

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

In the Matter of:	:	Consent Agreement and
	:	Final Order
SEPTA Callowhill Bus Garage	:	
59th & Callowhill Streets	:	U.S. EPA Docket Number
Philadelphia, PA 19138;	:	RCRA-03-2016-0059
	:	
SEPTA Comly Garage	:	Proceeding Under Section 9006 of the
Penn & Comly Streets	:	Resource Conservation and Recovery
Philadelphia, PA 19149;	:	Act, as amended, 42 U.S.C. § 6991e
	:	
SEPTA Frankford Bus Garage	:	
5235 Penn Street	:	
Philadelphia, PA 19124;	:	
	:	
SEPTA Midvale Bus Garage	:	
4301 Wissahickon Avenue	:	
Philadelphia, PA 19129; and	:	
	:	
SEPTA Southern Bus Garage	:	
20th & Johnson Streets	:	
Philadelphia, PA 19145;	:	
	:	
Facilities,	:	
	:	
Southeastern Pennsylvania	:	
Transportation Authority (SEPTA)	:	
1234 Market Street	:	
Philadelphia, PA 19107-3780	:	
	:	
Respondent.	:	

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CONSENT AGREEMENT

I. PRELIMINARY STATEMENT

1. This Consent Agreement is entered into by the Director of the Land and Chemicals Division, U. S. Environmental Protection Agency, Region III (“Complainant” or “EPA” or “Agency”) and the Southeastern Pennsylvania Transportation Authority (SEPTA)

(“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 of Practice*”), 40 C.F.R. Part 22 (with specific reference to 40 C.F.R. §§ 22.13(b), 22.18(b)(2), and (3)).

2. This Consent Agreement and the Final Order (hereinafter collectively referred to as the “CAFO”) resolve Respondent’s alleged violations of Subtitle I of RCRA, 42 U.S.C. §§ 6991-6991m, and the Commonwealth of Pennsylvania’s federally authorized Underground Storage Tank (“UST”) Program that occurred at five of Respondent’s facilities located at the following sites (referred to collectively after this as the “Facilities”):

- a. SEPTA Callowhill Bus Garage, 59th & Callowhill Streets, Philadelphia, PA (51-44392) (herein referred to as “Callowhill”);
- b. SEPTA Comly Garage, Penn & Comly Streets, Philadelphia, PA (51-07488) (herein referred to as “Comly”);
- c. SEPTA Frankford Bus Garage, 5235 Penn Street, Philadelphia, PA (51-07480) (herein referred to as “Frankford”);
- d. SEPTA Midvale Bus Garage, 4301 Wissahickon Avenue, Philadelphia, PA (51-46042) (herein referred to as “Midvale”); and

- e. SEPTA Southern Bus Garage, 20th & Johnson Streets, Philadelphia, PA (51-07489) (herein referred to as "Southern").

3. In accordance with 40 C.F.R. §§ 22.13(b), 22.18(b)(2), and (3), Complainant hereby simultaneously commences and resolves, as part of the settlement set forth herein, EPA's civil claims alleged in Section III ("Findings of Fact and Conclusions of Law") of this Consent Agreement.

II. GENERAL PROVISIONS

4. The settlement agreed to by the parties in this Consent Agreement reflects the desire of the parties to resolve this matter without litigation.
5. Respondent consents to the issuance of this CAFO and agrees to comply with its terms and conditions.
6. For purposes of this proceeding, Respondent admits the jurisdictional allegations set forth in this Consent Agreement and the attached Final Order.
7. Except as provided in Paragraph 6 of this Consent Agreement, for purposes of this proceeding, Respondent neither admits nor denies the factual allegations and legal conclusions set forth in this Consent Agreement.

8. Respondent agrees not to contest the jurisdiction of EPA with respect to the execution of this Consent Agreement, the issuance of the attached Final Order, or the enforcement of this CAFO.

9. For purposes of this proceeding only, Respondent hereby expressly waives any right to contest the allegations set forth in this Consent Agreement and any right to appeal the accompanying Final Order.

10. Each Party to this Consent Agreement shall bear its own costs and attorney's fees in connection with this proceeding.

11. With the exception of the violations noted in Section V below ("Compliance Order"), the person signing this Consent Agreement on behalf of Respondent certifies to EPA by his or her signature herein that, to the best of their knowledge, the Respondent has corrected the violations that are the subject of this Consent Agreement so that the Facilities are in compliance with the provisions of Subtitle I of RCRA, 42 U.S.C. §§ 6991-6991m, and the Commonwealth of Pennsylvania's UST Management Program regulations set forth at Pennsylvania Code, Title 25, Chapter 245, Administration of the Storage Tank and Spill Prevention Program (2002) ("PA UST Regulations") at the Facilities referenced in this Consent Agreement.

12. This Consent Agreement and the accompanying Final Order shall apply to and be binding upon the Respondent, Respondent's officers, directors, employees, and Respondent's successors and assigns.

13. 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.

14. To the extent applicable, Respondent agrees not to deduct for civil taxation purposes the civil penalty specified in this Consent Agreement and attached Final Order.

15. The Respondent is aware that the submission of false or misleading information to the United States government may subject the 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 the Findings of Fact and Conclusions of Law are false or, in any material respect, inaccurate.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

17. Pursuant to Section 9004 of RCRA, 42 U.S.C. § 6991c, and 40 C.F.R. Part 281, a state may 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. §§ 6991-6991m.

18. Effective September 11, 2003, EPA granted the Commonwealth of Pennsylvania final authorization to administer a state underground storage tank management program (“Pennsylvania Authorized UST Management Program”) in lieu of the Federal underground storage tank management program established under Subtitle I. See 68 FR 53520 (September 11, 2003). Through this final authorization, the provisions of the Pennsylvania Authorized UST Management Program became requirements of RCRA Subtitle I and are, accordingly, enforceable by EPA pursuant to Section 9006 of RCRA, 42 U.S.C. § 6991c(d)(2).

19. The factual allegations and legal conclusions in this CAFO are based upon the provisions of the Pennsylvania Authorized UST Management Program, as set forth in the PA UST Regulations.

20. On February 9, 2015, EPA gave the Commonwealth of Pennsylvania notice of the issuance of this CAFO in accordance with Section 9006(a)(2) of RCRA, 42 U.S.C. § 6991e(a)(2).

21. Respondent is a “person” as defined in Section 9001 of RCRA, 42 U.S.C. § 6991, and in the PA UST Regulations, 25 Pa. Code § 245.1 (2002).

22. At all times relevant to this CAFO, Respondent was the “owner” and “operator” of “underground storage tanks” (“USTs”) and “Underground Storage Tank systems,” as those

terms are defined in Section 9001 of RCRA, 42 U.S.C. § 6991, and the PA UST Regulations, 25 Pa. Code § 245.1 (2002), located at the Facilities.

Callowhill

23. On November 13, 2014, an EPA representative conducted a Compliance Enforcement Inspection (“CEI”) of Callowhill pursuant to Section 9005 of RCRA, 42 U.S.C. § 6991d.

24. At the time of the November 13, 2014 CEI of Callowhill, and at all times relevant to the applicable violations alleged herein, one UST, as described in the following subparagraph, among others, was located at Callowhill:

A. One six thousand (6,000) gallon fiberglass reinforced plastic tank (“Tank 016”) that was installed on or about January 1995, and that, at all times relevant hereto, routinely contained new motor oil.

25. At all times relevant to the applicable violations alleged in this Consent Agreement, Respondent has used Tank 016 at Callowhill to store new motor oil, which is a petroleum product. The new motor oil in Tank 016 is a “regulated substance” as that term is defined in Section 9001 of RCRA, 42 U.S.C. § 6991, and PA UST Regulations, 25 Pa. Code § 245.1 (2002). Because Tank 016 contains a form of petroleum, it and its associated piping therefore constitutes a “petroleum system” as that term is defined in PA UST Regulations, 25 Pa. Code § 245.1 (2002).

26. Pursuant to RCRA Section 9005, 42 U.S.C. § 6991d, on November 18, 2014, EPA requested information by an email message to Respondent about Tank 016 and other USTs at Callowhill (“Callowhill November Message”). The message asked if Tank 016 met the standard for “safe suction” as the requirements are set out at 25 Pa. Code § 245.442(2)(ii)(A) – (E) (2002).

27. In a December 5, 2014 letter response to the Callowhill November Message, the Respondent stated that the as-built drawings for Tank 016 indicated that it did not qualify for safe suction due to the presence of a foot valve at the base of the suction line, and that Respondent planned to hire a contractor to inspect the tank to see if it did qualify.

28. On March 19, 2015, EPA issued a Show Cause and Information Request Letter (“Show Cause Letter”) to the Respondent.

29. Pursuant to RCRA Section 9005, 42 U.S.C. § 6991d, EPA requested information about the Facilities in the information request section of the Show Cause Letter.

30. In the Show Cause Letter EPA asked the Respondent if it had performed any line tightness tests for Tank 016’s product line from April 2010 to the date of the Show Cause Letter.

31. On April 3, 2015, the Respondent sent a letter (“SEPTA April 3 Letter”) responding to the Show Cause Letter.

32. In the SEPTA April 3 Letter, the Respondent stated that the Respondent had not performed any line tightness tests for Tank 016's product line from April 2010 to the date of the Show Cause Letter, and that in response to EPA's concerns, the tank had been inspected and a foot valve removed, rendering the system compliant for safe suction.

Comly

33. On October 27, 2014, an EPA representative conducted a CEI of Comly pursuant to Section 9005 of RCRA, 42 U.S.C. § 6991d.

34. At the time of the October 27, 2014 CEI at Comly, and at all times relevant to the applicable violations alleged herein, one UST, among others, as described in the following subparagraph, was located at Comly:

A. One six thousand (6,000) gallon fiberglass reinforced plastic tank ("Tank 014") that was installed on or about January 1997, and that, at all times relevant hereto, routinely contained new motor oil.

35. At all times relevant to the applicable violations alleged in this Consent Agreement, Respondent has used Tank 014 at Comly to store new motor oil, which is a regulated substance.

36. Pursuant to RCRA Section 9005, 42 U.S.C. § 6991d, on October 30, 2014, EPA requested information by an email message to Respondent that was in part about Tank 014

(“October Message”). The October Message asked if Tank 014 met the standard for safe suction.

37. In a November 28, 2014 response letter to the October Message, the Respondent stated that it was looking for plans for Tank 014 that would indicate whether the tank did qualify for safe suction.

38. In the Show Cause Letter, EPA asked if Tank 014’s piping met the standard for safe suction. EPA also asked if Tank 014’s piping did not meet the standard for safe suction, had the Respondent performed any line tightness tests for Tank 014’s product line from April 2010 to the date of the Show Cause Letter.

39. In a response letter, dated June 5, 2015, to the Show Cause Letter (“June 5 Response Letter”), the Respondent stated that Tank 014’s product line did not meet the standard for safe suction and that the Respondent had not performed any line tightness tests for Tank 014’s product line from April 2010 to the date of the Show Cause Letter.

Frankford

40. On October 27, 2014, an EPA representative conducted a CEI of Frankford pursuant to Section 9005 of RCRA, 42 U.S.C. § 6991d.

41. At the time of the October 27, 2014 CEI at Frankford and at all times relevant to the applicable violations alleged herein, eight USTs, as described in the following subparagraphs, were located at Frankford:

- A. One ten thousand (10,000) gallon fiberglass reinforced plastic tank ("Tank 016") that was installed on or about February 1994, and that, at all times relevant hereto, routinely contained diesel fuel;
- B. One ten thousand (10,000) gallon fiberglass reinforced plastic tank ("Tank 017") that was installed on or about February 1994, and that, at all times relevant hereto, routinely contained diesel fuel;
- C. One six thousand (6,000) gallon fiberglass reinforced plastic tank ("Tank 019") that was installed on or about February 1994, and that, at all times relevant hereto, routinely contained gasoline;
- D. One six thousand (6,000) gallon fiberglass reinforced plastic tank ("Tank 020") that was installed on or about February 1994, and that, at all times relevant hereto, routinely contained new motor oil;
- E. One two thousand five hundred (2,500) gallon fiberglass reinforced plastic tank ("Tank 021") that was installed on or about February 1994, and that, at all times relevant hereto, routinely contained automatic transmission fluid;

- F. One two thousand five hundred (2,500) gallon fiberglass reinforced plastic tank (“Tank 022”) that was installed on or about February 1994, and that, at all times relevant hereto, routinely contained used oil;

- G. One six hundred (600) gallon fiberglass reinforced plastic tank (“Tank 023”) that was installed on or about February 1993, and that, at all times relevant hereto, routinely contained used oil; and

- H. One six hundred (600) gallon fiberglass reinforced plastic tank (“Tank 024”) that was installed on or about February 1993, and that, at all times relevant hereto, routinely contained used oil.

42. At all times relevant to the applicable violations alleged in this Consent Agreement, the tanks at Frankford, with the exception of Tank 021, have been used to store gasoline, diesel fuel, new motor oil, and used oil which are petroleum products. These liquids are “regulated substances” as that term is defined in Section 9001 of RCRA, 42 U.S.C. § 6991, and PA UST Regulations, 25 Pa. Code § 245.1 (2002). The tanks at the Facility and their associated piping constitute “petroleum system[s]” as that term is defined in PA UST Regulations, 25 Pa. Code § 245.1 (2002).

43. At all times relevant to the applicable violations alleged in this Consent Agreement, Respondent has used Tank 021 to store automatic transmission fluid which is a “regulated substance” as that term is defined in Section 9001 of RCRA, 42 U.S.C. § 6991, and PA UST Regulations, 25 Pa. Code § 245.1 (2002).

44. During the October 27, 2014 CEI at Frankford, the EPA inspector found that both Tanks 016 and 017 had two product lines with a mechanical line leak detector (MLLD) and a sump sensor for each product line.

45. For both Tanks 016 and 017, the Respondent designated one product line as Line 1 and the other as Line 2.

46. The EPA inspector found that one of the two product lines from both Tanks 016 and 017 had a vertical run that was longer than ten feet.

47. The Respondent's records that the EPA inspector reviewed during the inspection showed that the tank release detector for Tank 017 had been in liquid alarm from January 1, 2014, until May 1, 2014.

48. The inspector questioned if the product lines for Tanks 019, 020, and 021 met the standards for safe suction.

49. The inspector asked for tank detection records for Tanks 022, 023, and 024.

50. On October 29, 2014, the Respondent provided tank sump sensor records for Tanks 016 and 017 and tank detection records for Tanks 022, 023, and 024.

51. On November 10, 2014, the Respondent provided additional records for Tanks 022, 023 and 024.

52. On November 12, 2014, EPA asked for the following additional information from the Respondent ("Frankford November Message"):

- A. A description of the method of line release detection it used for Tanks 016 and 017 since it appeared that, with the static head pressure on the MLLDs, the MLLDs could not operate properly;
- B. Whether Respondent used an alternate method of tank release detection for Tank 017 while it appeared the Tank was in "liquid alarm" from January 1, 2014 through May 29, 2014;
- C. Records of line release detection and/or line tightness testing for Tanks 016 and 017 if the Respondent used such detection and/or testing for the Tanks' lines; and
- D. Additional tank release detection records for Tanks 022, 023, and 024.

53. By letter dated November 28, 2014, the Respondent replied to the Frankford November Message. In its reply, the Respondent stated the following:

- A. It had not used an alternate method of tank release detection for Tank 017 from January 1, 2014 through May 29, 2014;

- B. It was providing records of monthly line release detection for Tanks 016 and 017;
- C. It had not conducted annual line tightness testing for Tanks 016 and 017; and
- D. It could not find tank release detection records for Tanks 022, 023, and 024 from November 2013 through July 2014.

54. At Frankford, the Respondent's monthly monitoring records do not show that the Respondent conducted monthly monitoring from on or about April 30, 2014 to June 1, 2014; from on or about July 30, 2014 to August 12, 2014; and from on or about September 12, 2014 to September 23, 2014, of product for Tank 016, Sump 1.

55. At Frankford, the Respondent's monthly monitoring records do not show that the Respondent conducted monthly monitoring from on or about December 13, 2013 to January 13, 2014; from on or about March 13, 2014 to April 11, 2014; from on or about July 30, 2014 to August 12, 2014; and from on or about September 12, 2014 to September 23, 2014, of product for Tank 016, Sump 2.

56. At Frankford, the Respondent's monthly monitoring records do not show that the Respondent conducted monthly monitoring from on or about April 30, 2014 to June 1, 2014; from on or about July 30, 2014 to August 12, 2014; and from on or about September 12, 2014 to September 23, 2014, of product for Tank 017, Sump 1.

57. At Frankford, the Respondent's monthly monitoring records do not show that the Respondent conducted monthly monitoring from on or about July 30, 2014 to August 12, 2014; and from on or about September 12, 2014 to September 23, 2014, of product for Tank 017, Sump 2.

58. In the SEPTA April 3 Letter, the Respondent stated it did not have tank release detection data for Tank 017 from January 1, 2014 through May 29, 2014 because of issues related to the installation of a new TLS 450 automatic tank gauge.

59. In a May 15, 2015 response to the Show Cause Letter ("May Response"), the Respondent stated the following:

- A. A consultant for the Respondent concluded that the MLLDs for Tanks 016 and 017 could not function properly as installed; and
- B. It believed that Tank 022 was exempt from monitoring requirements and that Tanks 023, and 024 were not regulated USTs.

60. In the June 5 Response Letter, the Respondent stated that Tanks 019, 020 and 021 did not meet the requirements for safe suction and that it had not conducted line tightness tests on the lines.

Midvale

61. On November 13, 2014, an EPA representative conducted a CEI of Midvale pursuant to Section 9005 of RCRA, 42 U.S.C. § 6991d.

62. At the time of the November 13, 2014 CEI at Midvale, and at all times relevant to the applicable violations alleged herein, one UST, as described in the following subparagraph, among others, was located at Midvale:

A. One six thousand (6,000) gallon fiberglass reinforced plastic tank ("Tank 021") that was installed on or about November 1996, and that, at all times relevant hereto, routinely contained diesel fuel.

63. At all times relevant to the applicable violations alleged in this Consent Agreement, Respondent has used Tank 021 at Midvale to store diesel fuel. As a result, the tank at the Facility and its associated piping constitutes a "petroleum system" as that term is defined in PA UST Regulations, 25 Pa. Code § 245.1 (2002).

64. At the time of the November 13, 2014 CEI, the Respondent did not provide records of line leak detector testing for the UST.

65. Pursuant to RCRA Section 9005, 42 U.S.C. § 6991d, on November 18, 2014, EPA requested information by an email message to Respondent in part about Tank 021 ("November Email"). The message asked for copies of any line leak detector tests from January 2010 to the date of the November Email.

66. In a December 5, 2014 letter response to the November Email, the Respondent stated that it found the tests for 2013 and 2014 and the tests from 2010 to 2012 could not be immediately located.

67. In the Show Cause Letter, EPA asked if the Respondent had conducted line leak detector testing annually for Tank 021 from December 14, 2012 to the date of the Show Cause Letter.

68. Respondent's May Response to the Show Cause Letter demonstrates that the line leak detector for Tank 021 was tested on December 12, 2012 and next tested on April 25, 2014.

Southern

69. On November 5, 2014, an EPA representative conducted a CEI of Southern pursuant to Section 9005 of RCRA, 42 U.S.C. § 6991d.

70. At the time of the November 5, 2014 CEI at Southern, and at all times relevant to the applicable violations alleged herein, four USTs, as described in the following subparagraphs, among others, were located at Southern:

- A. One ten thousand (10,000) gallon fiberglass reinforced plastic tank ("Tank 017") that was installed on or about January 1991, and that, at all times relevant hereto, routinely contained diesel fuel;

- B. One ten thousand (10,000) gallon fiberglass reinforced plastic tank (“Tank 018”) that was installed on or about January 1991, and that, at all times relevant hereto, routinely contained diesel fuel;
- C. One six thousand (6,000) gallon fiberglass reinforced plastic tank (“Tank 019”) that was installed on or about January 1991, and that, at all times relevant hereto, routinely contained anti-freeze; and
- D. One six thousand (6,000) gallon fiberglass reinforced plastic tank (“Tank 020”) that was installed on or about January 1991, and that, at all times relevant hereto, routinely contained new motor oil.

71. At all times relevant to the applicable violations alleged in this Consent Agreement, Tanks 017, 018, and 020 at Southern have been used to store diesel fuel and new motor oil, both of which are “regulated substance[s]” as that term is defined in Section 9001 of RCRA, 42 U.S.C. § 6991, and PA UST Regulations, 25 Pa. Code § 245.1 (2002). Therefore, these tanks at Southern and their associated piping constitute “petroleum system[s]” as that term is defined in PA UST Regulations, 25 Pa. Code § 245.1 (2002).

72. At all times relevant to the applicable violations alleged in this Consent Agreement, Respondent has used Tank 019 to store anti-freeze, which is a hazardous substance. This liquid is a “regulated substance,” as that term is defined in Section 9001 of RCRA, 42 U.S.C. § 6991, and PA UST Regulations, 25 Pa. Code § 245.1 (2002).

73. During the November 5, 2014 CEI at Southern, the EPA inspector observed what she believed to be suction lines for Tanks 017, 018, 019 and 020.

74. According to the EPA inspector, the Respondent's representative informed the EPA inspector that the line for Tank 019 had a foot valve which meant it did not qualify as a safe suction line.

75. The EPA inspector also found that it was unclear if the lines for Tanks 017, 018, and 020 qualified as safe suction lines.

76. In an email dated December 5, 2014 ("December Email"), EPA asked the Respondent for documentation which demonstrated that the lines for Tanks 017, 018 and 020 met the requirements of 25 Pa. Code § 245.442(2)(ii) (2002) (standards for safe suction lines).

77. In a January 6, 2015 response to the December Email, the Respondent stated that, if the Respondent were otherwise unable to demonstrate that Tanks 017, 018 and 020 qualified as safe suction lines, it would engage a contractor to verify if the lines were qualified as such.

78. EPA stated in the Show Cause Letter that the Respondent failed to show that lines for Tanks 017, 018, 019, and 020 qualified as safe suction lines, which meant that the Respondent had to conduct line tightness testing for the lines.

79. In the SEPTA April 3 Letter, the Respondent stated that it was engaging a contractor to determine if the lines for Tanks 017, 018, 019 and 020 qualified as safe suction lines thereby exempting the lines from the line tightness/ monthly monitoring requirement.

80. In the June 5 Response Letter, the Respondent stated that Tanks 017, 018, 019 and 020 would need to be modified for their lines to qualify as safe suction lines.

Count I

81. Paragraphs 1 through 80 of this Consent Agreement are incorporated by reference as if fully set forth herein.

82. Pursuant to the PA UST Regulations, 25 Pa. Code § 245.442(2)(i)(A) (2002), all owners and operators of petroleum UST systems storing regulated substances must equip lines that carry regulated substances from their tanks under pressure with a line leak detector in accordance with 25 Pa. Code § 245.445(1) (2002).

83. Pursuant to 25 Pa. Code § 245.445(1) (2002), the line leak detector on pressurize product lines must be capable of alerting the operator to the presence of a leak by restricting or shutting of the flow of regulated substances through piping or triggering an audible or visual alarm only if it detects leaks of 3 gallons per hour at 10 pounds per square inch line pressure within 1 hour.

84. Tanks 016 and 017 at Frankford were, at the time of the violations alleged herein, UST systems used to store regulated substances and, as a result, subject to the requirements of the 25 Pa. UST Regulations, 25 Pa. Code Part 245 (2002).

85. At Frankford, static head pressure prevented the line leak detectors from operating as required by 25 Pa. Code § 245.445(1) (2002) for Tanks 016 and 017 from on or about June 30, 2010 to June 30, 2015.

86. The Respondent's failure to provide line leak detectors capable of meeting the standards required for Tanks 016 and 017 constitute violations of the PA UST Regulations, 25 Pa. Code § 245.445(1) (2002), from June 30, 2010 through June 30, 2015.

Count II

87. Paragraphs 1 through 86 of this Consent Agreement are incorporated by reference as if fully set forth herein.

88. Pursuant to 25 Pa. Code § 245.442(1) (2002), all owners and operators of UST systems storing petroleum products must, with limited exceptions, monitor for releases of product from their tanks using one of the methods in 25 Pa. Code § 245.444(4)-(9) (2002).

89. Tanks 22, 23 and 24 at Frankford were, at the time of the violations alleged herein, UST systems used to store petroleum products and, as a result, subject to the requirements of the PA UST Regulations, 25 Pa. Code Part 245 (2002).

90. At Frankford, from on or about June 30, 2010 to June 30, 2015, Respondent did not provide release detection for Tanks 22, 23 and 24.

91. The Respondent's failure to perform release detection for Tanks 22, 23 and 24 constitutes violations of the PA UST Regulations, 25 Pa. Code § 245.442(1) (2002), from June 30, 2010 through June 30, 2015.

Count III

92. Paragraphs 1 through 91 of this Consent Agreement are incorporated by reference as if fully set forth herein.

93. Tank 017 at Frankford was, at the time of the violations alleged herein, an UST system used to store a petroleum product and, as a result, subject to the requirements of the PA UST Regulations, 25 Pa. Code Part 245 (2002).

94. At Frankford, because of complications related to the new automatic tank gauging system, Respondent did not provide tank release detection for Tank 017 from on or about January 1, 2014 to May 29, 2014.

95. The Respondent's failure to perform tank release detection for Tank 017 constitutes a violation of the PA UST Regulations, 25 Pa. Code § 245.442(1) (2002), from January 1, 2014 to May 29, 2014.

Count IV

96. Paragraphs 1 through 95 of this Consent Agreement are incorporated by reference as if fully set forth herein.

97. Pursuant to the PA UST Regulations, 25 Pa. Code § 245.442(2)(i)(B) (2002), all owners and operators of petroleum UST systems storing regulated substances must, for lines that carry regulated substances from their tanks under pressure, have an annual line tightness test for the lines in accordance with 25 Pa. Code § 245.445(2) (2002) or conduct monthly monitoring in accordance with 25 Pa. Code § 245.445(3) (2002).

98. At Frankford, for Tank 016, Sumps 1 and 2, and Tank 017, the Respondent did not conduct annual line tightness testing and did not conduct monthly monitoring for the dates stated in Paragraphs 54 through 57, above.

99. The Respondent's failure to perform line leak detection of product for Tanks 016 and 017 constitutes violations of the PA UST Regulations, 25 Pa. Code § 245.442(2)(i)(B) (2002) for the dates cited in Paragraphs 54 through 57, above.

Count V

100. Paragraphs 1 through 99 of this Consent Agreement are incorporated by reference as if fully set forth herein.

101. Pursuant to 25 Pa. UST Regulations, 25 Pa. Code § 245.442(2)(ii) (2002), all owners and operators of petroleum UST systems storing regulated substances which do not meet the standards for safe suction described at 25 Pa. Code § 245.442(2)(ii)(A-D) (2002) must provide for line leak detection of regulated substances from the lines that carry regulated substances from their tanks.

102. Tanks 019, 020 and 021 at Frankford were, at the time of the violations alleged herein, UST systems used to store regulated substances and, as a result, were subject to the requirements of the PA UST Regulations, 25 Pa. Code Part 245 (2002) (2002).

103. Tanks 019, 020 and 021 at Frankford were, at the time of the violations alleged herein, UST systems used to store regulated substances and equipped with suction piping that did not meet the standards for "safe suction."

104. At Frankford, from on or about June 30, 2010 through June 30, 2015, Respondent did not perform line release detection for Tanks 019, 020, and 021.

105. The Respondent's failure to perform line release detection for Tanks 019, 020, and 021 constitute violations of the PA UST Regulations, 25 Pa. Code § 245.442(2)(ii) (2002) from June 30, 2010 through June 30, 2015.

Count VI

106. Paragraphs 1 through 105 of this Consent Agreement are incorporated by reference as if fully set forth herein.

107. Pursuant to the PA UST Regulations, 25 Pa. Code § 245.445(1) (2002), all owners and operators of UST systems storing regulated substances must annually test their line leak detectors.

108. Tank 021 at Midvale was, at the time of the violations alleged herein, an UST system used to store regulated substances and, as a result, subject to the requirements of the PA UST Regulations, 25 Pa. Code Part 245 (2002).

109. At Midvale, from on or about December 12, 2013 to April 25, 2014, Respondent did not perform the annual line leak detector testing for Tank 021.

110. The Respondent's failure to perform line leak detector testing for Tank 021 constitutes a violation of the PA UST Regulations, 25 Pa. Code § 245.445(1) (2002) from December 12, 2013 to April 25, 2014.

Count VII

111. Paragraphs 1 through 110 of this Consent Agreement are incorporated by reference as if fully set forth herein.

112. Tank 016 at Callowhill was, at the time of the violations alleged herein, an UST system used to store regulated substances and, as a result, subject to the requirements of the PA UST Regulations, 25 Pa. Code Part 245 (2002).

113. Tank 016 at Callowhill was, at the time of the violations alleged herein, an UST system used to store regulated substances and was equipped with suction piping that did not meet the standards for "safe suction."

114. At Callowhill, from on or about June 30, 2010, to March 12, 2015, Respondent did not perform line release detection for Tank 016.

115. The Respondent's failure to perform line release detection for Tank 016 constitutes a violation of the PA UST Regulations, 25 Pa. Code § 245.442(2)(ii) (2002), from June 30, 2010 through March 12, 2015.

Count VIII

116. Paragraphs 1 through 115 of this Consent Agreement are incorporated by reference as if fully set forth herein.

117. Tank 014 at Comly was, at the time of the violations alleged herein, an UST system used to store regulated substances and, as a result, subject to the requirements of the PA UST Regulations, 25 Pa. Code Part 245 (2002).

118. Tank 014 at Comly was, at the time of the violations alleged herein, an UST system used to store regulated substances and equipped with suction piping that did not meet the standards for “safe suction.”

119. At Comly, from on or about June 30, 2010 through June 30, 2015, Respondent did not perform line release detection for Tank 014.

120. The Respondent’s failure to perform line release detection for Tank 014 constitutes a violation of the PA UST Regulations, 25 Pa. Code § 245.442(2)(ii) (2002), from June 30, 2010 through June 30, 2015.

Count IX

121. Paragraphs 1 through 120 of this Consent Agreement are incorporated by reference as if fully set forth herein.

122. Tanks 017, 018, 019 and 020 at Southern were, at the time of the violations alleged herein, UST systems used to store regulated substances and, as a result, subject to the requirements of the PA UST Regulations, 25 Pa. Code Part 245 (2002).

123. Tanks 017, 018, 019 and 020 at Southern were, at the time of the violations alleged herein, UST systems used to store regulated substances and equipped with suction piping that did not meet the standards for “safe suction.”

124. At Southern, from on or about June 30, 2010 through June 30, 2015, Respondent did not perform line release detection for Tanks 017, 018, 019 and 020.

125. The Respondent's failure to perform line release detection for Tanks 017, 018, 019 and 020 constitutes violations of the PA UST Regulations, 25 Pa. Code § 245.442(2)(ii) (2002) from June 30, 2010 through June 30, 2015.

IV. CIVIL PENALTY

126. 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 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, codified at 40 C.F.R. Part 19, EPA has subsequently raised the maximum civil penalty not to exceed \$ 16,000 for each tank for each day of violation for all violations occurring after January 12, 2009 to the present.

127. In this matter, in settlement of EPA's claims for civil penalties assessable for the violations alleged in this Consent Agreement, Respondent consents to the assessment of a civil penalty in the amount of one hundred sixteen thousand eight hundred forty three

dollars (\$116,843) which Respondent shall be liable to pay in accordance with the terms set forth below.

128. The penalty becomes due and payable within thirty (30) days after Respondent's receipt of a true and correct copy of this CAFO.

129. The Parties represent that the settlement terms are reasonable and are based upon EPA's consideration of a number of factors, including the penalty criteria set forth in Section 9006(c) of RCRA, 42 U.S.C. § 6991e(c), i.e., the seriousness of the violation and any good faith efforts to comply with the applicable requirements. Section 9006(e) of RCRA, 42 U.S.C. § 6991e(e) authorizes EPA to also take into consideration the compliance history of the owner or operator and any other factors that EPA considers appropriate. EPA 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 ("UST Penalty Guidance")*. In applying these factors, EPA took into account the last amendment to 40 C.F.R. Part 19 and the *UST Penalty Guidance*.

130. Payment of the civil penalty amount required under the terms of Paragraph 127, above, shall be made as follows:

All payments by Respondent shall reference Respondent's name and address, and the Docket Number of this action, that is, RCRA-03-2016-0059;

All checks shall be made payable to "United States Treasury";

All payments made by check and sent by regular mail shall be addressed and mailed to:

U.S. Environmental Protection Agency
P.O. Box 979077
St. Louis, MO 63197-9000

Contact: Craig Steffen 513-487-2091

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

US Environmental Protection Agency
Government Lockbox 979077
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101

Contact: Craig Steffen 513-487-2091

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

Cincinnati Finance
U.S. EPA, MS-NWD
26 W ML King Drive
Cincinnati, OH 45268-0001

All electronic payments made through Fedwire (generally for foreign payments) shall be directed to:

Federal Reserve Bank of New York
ABA: 021030004
Account: 68010727
SWIFT address: FRNYUS33
33 Liberty Street
New York, NY 10045
Beneficiary: US Environmental Protection Agency

All electronic payments made through the automated clearinghouse (ACH) using the US Treasury's Vendor Express Program 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 customer assistance at the closest Regional Finance Center for more information about Vendor Express. See <http://fms.treas.gov/aboutfms/locations.html> for the locations of centers.

On-Line Payment Option for credit and debit card payments:

WWW.PAY.GOV

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

Additional payment guidance is available at:

<http://www2.epa.gov/financial/makepayment>

131. At the same time that the Respondent makes any payment, it shall mail copies of any corresponding check, or provide written notification confirming any electronic wire transfer, automated clearinghouse or online payment to the following addressees:

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

and

Philip Yeany
Sr. Asst. Regional Counsel (3RC50)
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

V. COMPLIANCE ORDER

132. Pursuant to Section 9006 of RCRA, 42 U.S.C. § 6991e, Respondent is hereby ordered to:

133. Within sixty (60) days of the effective date of this CAFO, the Respondent shall complete the repairs to ensure that the MLLDs on Tanks 016 and 017 at Frankford, as designed, built and installed, can function in a manner that meets the requirements of 25 Pa. Code §§ 245.442 and 445 (2002).

134. Within thirty (30) days of the effective date of this CAFO, the Respondent shall initiate tank release detection for Tanks 022, 023, and 024 at Frankford that meets the requirements of 25 Pa. Code §§ 245.442 and 444 (2002).

135. Within sixty (60) days of the effective date of this CAFO, the Respondent shall remove the foot valves for Tanks 019, 020 and 021 at Frankford. Further, the Respondent shall certify in the report required by Paragraph 137 that the piping for Tanks 019, 020 and 021 now meets the "safe suction" requirements at 25 Pa. Code §245.442(2)(ii)(A-D) (2002). If the Respondent cannot provide certification of "safe suction," the Respondent shall provide documentation in the report required by Paragraph 137 that it is now performing piping release detection at least once every three (3) years that meets the requirements of 25 Pa. Code §§ 245.442(b)(2)(ii) and 445(2) (2002).

136. Within sixty (60) days of the effective date of this CAFO, the Respondent shall remove the foot valves for Tanks 017, 018, 019 and 020 at Southern. Further, the Respondent shall certify in the report required by Paragraph 137 that the piping for Tanks 017, 018, 019 and 020 now meets the "safe suction" requirements at 25 Pa. Code §245.442(2)(ii)(A-D) (2002). If the Respondent cannot provide certification of "safe suction," the Respondent shall provide documentation in the report required by Paragraph 137 that it is now performing piping release detection at least once every three (3) years that meets the requirements of 25 Pa. Code §§ 245.442(b)(2)(ii) and 445(2) (2002).

137. Within thirty (30) days of the later of (a) the Respondent completing the last task required by Paragraphs 133 through 136, or (b) the EPA's issuance of the accompanying Final Order, the Respondent shall submit to EPA a report demonstrating the Respondent's compliance with the requirements of Paragraphs 133 through 136. The report shall include documentation that the Respondent has completed all of the tasks required by this

Compliance Order Section, provide all required certifications of "safe suction," and provide any additional documentation required in lieu of certification of "safe suction."

138. The Respondent shall certify any notice, report, certification, data presentation, or other document submitted by Respondent pursuant to this Compliance Order which discusses, describes, demonstrates, supports any finding or makes any representation concerning Respondent's compliance or noncompliance with any requirement of this Compliance Order in the following form:

I certify that the information contained in or accompanying this [type of submission] is true, accurate, and complete. As to [the/those] identified portions of this [type of submission] for which I cannot personally verify [its/their] accuracy, I certify under penalty of law that this [type of submission] and all attachments were prepared in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

Signature:

Name:

Title:

139. All documents and reports to be submitted pursuant to this Compliance Order shall be sent by regular mail to the following person:

Marie Owens Powell
RCRA Compliance and Enforcement Branch (3LC70)
U.S. Environmental Protection Agency - Region III
1650 Arch Street
Philadelphia, PA 19103-2029

140. One copy of all documents submitted to EPA shall also be sent by regular mail to the attention of:

Kris A. Shiffer, Env'tl. Group Mgr.
Pennsylvania Department of Environmental Protection
Division of Storage Tanks
Rachel Carson State Office Building
400 Market Street
Harrisburg, PA 17101

141. Respondent is hereby notified that failure to comply with any of the terms of this Compliance Order may subject it to imposition of a civil penalty of up to \$37,500 for each day of continued noncompliance, pursuant to Section 9006(a)(3) of RCRA, 42 U.S.C. § 6991e(a)(3), the Debt Collection Improvement Act of 1996 ("DCIA"), and the subsequent Civil Monetary Penalty Inflation Adjustment Rule codified at 40 C.F.R. Part 19.

142. The term "days" as used herein shall mean calendar days unless specified otherwise.

VI. EFFECT OF SETTLEMENT

143. 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 in this Consent Agreement. 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.

VII. RESERVATION OF RIGHTS

144. This Consent Agreement and the accompanying Final Order resolve only EPA's claims for civil monetary penalties for the specific violations alleged in Section III ("Findings of Fact and Conclusions of Law") herein. 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.

VIII. AUTHORITY TO BIND THE PARTIES

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

IX. EFFECTIVE DATE

146. The effective date of this Consent Agreement and the accompanying Final Order is the date on which the Final Order, signed by the Regional Administrator of EPA Region III,


or his designee, the Regional Judicial Officer, and this Consent Agreement are filed with the EPA Regional Hearing Clerk pursuant to the *Consolidated Rules of Practice*.

X. ENTIRE AGREEMENT

147. This Consent Agreement and the accompanying Final Order constitute the entire agreement and understanding of the parties regarding settlement of all claims pertaining to the specific violations alleged herein and there are no representations, warranties, covenants, terms, or conditions agreed upon between the parties other than those expressed in this CAFO.

For Respondent:

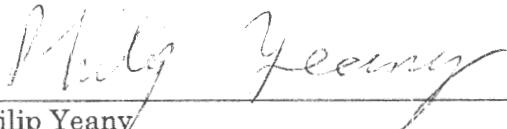
Date: _____

 2/26/2014

Gino J. Benedetti, Esquire
Office of the General Counsel of SEPTA

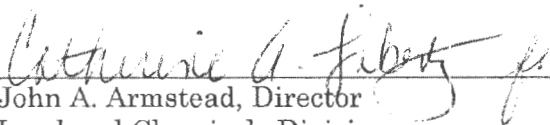
For Complainant:

Date: 3/16/16


Philip Yeany
Senior Assistant
Regional Counsel

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: 3-24-16


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

BEFORE THE UNITED STATES

ENVIRONMENTAL PROTECTION AGENCY

REGION III

In the Matter of:	:	EPA Docket Number
SEPTA Callowhill Bus Garage	:	RCRA-03-2016-0059
59th & Callowhill Streets	:	
Philadelphia, PA 19138.	:	
SEPTA Comly Garage	:	Proceeding Under Section 9006 of the
Penn & Comly Streets	:	Resource Conservation and Recovery
Philadelphia, PA 19149.	:	Act, as amended, 42 U.S.C. § 6991e
SEPTA Frankford Bus Garage	:	
5235 Penn Street	:	
Philadelphia, PA 19124.	:	
SEPTA Midvale Bus Garage	:	
4301 Wissahickon Avenue	:	
Philadelphia, PA 19129. and	:	
SEPTA Southern Bus Garage	:	
20th & Johnson Streets	:	
Philadelphia, PA 19145.	:	
Facilities,	:	
Southeastern Pennsylvania	:	
Transportation Authority (SEPTA)	:	
1234 Market Street	:	
Philadelphia, PA 19107-3780	:	
Respondent.	:	

FINAL ORDER

Complainant, the Director of the Land and Chemicals Division, U.S. Environmental Protection Agency - Region III, and Respondent, Southeastern Pennsylvania Transportation Authority (SEPTA), 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*, 40 C.F.R. Part 22, specifically 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 herein as if set forth at length.


Based on the representations of the parties in the attached Consent Agreement, the penalty agreed to therein is based upon a consideration of, *inter alia*, EPA's *Penalty Guidance for Violations of UST Regulations (1990)* and the statutory factors set forth in Sections 9006(c) and (e) of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. §§ 6991e(c) and (e) and Section 9006(c) of RCRA, 42 U.S.C. § 6991e(c).

NOW, THEREFORE, PURSUANT TO Section 9006(c) of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6991e(c), and 40 C.F.R. § 22.18(b)(3), IT IS HEREBY ORDERED that Respondent pay a civil penalty in the amount of one hundred sixteen thousand eight hundred forty three dollars (\$116,843) in accordance with the

payment provisions set forth in the attached Consent Agreement and comply with the terms and conditions of the attached Consent Agreement.

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

Date: May 30, 2016



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

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

In the Matter of: : Consent Agreement and
: Final Order
SEPTA Callowhill Bus Garage :
59th & Callowhill Streets : U.S. EPA Docket Number
Philadelphia, PA 19138; : RCRA-03-2016-0059
:
SEPTA Comly Garage :
Penn & Comly Streets :
Philadelphia, PA 19149; :
: Proceeding Under Section 9006 of the
SEPTA Frankford Bus Garage : Resource Conservation and Recovery
5235 Penn Street : Act, as amended, 42 U.S.C. § 6991e
Philadelphia, PA 19124; :
:
SEPTA Midvale Bus Garage :
4301 Wissahickon Avenue :
Philadelphia, PA 19129; and :
:
SEPTA Southern Bus Garage :
20th & Johnson Streets :
Philadelphia, PA 19145; :
:
Facilities, :
:
Southeastern Pennsylvania :
Transportation Authority (SEPTA) :
1234 Market Street :
Philadelphia, PA 19107-3780 :

REGION III SEPTA OFFICE
350 ARCH STREET
PHILADELPHIA, PA

2016 MAR 30 PM 1:44

RECEIVED

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that, on the date provided below, the original and one true and correct copy of the foregoing Consent Agreement and Final Order (“CAFO”), were hand-delivered to and filed with the Regional Hearing Clerk (3RC30), U.S. EPA - Region III, 1650 Arch Street, Philadelphia, PA, and that true and correct copies were served via overnight

In the Matter of:

Consent Agreement and Final Order

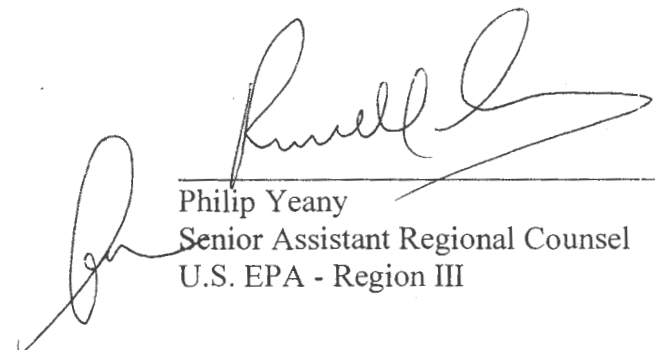
*Southeastern Pennsylvania Transit Authority (SEPTA)
Docket #: RCRA-03-2016-0059*

mail to:

Gino J. Benedetti, Esq.
Office of the General Counsel of SEPTA
Southeastern Pennsylvania
Transportation Authority
1234 Market Street
Philadelphia, PA 19107-3780

Date:

3/30/16


Philip Yeany
Senior Assistant Regional Counsel
U.S. EPA - Region III