuant to the above schedule, Respondents will remit payments totaling Thirty-One Thousand Four Hundred Sixty Dollars and One Cent (\$31,460.01) for the civil penalty which includes total interest payments in the amount of Two Hundred Thirty-One Dollars (\$231.00).

If Respondents fail to make one of the installment payments in accordance with the schedule set forth above, the entire unpaid balance of the penalty and all accrued interest shall become due immediately upon such failure, and Respondents shall *immediately* pay the entire remaining principal balance of the civil penalty along with any interest that has accrued up to the time of such payment. In addition, Respondents shall be liable for and shall pay administrative handling charges and late payment penalty charges as described in paragraphs 43 and 44, below, in the event of any such failure or default.

- 41. 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.
- 42. 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 Respondents. 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).

43. 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.
44. 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).
45. 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 Respondents's violations and any good faith efforts by Respondents 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.
46. Respondents shall pay the amount described in Paragraph 40 above, by sending a certified or cashier's check payable to the "United States Treasury," as follows:

By Regular US Postal Service Mail:

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

By Private Commercial Overnight Delivery:

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

Contact: Natalie Pearson
(314) 418-4087

Payment of the penalty as required by this CAFO may also be made by wire transfer to:

Electronic Funds Transfer ("EFT")

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")

Automated Clearing House (ACH) Transfers also known as
Remittance Express ("REX")

PNC Bank
ABA = 051036706
Environmental Protection Agency
Account 310006
CTX Format
Transaction Code 22 - checking
808 17th Street, NW
Washington, DC 20074
Contact Jessie White
(301) 887-6548

On-line Payments (bank account, credit card, debit card)

Go to www.pay.gov
Within the search field enter: sfo 1.1
Open the form and complete the required fields

Payment by Respondents shall reference Respondents's name and address, and the EPA Docket Number of this CAFO. A copy of Respondents's check or a copy of Respondents'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 (3RC30)
Senior Assistant Regional Counsel
U.S. Environmental Protection Agency - Region III
1650 Arch Street
Philadelphia, PA 19103-2029.

FULL AND FINAL SATISFACTION

47. 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

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

49. Nothing in this CAFO shall relieve Respondents of any duties otherwise imposed on it by applicable federal, state or local law and/or regulations.

AUTHORITY TO BIND THE PARTIES

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

ENTIRE AGREEMENT

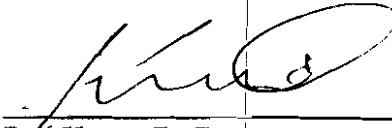
51. This CA and the attached FO constitute the entire agreement and understanding of the parties concerning settlement of the above-captioned action and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this CA and the attached FO.

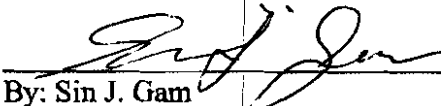
EFFECTIVE DATE

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

For Respondents:

9/10/08
Date



By: Kyung B. Gam


By: Sin J. Gam

For Complainant:

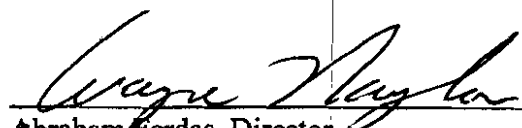
9/18/08
Date

U.S. Environmental Protection Agency,
Region III


Donzetta Thomas (3RC30)
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.

9/19/08
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:)	
Kyung B. Gam and Sin J. GAM)	
15201 Shady Grove Road)	Docket Number: RCRA-3-2008-0402
Suite 105)	
Rockville, MD 20850)	Proceeding Under Section 9006 of the
)	Resource Conservation and Recovery Act,
Respondents)	as amended, 42 U.S.C. § 6991e.

FINAL ORDER

Complainant, the Director of the Land and Chemicals Division, U.S. Environmental Protection Agency - Region III, and Respondents, Kyung B. Gam and Sin J. Gam, 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.

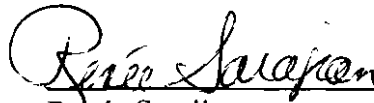
NOW, THEREFORE, PURSUANT TO Section 22.18(b)(3) of the *Consolidated Rules of Practice* and Section 9006(c) of the Resource Conservation and Recovery Act, 42 U.S.C. § 6991e(c) ("RCRA"), and having determined, based on the representations of the parties in the attached Consent Agreement, that the civil 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 Respondents pay a civil penalty of Thirty-One Thousand Two Hundred Twenty-Nine Dollars (\$31,229.00) 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:

9/24/08



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

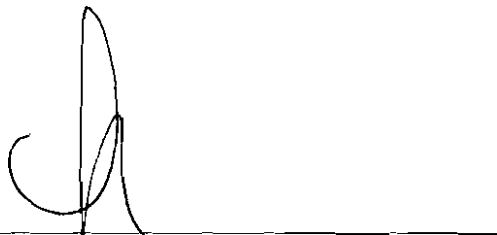
CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on the date listed below, the original of the foregoing Consent Agreement and Final Order, Docket No. RCRA-03-2008-0402, 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 parties:

Overnight mail:

Megan Chung, Esq.
Hale Carlson Penn, PLC
10511 Judicial Drive
Fairfax, VA 22030-5172

9/28/08
Date



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