

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

|                         |   |   |
|-------------------------|---|---|
| In the Matter of:       | ) |   |
|                         | ) |   |
| AKJK, LLC               | ) |   |
| 104 Ashton Oaks Court   | ) | U.S. EPA Docket Number                  |
| Ashton, MD 20861        | ) | RCRA-03-2008-0397                       |
|                         | ) |   |
| RESPONDENT,             | ) | Proceeding Under Section 9006 of the    |
|                         | ) | Resource Conservation and Recovery Act, |
|                         | ) | as amended, 42 U.S.C. Section 6991e     |
|                         | ) |   |
| King Chevron            | ) |   |
| 3011 MLK Jr. Avenue, SE | ) |   |
| Washington, DC 20032    | ) |   |
| Facility ID No. 8000205 | ) |   |
|                         | ) |   |
| 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 AKJK, LLC (“Respondent”), pursuant to Section 9006 of the Resource Conservation and Recovery Act (“RCRA”), as amended, 42 U.S.C. § 6991e, and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (“Consolidated Rules”), 40 C.F.R. Part 22, including, specifically 40 C.F.R. §§ 22.13(b) and .18(b)(2) and (3).

This CA and the Final Order (collectively “CAFO”) resolve violations of RCRA Subtitle I, 42 U.S.C. §§ 6991-6991m, and the District of Columbia’s federally authorized underground storage tank program by Respondent in connection with its underground storage tanks at Respondent’s facility located at 3011 MLK Jr. Avenue, SE, Washington, DC 20032 (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.*

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).

### **GENERAL PROVISIONS**

1. For purposes of this proceeding only, Respondent admits the jurisdictional allegations set forth in this CAFO.
2. Respondent neither admits nor denies the specific factual allegations and conclusions of law set forth in this CAFO, except as provided in Paragraph 1, above.
3. Respondent agrees 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, Respondent hereby expressly waives its right to a hearing on any issue of law or fact set forth in this CA and any right to appeal the accompanying FO.
5. Respondent consents to the issuance of this CAFO, and agrees to comply with its terms and conditions.
6. Respondent shall bear its own costs and attorney's fees.
7. The person signing this CA on behalf of the Respondent certifies to EPA by his signature herein that Respondent, as of the date of this CA, is in compliance with the provisions of RCRA, Subtitle I, 42 U.S.C. §§ 6991-6991m, and the 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 Respondent, and its officers, directors, employees, successors and assigns.
9. This CAFO shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit, nor does this

CAFO constitute a waiver, suspension or modification of the requirements of RCRA Subtitle I, 42 U.S.C. §§ 6991-6991m, or any regulations promulgated thereunder.

10. Complainant shall have the right to institute further actions to recover appropriate relief if Complainant obtains evidence that the information provided and/or representations made by Respondent to EPA regarding matters at issue in the CAFO are false or, in any material respect, inaccurate. Respondent is aware that the submission of false or misleading information to the United States government may subject Respondent to separate civil and/or criminal liability.
11. Respondent agrees not to deduct for civil taxation purposes the civil penalty specified in this Consent Agreement and the attached Final Order.

#### **FACTUAL ALLEGATIONS AND CONCLUSIONS OF LAW**

12. The United States Environmental Protection Agency - Region III ("EPA" or the "Region") and EPA's Office of Administrative Law Judges have jurisdiction over this matter pursuant to Section 9006 of RCRA, 42 U.S.C. § 6991e, 40 C.F.R. Part 280 and 40 C.F.R. § 22.1(a)(4) and .4(c).
13. At all times relevant to this Complaint, AKJK, LLC ("Respondent") has been a District of Columbia limited liability company doing business in the District of Columbia .
14. 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, Respondent has been the "owner" and/or "operator," as those terms are defined in Section 9001(3) and (4) of RCRA, 42 U.S.C. § 6991(3) and (4), and 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 March 6, 2008, an EPA representative conducted a Compliance Evaluation Inspection ("CEI") of the Facility pursuant to Section 9005 of RCRA, 42 U.S.C. § 6991d.
17. At the time of the March 6, 2008 CEI, and at all times relevant to the applicable violations alleged herein, three USTs, as described in the following subparagraphs, were located at the Facility:

- A. a ten thousand (10,000) gallon fiberglass-reinforced-plastic tank that was installed in or about August 1988, and that, at all times relevant hereto, routinely contained and was used to store gasoline (regular), 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”), and
  - B. a ten thousand (10,000) gallon fiberglass-reinforced-plastic tank that was installed in or about August 1988, and that, at all times relevant hereto, routinely contained and was used to store gasoline (premium), 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 ten thousand (10,000) gallon fiberglass-reinforced-plastic tank that was installed in or about August 1988, and that, at all times relevant hereto, routinely contained and was used to store gasoline (diesel), 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”), and
- 18. At all times relevant to the applicable violations alleged herein, UST No. 1 has been a “petroleum UST system” and “existing UST system” as these terms are defined in 20 DCMR § 6899.1, respectively.
  - 19. At all times relevant to the applicable violations alleged herein, UST No. 2 has been a “petroleum UST system” and “existing UST system” as these terms are defined in 20 DCMR § 6899.1, respectively.
  - 20. At all times relevant to the applicable violations alleged herein, UST No. 3 has been a “petroleum UST system” and “existing UST system” as these terms are defined in 20 DCMR § 6899.1, respectively.
  - 21. USTs Nos. 1, 2 and 3 are and were, at all times relevant to the applicable violations alleged in this CAFO, used to store “regulated substance(s)” at Respondent’s 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.
  - 22. Pursuant to RCRA Section 9005, 42 U.S.C. § 6991d, on April 8, 2008, EPA issued an Information Request to Respondent concerning its petroleum UST systems at the Facility.

**COUNT I**

(Failure to perform release detection on UST No. 1)

23. The allegations of Paragraphs 1 through 22 of this CAFO are incorporated herein by reference.
24. 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.
25. Pursuant to 20 DCMR §§ 6003.1 through 6003.5, tanks which are part of a petroleum UST system must be monitored at least every 30 days for releases using one of the methods listed in 20 DCMR §§ 6008 through 6012, except that: (1) prior to December 22, 1995, certain UST systems could have been monitored using a combination of inventory control and tank tightness testing in compliance with the requirements of 20 DCMR §§ 6005 through 6007; and (2) tanks with a capacity of 550 gallons or less may use weekly tank gauging conducted in accordance with 20 DCMR § 6006.
26. From January 13, 2008 until April 18, 2008, the method of release detection selected by Respondent for UST Nos. 1, 2 and 3 has been automatic tank gauging in accordance with 20 DCMR § 6008.
27. Specifically, the Facility uses a Veeder-Root TLS-300C to perform release detection for UST Nos. 1, 2 and 3 by automatic tank gauging through continuous statistical leak detection (“ATG/CSLD”). According to the Veeder-Root website, CSLD is an “advanced tank testing technology that enables Veeder-Root consoles with CSLD to continuously monitor fuel height and temperature information to detect idle times in the tank. During each idle period, data is collected and combined with information from other idle periods to form a highly accurate leak detection database.”
28. However, from January 2008 through March 2008, Respondent failed to perform adequate automatic tank gauging for UST No. 1, in violation of 20 DCMR § 6003.2, because the probe was malfunctioning.
29. During the period of time indicated in Paragraph 28, above, Respondent did not use any of the other release detection methods specified in 20 DCMR § 6003.3 through 6003.5 and/or 20 DCMR §§ 6005 through 6012 on UST No. 1.
30. Respondent’s acts and/or omissions as alleged in Paragraphs 26 through 29, above, constitute violations by Respondent of 20 DCMR §§ 6000.1 and 6003.

**COUNT II**

(Failure to maintain release detection records at the Facility)

31. The allegations of Paragraphs 1 through 30 of this CAFO are incorporated herein by reference.
32. 20 DCMR § 5602.4(c) provides that each UST system owner or operator shall maintain information of recent compliance with release detection requirements pursuant to 20 DCMR § 6001.
33. Pursuant to 20 DCMR § 6001.1, owners and operators of each UST system shall maintain records in accordance with 20 DCMR § 5602 demonstrating compliance with all applicable requirements of DCMR.
34. 20 DCMR § 6001.2 provides that all written performance claims pertaining to any release detection system used, and the manner in which these claims have been justified or tested by the equipment manufacturer or installer, shall be maintained for 5 years from the date of installation.
35. 20 DCMR § 6001.3 and 4 provide that the results of any sampling, testing, or monitoring shall be maintained for 3 years, except the results for tank tightness testing conducted in accordance with 20 DCMR § 6007 shall be retained until the next test of the UST system is conducted.
36. 20 DCMR § 6001.5 provides that written documentation of all calibration, maintenance, and repair of release detection equipment permanently located on the UST system site shall be maintained for at least 3 years after the servicing work is completed.
37. 20 DCMR § 6001.6 provides that all schedules of required calibration and maintenance provided by the release detection equipment manufacturer shall be retained for five (5) years from the date of installation of the UST system.
38. From at least March 2005 through October 2007, Respondent failed to maintain records of release detection monitoring for USTs Nos. 1, 2 and 3 in accordance with 20 DCMR § 5602.4(c) and 20 DCMR § 6001.5.
39. Respondent's acts and/or omissions as alleged in Paragraph 38, above, constitute violations by Respondent of 20 DCMR § 5602.4(c) and 20 DCMR § 6001.

**CIVIL PENALTY**

40. In settlement of Complainant's claims for civil penalties for the violations alleged in this CA, Respondent agrees to pay a civil penalty in the amount of \$2,621.00. The civil penalty amount is due and payable immediately upon Respondent's receipt of a true and correct copy of this CAFO. If Respondent pays the entire civil penalty of \$2,621.00 within thirty (30) calendar days of the date on which this CAFO is mailed or hand-delivered to Respondent, no interest will be assessed against Respondent pursuant to 40 C.F.R. § 13.11(a)(1).
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 Respondent. However, EPA will not seek to recover interest on any amount of such civil penalty that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a).
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 Respondent's violations and any good faith efforts by Respondent to comply with all applicable requirements as provided in RCRA Section 9006(c), 42 U.S.C. § 6991e(c), and with EPA's Penalty Guidance for Violations of UST Regulations ("UST Guidance") dated November 4, 1990.

46. Respondent shall remit the full penalty, pursuant to Paragraph 40, above, and/or any interest, administrative fees and late payment penalties, in accordance with Paragraphs 41 through 44, above, via one of the following methods:

- a. Via U.S. Postal Service regular mail of a certified or cashier's check, made payable to the "United States Treasury," sent to the following address:

US Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
PO Box 979077  
St. Louis, MO 63197-9000

- b. Via overnight delivery of a certified or cashier's check, made payable to the "United States Treasury," sent to the following address:

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

*The U.S. Bank customer service contact for regular and overnight delivery is Natalie Pearson, who may be reached at 314-418-4087.*

- c. Via electronic funds transfer ("EFT") to the following account:

Federal Reserve Bank of New York  
ABA No. 021030004  
Account No. 68010727  
SWIFT address = FRNYUS33  
33 Liberty Street  
New York NY 10045  
(Field Tag 4200 of the Fedwire message should read "D 68010727  
Environmental Protection Agency")



- d. Via automatic clearinghouse (“ACH”), also known as Remittance Express (“REX”), to the following account:

PNC Bank  
ABA No. 05136706  
Environmental Protection Agency  
Account 310006  
CTX Format  
Transaction Code 22 - checking  
808 17th Street NW  
Washington, D.C. 20074.

*The PNC Bank customer service contact, Jesse White, may be reached at 301-887-6548.*

- e. Via on-line payment (from bank account, credit card, debit card), access “www.pay.gov” and enter “sfo 1.1” in the search field. Open the form and complete the required fields.
47. Payment by the Respondent shall include Respondent’s full name and address and the EPA Docket Number of this CAFO (RCRA-03-2008-0397).
48. A copy of Respondent’s check or a copy of Respondent’s electronic transfer shall be sent simultaneously to:

Regional Hearing Clerk (3RC00)  
U.S. Environmental Protection Agency, Region III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103 - 2029, and

Natalie Katz (3RC30)  
Senior Assistant Regional Counsel  
U.S. Environmental Protection Agency, Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029.

**FULL AND FINAL SATISFACTION**

49. Respondent has demonstrated, to EPA’s satisfaction, that it has repaired the release detection probe for UST No. 1, and has begun maintaining records of release detection monitoring for USTs Nos. 1, 2 and 3 in accordance with 20 DCMR § 5602.4(c) and 20 DCMR § 6001.5.