

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

In the Matter of:)	
)	
Wonderland Amusement Management, LLC)	Docket No.: RCRA-03-2011-0149
2249 Lincoln Highway East)	
Lancaster, PA 17602)	Proceeding Under Section 9006 of the
)	Resource Conservation and Recovery Act,
RESPONDENT,)	as amended, 42 U.S.C. Section 6991e;
)	
Dutch Wonderland)	CONSENT AGREEMENT
Family Entertainment Complex)	
2249 Lincoln Highway East)	
Lancaster, PA 17602)	
)	
FACILITY.)	

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 03/11/15
 10:00 AM
 REGION III
 PHILADELPHIA, PA

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 the Wonderland Amusement Management, 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 alleged violations of RCRA Subtitle I, 42 U.S.C. §§ 6991-6991m, and the Commonwealth of Pennsylvania’s federally authorized underground storage tank program by Respondent in connection with underground storage tanks at Respondent’s Dutch Wonderland Family Entertainment Complex located at 2249 Lincoln Highway East in Lancaster, Pennsylvania (the “Facility”).

Effective September 11, 2003, pursuant to Section 9004 of RCRA, 42 U.S.C. § 6991c, and 40 C.F.R. Part 281, the Commonwealth of Pennsylvania was granted final authorization to administer a state UST management program (“Pennsylvania 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 Pennsylvania UST management program, through this

final authorization, are enforceable by EPA pursuant to Section 9006 of RCRA, 42 U.S.C. § 6991e. The Pennsylvania UST management program regulations are set forth in the Pennsylvania Code, Title 25, Chapter 245, Sections 245.1 *et seq.*, and will be cited hereinafter as 25 Pa. Code 245.1 *et seq.*

Section 9006(d) of RCRA, 42 U.S.C. § 6991e(d), authorizes EPA to assess a civil penalty against any owner or operator of an underground storage tank who fails to comply with, *inter alia*, any requirement or standard of a State underground storage tank program that has been approved by EPA pursuant to Section 9004 of RCRA, 42 U.S.C. § 6991c.

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 provisions of this CAFO shall be binding upon Respondent, and its officers, directors, employees, successors and assigns.
8. This CAFO shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit, nor does this CAFO constitute a waiver, suspension or modification of the requirements of RCRA Subtitle I, 42 U.S.C. §§ 6991-6991m, or of any regulations promulgated or authorized thereunder.

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

12. EPA has jurisdiction over this matter pursuant to Section 9006 of RCRA, 42 U.S.C. § 6991e, 40 C.F.R. Part 281 and 40 C.F.R. § 22.1(a)(4).
13. At all times relevant to this CAFO, Respondent has been a limited liability company doing business in the Commonwealth of Pennsylvania.
14. Respondent is a "person" as defined in Section 9001(5) of RCRA, 42 U.S.C. § 6991(5), and 25 PA Code § 245.1.
15. At all times relevant to this CAFO, Respondent has been the "operator" or "owner", as those terms are defined in Section 9001(3) and (4) of RCRA, 42 U.S.C. § 6991(3) and (4), and 25 PA Code § 245.1, of "underground storage tank(s)" and "underground storage tank system(s)" as those terms are defined in Section 9001(10) of RCRA, 42 U.S.C. § 6991(10), and 25 PA Code § 245.1, at the Facility located at 2249 Lincoln Highway East in Lancaster, Pennsylvania.
16. On September 10, 2009, 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 September 10, 2009 CEI, and at all times relevant to the applicable violations alleged herein, two (2) six hundred (600) gallon double-walled fiberglass reinforced plastic underground storage tanks, installed in or about 1993, and routinely containing gasoline, a "regulated substance" as that term is defined in Section 9001(7) of

RCRA, 42 U.S.C. § 6991(7), and 25 PA Code § 245.1, were located at the Facility (hereinafter referred to as "UST-008 and UST-009").

18. At all times relevant to the applicable violations alleged herein, UST-008 and UST-009, together with respective connected piping, ancillary equipment and containment systems, were each "petroleum system(s)" and "underground storage tank system(s)" as these terms are defined in 25 PA Code § 245.1.
19. At all times relevant to the applicable violations alleged herein, UST-008 and UST-009, together with respective connected piping, ancillary equipment and containment systems, were each used to store "regulated substance(s)", as defined in Section 9001(7) of RCRA, 42 U.S.C. § 6991(7), and 25 PA Code § 245.1, and were not "empty" as that term is defined at 25 PA Code § 245.451.
20. At all times relevant to the applicable violations alleged herein, the underground connected piping associated with UST-008 and UST-009 was constructed of steel and equipped with a cathodic protection system to prevent releases due to corrosion, as described in 25 PA Code § 245.432.
21. Pursuant to RCRA Section 9005, 42 U.S.C. § 6991d, EPA issued an Information Request letter to Respondent on June 2, 2010 concerning its petroleum underground storage tank systems at the Facility.

COUNT 1

FAILURE TO PERFORM RELEASE DETECTION ON UST-008 AND UST-009

22. Paragraphs 1 through 21 are incorporated by reference as if fully set forth herein.
23. Pursuant to 25 PA Code § 245.441(a) and (c), owners and operators of new and existing underground storage tank systems must provide a method or combination of methods of release detection monitoring that meets the requirements described therein.
24. 25 PA Code § 245.442(1) provides, in pertinent part, that petroleum underground storage tank systems shall be monitored at least every 30 days for releases using one of the methods listed in 25 PA Code § 245.444(4)-(9), except that:
 - (i) Underground storage tank systems that meet the performance standards in 25 PA Code §§ 245.421 and .422, and the monthly inventory control requirements in 25 PA Code § 245.444(1) or (2), may use tank tightness testing at least every 5 years until December 22, 1998, or until 10 years after the UST is installed or upgraded under 25 PA Code § 245.422(b),

whichever is later.

- (ii) Underground storage tank systems that do not meet the performance standards in 25 PA Code §§ 245.421 or .422 may use monthly inventory controls, conducted in accordance with § 245.444(1) or (2), and annual tank tightness testing until December 22, 1998, when the tank shall be upgraded under 25 PA Code § 245.422 or permanently closed under 25 PA Code § 245.452.
- (iii) Tanks with a capacity of 550 gallons or less may use manual tank gauging, conducted in accordance with 25 PA Code § 245.444(2).
- (iv) Tanks with capacity of 551 to 1,000 gallons using the longer test times specified may use manual tank gauging, conducted in accordance with 25 PA Code § 245.444(2).

25. From May 2006 until March 2009, the method of release detection selected by Respondent for UST-008 and UST-009 was interstitial monitoring pursuant to 25 PA Code § 245.444(7).
26. Respondent was unable to establish that, from May 2006 until March 2009, it monitored UST-008 and UST-009 at least every 30 days for releases using interstitial monitoring in accordance with 25 PA Code § 245.444(7).
27. During the periods of time indicated in Paragraphs 25 and 26, above, Respondent was unable to establish that it used any of the release detection methods allowed under 25 PA Code § 245.442(1)(i)-(iv) or monitor at least every 30 day for releases using other methods under 25 PA Code § 245.444(4)-(9) for UST-008 and UST-009.
28. Respondent's acts and/or omissions as alleged in Paragraphs 25 through 27, above, constitute violations by Respondent of 25 PA Code §§ 245.441 and .442.

COUNT 2

FAILURE TO MAINTAIN CATHODIC PROTECTION SYSTEM TESTING RECORDS

29. Paragraphs 1 through 21 are incorporated by reference as if fully set forth herein.
30. At all times relevant to the applicable violations alleged herein, the piping affiliated with UST-008 and UST-009 was constructed of steel and the method of cathodic protection selected by Respondent for such piping was a sacrificial anode system.

31. 25 PA Code § 245.432(2)(i) requires owners and operators of steel underground storage tank systems with corrosion protection to have cathodic protection systems inspected for proper operation and tested at least every 3 years.
32. 25 PA Code § 245.432(4)(ii) requires owners and operators of steel underground storage tank systems to maintain records of the results of cathodic protection testing from the previous two 3-year inspections.
33. From at least September 10, 2009 until May 2011, Respondent failed to maintain records of both of the previous two 3-year cathodic protection results conducted on underground steel piping affiliated with UST-008 and UST-009, as required by 25 PA Code § 245.432(4)(ii).
34. Respondent's act and/or omission as alleged in Paragraph 33, above, constitute violations by Respondent of 25 PA Code § 245.432(4)(ii).

CIVIL PENALTY

35. 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 fourteen thousand eight hundred dollars (\$14,800). The civil penalty amount is due and payable immediately upon Respondent's receipt of a true and correct, fully executed copy of this CAFO. If Respondent pays the entire civil penalty of fourteen thousand eight hundred dollars (\$14,800) within thirty (30) calendar days of the date on which this fully executed 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).
36. 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.
37. 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 fully executed 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).
38. 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.

39. 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).
40. 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 Section 9006(c) of RCRA, 42 U.S.C. § 6991e(c), and with EPA's Penalty Guidance for Violations of UST Regulations ("UST Guidance") dated November 4, 1990.
41. Respondent shall pay the amount described in Paragraph 35, above, by sending a certified or cashier's check payable to the "United States Treasury," as follows:

a. Mailing (*via first class U.S. Postal Service Mail*) a certified or cashier's check, made payable to the "United States Treasury" to the following address

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

Contact: Craig Steffen 513-487-2091
Eric Volck 513-487-2105

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

U.S. Bank
Government Lockbox 979077
US EPA Fines & Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101
314-418-1028

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

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

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

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

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

U.S. Treasury REX/Cashlink ACH Receiver
ABA 051036706
Account No. 310006
Environmental Protection Agency
CTX Format
Transaction Code 22 - checking

Contact: John Schmid
202-874-7026

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

g. Additional payment guidance is available at:

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

All payments shall also reference the above case caption and docket number, DOCKET NO.: RCRA-03-2011-0149. At the same time that any payment is made, Respondent

shall mail copies of any corresponding check, or provide written notification confirming any electronic wire transfer, automated clearinghouse or online payment to Lydia A. Guy, Regional Hearing Clerk (3RC00), U.S. EPA, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029 and to Andrew Ma (3LC70), U.S. Environmental Protection Agency, Region III, Office of Land Enforcement, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029.

FULL AND FINAL SATISFACTION

42. 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

43. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. In addition, this settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18(c) of the Consolidated Rules of Practice. Further, EPA reserves any rights and remedies available to it under RCRA, the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this CAFO, following its filing with the Regional Hearing Clerk.

OTHER APPLICABLE LAWS

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

AUTHORITY TO BIND THE PARTIES

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

ENTIRE AGREEMENT

46. This Consent Agreement and the attached Final Order constitute the entire agreement and understanding of the parties concerning settlement of the above-captioned action and

there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Consent Agreement and the attached Final Order.

EFFECTIVE DATE

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

For Respondent:

Wonderland Amusement Management, LLC

6/14/11
Date

Richard L. Stammel
Rick Stammel, General Manager

For Complainant:

U.S. Environmental Protection Agency,
Region III

6/21/11
Date

Jennifer M. Abramson
Jennifer M. Abramson
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.

6/21/11
Date

Abraham Ferdas
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:

Wonderland Amusement Management, LLC
 2249 Lincoln Highway East
 Lancaster, PA 17602

RESPONDENT,

Dutch Wonderland
 Family Entertainment Complex
 2249 Lincoln Highway East
 Lancaster, PA 17602

FACILITY.

)
) Docket No.: RCRA-03-2011-0149
)
) Proceeding Under Section 9006 of the
) Resource Conservation and Recovery
) Act, as amended, 42 U.S.C. Section
) 6991e
)
)

) **FINAL ORDER**

FINAL ORDER

Complainant, the Director, Land and Chemicals Division, U.S. Environmental Protection Agency - Region III, and Respondent, Wonderland Amusement Management, LLC, 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.

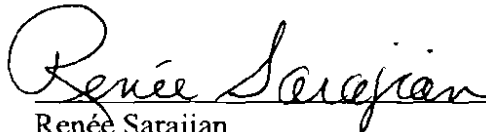
NOW, THEREFORE, PURSUANT TO Section 22.18(b)(3) of the *Consolidated Rules of Practice* and Section 9006(c) of the Resource Conservation and Recovery Act, 42 U.S.C. § 6991e(c)(("RCRA"), and having determined, based on the representations of the parties in the

attached Consent Agreement, that the civil penalty agreed to therein was based upon a consideration of the factors set forth in Section 9006(c) of RCRA, 42 U.S.C. § 6991e(c), **IT IS HEREBY ORDERED** that Respondent pay a civil penalty of fourteen thousand eight hundred dollars (\$14,800) 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:

6/22/11



Renée Sarajian
Regional Judicial 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:)
)
Wonderland Amusement Management, LLC) Docket No.: RCRA-03-2011-0149
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Dutch Wonderland)
Family Entertainment Complex)
2249 Lincoln Highway East)
Lancaster, PA 17602)
)
FACILITY.)

CERTIFICATE OF SERVICE

I certify that the foregoing CONSENT AGREEMENT AND FINAL ORDER in the above referenced matter was sent this day in the following manner to the below addressees.


Original and one copy by hand-delivery:

Lydia Guy, Regional Hearing Clerk

Copy by Certified Mail

Scott A. Gould, Esq.
McNees Wallace & Nurick LLC
100 Pine Street
P.O. Box 1166
Harrisburg, PA 17108-1166

6/23/11
Date


Jennifer M. Abramson (3RC50)
Senior Assistant Regional Counsel
U.S. EPA, Region III

