

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

In the Matter of: :

Frederick County, Maryland :
Fleet Services Department :
331 Montevue Lane :
Frederick, Maryland 21702 :

U.S. EPA Docket No.
RCRA-03-2009-0041

Respondent. :

Fleet Services Department :
331 Montevue Lane :
Frederick, Maryland 21702 :

CONSENT AGREEMENT

Facility. :

Preliminary Statement

This Consent Agreement (“CA”) is entered into by the Director of the Land and Chemicals Division, U.S. Environmental Protection Agency, Region III (“Complainant”), and the Board of County Commissioners of Frederick County, Maryland, a body corporate and politic of the State of Maryland (“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 accompanying Final Order (“FO”) (collectively “CAFO”) resolve violations of RCRA Subtitle I, 42 U.S.C. §§ 6991-6991m and the State of Maryland’s underground storage tank regulations authorized by EPA pursuant to Section 9004 of RCRA, 42 U.S.C. § 6991c, by Respondent in connection with the underground storage tanks at Respondent’s facility located at 331 Montevue Lane, Frederick, Maryland.

Effective July 30, 1992, pursuant to Section 9004 of RCRA, 42 U.S.C. § 6991c, and 40 C.F.R. Part 281, Subpart A, the State of Maryland was granted final authorization to administer a state underground storage tank management program *in lieu* of the Federal underground storage tank management program. The provisions of the Maryland underground storage tank management program, through this final authorization, have become requirements of Subtitle I of RCRA and are, accordingly, enforceable by EPA pursuant to Section 9006 of RCRA, 42 U.S.C. § 6991e. Maryland’s authorized underground storage tank program regulations are set

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forth in the Code of Maryland Regulations (hereinafter "COMAR," followed by the applicable section of the regulations) administered by the Maryland Department of the Environment ("MDE").

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 promulgated under Section 9003 of RCRA, 42 U.S.C. § 6991b (40 C.F.R. Part 280) or 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.

EPA has given the State of Maryland notice of the issuance of this CAFO in a letter dated October 18, 2007, in accordance with Section 9006(a) of RCRA, 42 U.S.C. § 6991e(a).

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 Consent Agreement, the issuance of the attached Final Order, or the enforcement of the CAFO.
4. For the purposes of this proceeding only, Respondent hereby expressly waives its rights to a hearing on any issue of law or fact set forth in this Consent Agreement and any right to appeal the accompanying Final Order.
5. Respondent consents to the issuance of this CAFO and agrees to comply with its terms.
6. Each party shall bear its own costs and attorney's fees.

EPA's Findings of Fact and Conclusions of Law

7. In accordance with the Consolidated Rules at §§ 22.13(b) and 22.18(b)(2) and (3), Complainant makes the following findings of fact and conclusions of law:
 - A. Respondent is a "person" as defined by COMAR § 26.10.02.04 and Section 9001(5) of RCRA, 42 U.S.C. § 6991(5).
 - B. Respondent is, and at all times relevant to the violations alleged in this CAFO, was the "operator" and "owner" of "underground storage tanks" ("USTs") and

“UST systems”, as defined in COMAR § 26.10.02.04 B(37), (39), (64) and (66) and Sections 9001 (3), (4), and (10) of RCRA, 42 U.S.C. § 6991(3), (4) and (10), at its facility located at 331 Montevue Lane, Frederick, Maryland (“Facility”).

- C. On March 14, 2007, an EPA representative conducted an inspection of the USTs and UST systems at the Facility pursuant to RCRA § 9005, 42 U.S.C. § 6991d.
- D. At the time of the March 14, 2007 inspection, and at all times relevant to the violations alleged in this CAFO, three USTs were located at the Facility: UST #1 (12,000 gallon petroleum UST with underground pressure piping); UST #2 (12,000 gallon petroleum UST with underground pressure piping); and UST #3 (12,000 gallon diesel UST with underground suction piping).
- E. At the time of the March 14, 2007 inspection, and at all times relevant to the violations alleged in this CAFO, Respondent’s USTs referenced above in Paragraph 7.D., routinely contained and were used to store “regulated substances” as defined in COMAR §26.10.02.04 B(48) and Section 9001(7) of RCRA, 42 U.S.C. § 6991(7).
- F. Each of Respondent’s USTs referenced above in Paragraph 7.D. were installed on or around January 1, 1995 and are “petroleum UST systems” and “existing tank systems” as defined in COMAR § 26.10.02.04 B(43) and (19), respectively.
- G. At the time of the March 14, 2007 inspection, and at all times relevant to the violations alleged in this CAFO, Respondent’s USTs referenced above in Paragraph 7.D. were not “empty” as that term is defined in COMAR § 26.10.10.01 A.

COUNT I

(Failure to Maintain Records of UST Release Detection: March - December 2007)

- 8. Paragraphs 1–7 of this CAFO are incorporated by reference as though fully set forth herein.
- 9. Pursuant to COMAR § 26.10.05.01 A and C, owners and operators of new and existing UST systems must provide a method or combination of methods of release detection monitoring that meets the requirements described therein.
- 10. COMAR § 26.10.05.02 B provides, among other things, that USTs shall be monitored at least every 30 calendar days for releases using one of the methods listed in COMAR § 26.10.05.04 E-I, except that:

- (1) UST systems that meet the performance standards in COMAR §§ 26.10.03.01 (Performance Standards for New UST Systems) and .02 (Upgrading of Existing UST Systems), and the monthly inventory control requirements in COMAR § 26.10.05.04 B or C (Inventory Control or Manual Tank Gauging) shall use tank tightness testing, conducted in accordance with COMAR § 26.10.05.04 D (Tank Tightness Test), at least every 5 years until December 22, 1998, or until 10 years after the UST is installed or upgraded under COMAR § 26.10.03.02 B (Tank Upgrading Requirements); and
 - (2) UST systems that do not meet the performance standards in COMAR §§ 26.10.03.01 (Performance Standards for New UST Systems) and .02 (Upgrading of Existing UST Systems), may use monthly inventory controls, conducted in accordance with COMAR § 26.10.05.04 B or C (Inventory Control or Manual Tank Gauging) and annual tank tightness testing, conducted in accordance with COMAR § 26.10.05.04 D (Tank Tightness Test) until December 22, 1998, when the tank must be upgraded under COMAR § 26.10.03.02 (Tank Upgrading Requirements) or permanently closed under COMAR § 26.10.10.02; and
 - (3) Tanks with a capacity of 550 gallons or less and not metered may use weekly tank gauging, conducted in accordance with COMAR § 26.10.05.04 C.
11. COMAR § 26.10.04.05 C(4) provides that UST system owners and operators shall maintain information of recent compliance with release detection requirements pursuant to COMAR § 26.10.05.06.
 12. Pursuant to COMAR § 26.10.05.06, owners and operators of new and existing UST systems shall maintain records in accordance with COMAR § 26.10.04.05 demonstrating compliance with all applicable requirements of COMAR. These records shall include the following and shall be maintained as follows:
 - A. 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;
 - B. The results of any sampling, testing, or monitoring shall be maintained for 1 year; and
 - C. Written documentation of all calibration, maintenance, and repair of release detection equipment permanently located on-site shall be maintained for at least 1 year after the service work is completed, and any schedules of required calibration and maintenance provided by the release detection equipment manufacturer shall

be retained for 5 years from the date of installation.

13. Respondent asserts that during the calendar year 2007, it performed an approved method of release detection for USTs #1 , #2 and #3.
14. For the period of March 1, 2007 through December 31, 2007, Respondent failed to maintain records of release detection monitoring for USTs #1, #2, and #3 in accordance with COMAR § 26.10.04.05 C(4) and COMAR § 26.10.05.06 B .
15. Respondent's acts and/or omissions as alleged in Paragraph 14, above, constitute violations by Respondent of COMAR § 26.10.04.05 C(4) and COMAR § 26.10.05.06 B.

COUNT II

(Failure to Perform Automatic Line Leak Detector Testing Annually
for Piping for USTs #1 and #2: 2004-2007)

16. Paragraphs 1–15 of this CAFO are incorporated by reference as though fully set forth herein.
17. COMAR § 26.10.05.02 C(1) provides that underground piping that routinely contains regulated substances shall be monitored for releases as set forth in COMAR § 26.10.05.02 C. Further, COMAR § 26.10.05.02 C(2) provides, in pertinent part, that underground piping that conveys regulated substances under pressure shall:
 - A. Be equipped with an automatic line leak detector conducted in accordance with COMAR § 26.10.05.05 B; and
 - B. Have an annual line tightness test conducted in accordance with COMAR § 26.10.05.05 C or have monthly monitoring conducted in accordance with COMAR § 26.10.05.05 D.
18. COMAR § 26.10.05.05 B provides, in pertinent part, that an annual test of the operation of the leak detector shall be conducted in accordance with the manufacturer's requirements.
19. From January 1, 2001 through the present, the piping for USTs #1 and #2 was underground and routinely contained and conveyed under pressure regulated substances.
20. Respondent conducted a test of the automatic line leak detectors for the piping associated with USTs #1 and #2 on February 23, 2001 and on May 9, 2007.
21. Respondent failed to perform six separate annual tests of the automatic line leak detectors

for the underground piping for both UST #1 and UST #2 between February 23, 2002 and May 8, 2007.

22. Respondent's acts and/or omissions as alleged in Paragraph 21, above, constitute violations by Respondent of COMAR § 26.10.05.02 C(2)(a) and COMAR § 26.10.05.05B.

COUNT III

(Failure to Perform Annual Line Tightness Testing or Monthly Monitoring for Piping for USTs #1 and #2: October 10, 2006 - May 9, 2007)

23. Paragraphs 1-22 of this CAFO are incorporated by reference as though fully set forth herein.
24. COMAR § 26.10.05.02 C(2)(b) provides that underground piping that routinely conveys regulated substances under pressure must have an annual line tightness test conducted in accordance with COMAR § 26.10.05.05 C or have monthly monitoring conducted in accordance with COMAR § 26.10.05.05 D.
25. COMAR § 26.10.05.05 C provides that a line tightness test conducted pursuant to this subsection must be capable of detecting a 0.1 gallon per hour leak rate at one and one-half times the operating pressure.
26. COMAR § 26.10.05.05 D provides that UST system owners and operators may use any of the release detection methods specified in COMAR § 26.10.05.04 F - I to detect a release from any portion of the underground piping that routinely contains regulated substances as alternative form of line tightness test.
27. For calendar years 2006 and 2007, Respondent conducted one of the approved monthly methods of release detection set forth in COMAR § 26.10.05.04 F - I from January 1, 2006 through October 9, 2006 for the underground piping for USTs #1 and #2.
28. On May 9, 2007, Respondent conducted a line tightness test pursuant to COMAR § 26.10.05.05 C for the underground piping for USTs #1 and #2.
29. From October 10, 2006 though May 8, 2007, Respondent did not conduct an annual line tightness test in accordance with COMAR § 26.10.05.05 C nor an approved monthly release detection method specified in COMAR § 26.10.05.04 F - I for the underground piping for USTs #1 and #2. Respondent's acts and/or omissions as alleged in this Paragraph 29 constitute violations by Respondent of COMAR § 26.10.05.02 C(2)(b) and COMAR § 26.10.05.05C or § 26.10.05.05D.

Civil Penalty

30. Respondent consents to the assessment of a civil penalty in the amount of Four Thousand and Six Hundred Dollars (\$4,600.00) and to perform the Automatic Tank Gaging Monitoring Program Supplemental Environmental Project, as described in Paragraphs 37-46 of this CAFO, for Respondent's one 12,000 gallon above-ground gasoline tank located at the County's Law Enforcement Center and two 6,000 gallon above-ground diesel tanks located at the County's Transit Facility in full satisfaction of all claims for penalties for the violations alleged in this CAFO. Such civil penalty amount is due and payable immediately upon Respondent's receipt of a true and correct copy of this CAFO, fully executed by the parties, signed by the Regional Judicial Officer, and filed with the Regional Hearing Clerk. In order to avoid the assessment of interest, administrative costs and late payment penalties in connection with such civil penalty, as described below, Respondent must pay the civil penalty no later than thirty (30) calendar days after the date on which this CAFO is mailed or hand-delivered to Respondent.
31. The aforesaid settlement amount was based upon Complainant's consideration of a number of factors, including, but not limited to, the statutory factors provided in RCRA Section 9006(c) - (e), 42 U.S.C. § 6991e(c) - (e), and in accordance with EPA's Penalty Guidance for Violations of UST Regulations ("UST Guidance") dated November 4, 1990. EPA has also considered the *Adjustment of Civil Penalties for Inflation* as set forth in 40 C.F.R. Part 19 and the September 21, 2004 memorandum by Acting EPA Assistant Administrator Thomas V. Skinner entitled, *Modifications to EPA Penalty Policies to Implement the Civil Monetary Penalty Inflation Adjustment Rule* ("2004 Skinner Memorandum"). 40 C.F.R. Part 19 and the 2004 Skinner Memorandum specify, *inter alia*, that for violations occurring after January 30, 1997, statutory penalties and penalties under the UST Guidance for, *inter alia*, RCRA Subtitle I violations, were increased 10% above the maximum amount to account for inflation, and, statutory penalties for, *inter alia*, RCRA Subtitle I violations occurring after March 15, 2004, were increased by and an additional 17.23% above the maximum amount to account for inflation.
32. Payment of the civil penalty amount required under the terms of Paragraph 30, above, shall be made by either cashier's check, certified check or electronic wire transfer, in the following manner:
- A. All payments by Respondent shall reference its name and address and the Docket Number of this action (Docket No. RCRA-03-2009-0041);
 - B. All checks shall be made payable to "United States Treasury";
 - C. All payments made by check and sent by regular mail shall be addressed and mailed to:

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

Contact: Natalie Pearson, 314-418-4087

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

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

Contact: Natalie Pearson, 314-418-4087

- E. All payments made by electronic wire transfer shall be directed to:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045

Field Tag 4200 of the Fedwire message should read “D 68010727 Environmental Protection Agency”

- F. All electronic payments made through the automated clearinghouse (ACH), also known as Remittance Express (REX), shall be directed to:

Automated Clearinghouse (ACH) for receiving US currency
PNC Bank
808 17th Street, NW
Washington, DC 20074
Contact: Jesse White 301-887-6548

ABA = 051036706
Transaction Code 22 - Checking
Environmental Protection Agency
Account 310006

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G. On-Line Payment Option:

WWW.PAY.GOV

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

H. The customer service phone numbers for the above payment centers are:

212-720-5000 (wire transfers, Federal Reserve Bank of New York)
800-762-4224 (ACH/Wire Info, PNC Bank)

Additional payment guidance is available at:

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

I. Copies of all checks and/or copies of all electronic fund transfers made in payment of the penalty described in Paragraph 30 shall be sent simultaneously to:

James Heenehan
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region III (Mail Code 3RC30)
1650 Arch Street
Philadelphia, PA 19103-2029

and

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

33. 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.

34. In accordance with 40 C.F.R. § 13.11(a), interest on any civil penalty assessed in a Consent Agreement and Final Order begins to accrue on the date that a copy of the Consent Agreement and Final Order 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).
35. 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) calendar days the penalty remains unpaid.
36. 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).

Supplemental Environmental Project

37. Respondent shall complete the following Supplemental Environmental Project ("SEP") which the parties agree is intended to secure significant environmental or public health protections. The SEP is an Automatic Tank Gauging ("ATG") Monitoring Program ("ATG MP SEP" or "SEP") for Respondent's 12,000 gallon above-ground gasoline tank located at the County's Law Enforcement Center (110 Airport Drive, East Frederick, Maryland, 21701) and two 6,000 gallon above-ground diesel tanks located at the County's Transit Facility (1040 Rocky Springs Road, Frederick, Maryland 21702) which are to be remotely monitored with a dedicated computer using "Inform" Software at Respondent's County Fleet Services central office located at 331 Montevue Lane, Frederick, Maryland 21702. The purpose of the ATG MP SEP is to provide more frequent and more reliable system monitoring of the three specified above-ground tanks to allow Respondent to detect possible releases and take appropriate response actions to address such releases faster than Respondent would otherwise be able to do were it not to implement this SEP. The ATG MP SEP consists of the following elements:
 - A. Purchase, installation, and operation of a Veeder Root TLS-350 Plus Automatic Tank Gauging System or "ATG" for the three above-ground tanks referred to above; and

B. Purchase, installation, and operation of an "Inform" software alarm system to be installed in a dedicated computer and linked to the ATG monitoring system for the three above-ground tanks referred to above.

38. The components for the ATG MP SEP are set forth in Attachment A to this CAFO.
39. The Veeder Root TLS-350 Plus Automatic Tank Gauging System is a tank monitoring system that provides continuous statistical leak detection and inventory control for the three above-ground tanks specified in this SEP to determine if there is a leak at one or more of these above-ground tanks. The system will provide continuous monitoring of these three tanks to determine if a leak of greater than 0.1 gallon per hour ("gph") is occurring at any given tank.
40. The "Inform" software alarm system is a computer software system located at Respondent's County Fleet Services central office which will be linked to ATG leak detection alarms at Respondent's 12,000 gallon above-ground gasoline tank (Law Enforcement Center) and two 6,000 gallon above-ground diesel tanks (Transit Facility). This system provides Respondent with remote access monitoring at these above-ground tank systems. The "Inform" software alarm system records the results of any activated leak detector alarm at any of the three specified above-ground tank systems. Respondent shall review the "Inform" alarm system software to check to see for possible leak alarms at such tanks at least once every work day and shall have on call staff on weekends and holidays equipped with the Fleet Services after hours emergency pager to receive alarm notifications once the system is activated as set forth in Attachment A of this CAFO.
41. Not more than ninety (90) calendar days after receiving a true and correct copy of this fully executed CAFO, Respondent shall purchase and install a Veeder Root TLS-350 Plus Automatic Tank Gauging System for Respondent's 12,000 gallon above-ground gasoline tank located at the County's Law Enforcement Center and two 6,000 gallon above-ground diesel tanks located at the County's Transit Facility.
42. Not more than ninety (90) calendar days after receiving a true and correct copy of this fully executed CAFO, Respondent shall purchase the "Inform" software alarm notification system and have it connected to the Veeder Root TLS-350 Plus system, as described in Attachment A to this CAFO.
43. Not more than one hundred and twenty (120) calendar days of Respondent's receipt of a true and correct copy of this fully executed and effective CAFO, the ATG shall be fully operational for Respondent's 12,000 gallon above-ground gasoline tank located at the County's Law Enforcement Center and two 6,000 gallon above-ground diesel tanks located at the County's Transit Facility .
44. Not more than one hundred and twenty (120) calendar days of Respondent's receipt of a

true and correct copy of this fully executed and effective CAFO, the "Inform" software alarm system shall be fully operational for Respondent's 12,000 gallon above-ground gasoline tank located at the County's Law Enforcement Center and two 6,000 gallon above-ground diesel tanks located at the County's Transit Facility.

45. Not more than one hundred and fifty (150) calendar days of Respondent's receipt of a true and correct copy of this fully executed and effective CAFO, the ATG MP SEP shall be fully operational.

46. The total expenditure for this SEP ("**Total Required SEP Expenditure**") shall not be less than TWENTY-TWO THOUSAND FIVE HUNDRED AND THREE (\$22,503.00) as documented and approved by EPA pursuant to Paragraphs 52-54 for the purchase, contracting, installation, and/or construction of the ATG and the "Inform" software alarm system that together compose the ATG MP SEP subject to this CAFO. The approved costs consist of all capital and/or equipment expenditures and the costs of installation associated with the SEP. The Total Required SEP Expenditure shall be allocated among individual components of the ATG MP SEP as follows:

A.	ATG - Two 6,000 Gallon Diesel Tanks/Transit Facility ("ATG Transit Facility Required SEP Expenditure"):	\$10,187;
B.	ATG - One 12,000 Gas tank/Law Enforcement Center ("ATG Law Enforcement Center Required SEP Expenditure"):	\$ 8,683;
C.	Inform Software/Dedicated Computer ("Software/PC Required SEP Expenditure"):	\$ 1,593;
D.	In-house Electrical Work/Communication Cabling ("Electrical/Cabling Required SEP Expenditure"):	\$ 2,040.

In order to satisfy the Total Required SEP Expenditure requirement of this Paragraph, Respondent must document that it has spent the required amounts to meet each of the four individual required SEP Expenditures ("Individual Required SEP Expenditures") described above. The failure to document Required SEP Expenditures for any individual component of the ATG MP SEP shall constitute a failure to complete that portion of the SEP and Respondent shall become liable for additional penalties pursuant to Paragraphs 56-57 below. A total SEP expenditure that meets or exceeds TWENTY-TWO THOUSAND FIVE HUNDRED AND THREE (\$22,503.00 - "Total Required SEP Expenditure Amount") will not satisfy the Total Required SEP Expenditure requirement of this Paragraph if one or more of the Required SEP Expenditures for an individual component of the SEP has not been met. The Required SEP Expenditure for each of the four individual components of the SEP must be satisfied in order to satisfy the Total Required SEP Expenditure requirement of this Paragraph.

47. Respondent shall operate the ATG MP SEP for at least three years after the ATG MP SEP becomes fully operational.
48. Respondent hereby certifies that, as of the date of this Consent Agreement, Respondent is not required to perform or develop the ATG MP SEP by any federal, state or local law or regulation; nor is Respondent required to perform or develop the SEP by any other agreement, grant or as injunctive relief in this or any other case. Respondent further certifies that it has not received, and is not presently negotiating to receive, credit in any other enforcement action for the SEP or any portion thereof.

SEP Completion Report

49. Respondent shall submit a SEP Completion Report to EPA no later than sixty (60) calendar days after the completion of all activities set forth in Paragraphs 41 - 45 of this CAFO. The SEP Completion Report shall contain the following information:
 - A. A detailed description of the SEP as implemented;
 - B. A description of any operating problems encountered and the solution thereto;
 - C. An itemization of costs incurred in implementing the SEP as of the date of the SEP Completion Report, documented by copies of purchase orders and receipts or cancelled checks;
 - D. Certification as set forth in Paragraph 63 of this CAFO that the SEP has been fully implemented pursuant to the provisions of this CAFO; and
 - E. A description of the environmental and public health benefits resulting from implementation of the SEP.
50. Failure to submit the SEP Completion Report required by Paragraph 49, above, shall be a violation of this CAFO and Respondent shall become liable for additional penalties pursuant to Paragraphs 56-57 below.
51. Respondent shall maintain for inspection by EPA the original records pertaining to the costs incurred and expenditures made for performing the SEP, such as purchase orders, receipts, and/or cancelled checks, for a period of one year following EPA's issuance of a "Letter of Remittance Upon Satisfaction of Settlement Conditions" pursuant to Paragraph 68. Respondent shall also maintain non-financial records, such as work orders and work reports, documenting the actual implementation and/or performance of the SEP for a period of one year following EPA's issuance of a "Letter of Remittance Upon Satisfaction

of Settlement Conditions” pursuant to Paragraph 68.

EPA Review of SEP Completion Report

52. Following receipt of the SEP Completion Report, EPA will do one of the following:
- A. If EPA determines that the SEP was conducted in accordance with the terms of this CAFO and in compliance with all applicable federal, state and local laws and regulations, EPA will issue a written notification to Respondent accepting the SEP Completion Report (“Notice of SEP Completion Report Acceptance”) and approving the SEP expenses itemized and documented in the SEP Completion Report which EPA agrees Respondent incurred pursuant to this SEP.
 - B. If EPA determines that the SEP was not conducted in accordance with the terms of this CAFO and in compliance with all applicable federal, state and local laws and regulations, or the SEP Completion Report fails to satisfactorily address all the requirements of Paragraph 49 of this CAFO, EPA will issue a written notification to Respondent rejecting the SEP Completion Report (“Notice of SEP Completion Report Rejection”), providing EPA’s reasons therefore, identifying the deficiencies with the SEP purchase, installation and/or construction or with the SEP Completion Report itself, and granting Respondent a reasonable time from receipt of such notice within which to correct any such deficiencies. In the event Respondent fails to correct the identified deficiencies EPA will issue a written notice of disapproval (“Notice of SEP Completion Report Disapproval”) and may seek Additional Penalties in accordance with Paragraphs 56-57 of this CAFO.
53. If EPA issues a written Notice of SEP Completion Report Disapproval rejecting the SEP Completion Report, or issues a written Notice of SEP Completion Report Acceptance but disapproves certain of the expenses Respondent believes were legitimately incurred in implementing the SEP, EPA shall grant Respondent the opportunity to object in writing to such notification within TEN (10) calendar days of receipt of such notification (“Respondent Completion Report Objection”). EPA and Respondent shall have an additional THIRTY (30) calendar days from the receipt by EPA of the Respondent Completion Report Objection to reach agreement on the matter in dispute. If the parties are able to reach agreement on the issues raised in the Respondent Completion Report Objection, the agreement shall be memorialized in writing and signed by the parties (“SEP Completion Report Dispute Agreement”) and Respondent shall complete the SEP Completion Report in accordance with the terms of such agreement. If agreement cannot be reached on any such matter within such thirty (30) day period, EPA shall provide a written statement of its decision and the rationale therefore (“EPA SEP Completion Report Dispute Decision”) to Respondent, which decision shall be final and binding upon Respondent.

54. In the event EPA determines after the expiration of the above thirty (30) day dispute resolution period that the ATG MP SEP, including the ATG and "Inform" software alarm system components of this SEP, has not been completed as specified herein (including the Total Required SEP Expenditure Amount) or has issued a written notice of disapproval for which a timely objection has not been filed by Respondent, Additional Penalties shall be due and payable by Respondent to EPA in accordance with Paragraphs 56-57 of this CAFO.

Notification and Reporting

55. Except as otherwise specified herein, whenever this SEP requires notice or submission of reports, information, or documents, such notice or submission shall be provided to the following persons via certified mail, return receipt requested, first class mail, overnight mail (Express or Priority), hand-delivery or any reliable commercial delivery service:

To EPA:

James Heenehan
Sr. Assistant Regional Counsel (3RC30)
U.S. EPA Region III
1650 Arch Street
Philadelphia, PA 19103

and

Clark Conover
Office of Land Enforcement (3LC70)
U.S. EPA Region III
1060 Chapline St.
Wheeling, WV 26002

To Respondent:

Richard McCain, Esq.
Office of the County Attorney
Winchester Hall
12 East Church St.
Frederick, MD 21704

And

Austin S. Abraham
Director
Management Services Division
Frederick County, Maryland
12 East Church Street
Frederick, Maryland 21701

Either party may substitute another party to receive notice on its behalf or change the address to which notices are being sent by sending written notification of the substitution or change to the other party.

Failure to Satisfactorily Complete the SEP/Delays in Performance

56. In the event that Respondent fails to comply with any of the terms or conditions of this Consent Agreement relating to the performance of the SEP as described in Paragraphs 37-46 above, and to the extent that the actual expenditures incurred by Respondent and approved by EPA pursuant to Paragraphs 52-54 of this CAFO for an individual component of the SEP do not equal or exceed the Individual Required SEP Expenditures for such component, Respondent shall be liable for Additional Penalties according to the provisions set forth below:
- A. Except as provided in subparagraph B immediately below, if the SEP has not been completed satisfactorily pursuant to this CAFO, Respondent shall pay an Additional Penalty of up to TWENTY-TWO THOUSAND FIVE HUNDRED AND THREE (\$22,503.00) calculated in accordance with this Paragraph;
 - B. Except as provided in subparagraph F of this Paragraph, if the SEP is not completed in accordance with Paragraphs 37-46 but: (i) EPA determines that Respondent made good faith and timely efforts to complete the project; and (ii) Respondent certifies, with supporting documentation, that at least 90% of the Individual Required SEP Expenditures for each SEP component (see Paragraph 46) was expended on each such component, Respondent shall not be liable for any Additional Penalties;
 - C. Except as provided in subparagraphs E, F and G of this Paragraph, if the SEP is completed in accordance with Paragraphs 37-46, and the Respondent certifies, with supporting documentation, that at least 90% of the Individual Required SEP Expenditures for each SEP component (see Paragraph 46) was expended on each such component, Respondent shall not be liable for any Additional Penalties;
 - D. If the SEP is completed in accordance with Paragraphs 37-46, but EPA determines

that the Respondent spent less than 90% of the Individual Required SEP Expenditures for each SEP component (see Paragraph 46) was expended on each such component, Respondent shall pay to the United States up to the amounts calculated an additional penalty as follows:

- i. ATG-Transit Facility: ATG-Transit Facility Required SEP Expenditure (\$10,187) *minus* the amount of the ATG-Transit Facility Required SEP Expenditure actually incurred and approved by EPA *equals* the amount of ATG-Transit Facility Required SEP Expenditure not incurred and approved by EPA. The amount of ATG-Transit Facility Required SEP Expenditure not incurred and approved by EPA *divided by ONE (1) equals* the additional penalty due for this SEP Component.
- ii. ATG-Law Enf. Ctr.: ATG-Law Enforcement Center Required SEP Expenditure (\$8,683) *minus* the amount of the ATG-Law Enforcement Center Required SEP Expenditure actually incurred and approved by EPA *equals* the amount of ATG-Law Enforcement Center Required SEP Expenditure not incurred and approved by EPA. The amount of ATG-Law Enforcement Center Required SEP Expenditure not incurred and approved by EPA *divided by FOUR (4) equals* the additional penalty due for this SEP Component.
- iii. Software/PC: Software/PC Required SEP Expenditure (\$1,593) *minus* the amount of the Software/PC Required SEP Expenditure actually incurred and approved by EPA *equals* the amount of Software/PC Required SEP Expenditure not incurred and approved by EPA. The amount of Software/PC Required SEP Expenditure not incurred and approved by EPA *divided by ONE (1) equals* the additional penalty due for this SEP Component.
- iv. Electrical/Cabling: Electrical/Cabling Work Required SEP

Expenditure (\$2,040) *minus* the amount of the Electrical/Cabling Work Required SEP Expenditure actually incurred and approved by EPA *equals* the amount of Electrical/Cabling Work Required SEP Expenditure not incurred and approved by EPA. The amount of Electrical/Cabling Work Required SEP Expenditure not incurred and approved by EPA *divided by ONE and ONE-THIRD (1.33) equals* the additional penalty due for this SEP Component.

- E. If the purchase, installation and/or construction and implementation of the SEP is not completed within the deadlines provided by Paragraphs 41, 42, 43, 44 and 45 above, Respondent shall pay an Additional Penalty of up to FIVE HUNDRED DOLLARS (\$500) for each day after the applicable deadline until the SEP is completed. Payment shall be made pursuant to the procedures set forth in Paragraph 32;
- F. For failure to submit the SEP Completion Report required by Paragraph 49 above, Respondent shall pay an Additional Penalty of up to TWO HUNDRED and FIFTY DOLLARS (\$250) for each day after the applicable deadline for such submission until the report is submitted. Payment shall be made pursuant to the procedures set forth in Paragraph 32; and
- G. For failure to submit any other report or document required by this CAFO, Respondent shall pay an Additional Penalty in the amount of up to ONE HUNDRED DOLLARS (\$100) for each day after the applicable deadline until the report is submitted. Payment shall be made pursuant to the procedures set forth in Paragraph 32.
- H. Notwithstanding the foregoing, and except as provided in subparagraph F of this Paragraph, in no event shall the total of any SEP Expenditures actually incurred by Respondent and approved by EPA under this CAFO, plus any Additional Penalties paid pursuant to this Paragraph, exceed the amount of TWENTY-TWO THOUSAND FIVE HUNDRED AND THREE (\$22,503.00).
- I. The determination of whether the SEP has been satisfactorily implemented and completed, whether Respondent has made a good faith timely effort to implement and complete the SEP and whether and to what extent Additional Penalties under this Section shall be assessed shall be within the sole discretion of EPA.
- J. Additional Penalties under this Paragraph 56.E-.G. shall begin to accrue on the day after performance is due, and shall continue to accrue through the final day of the

completion of the activity, *provided that* such additional penalties shall not accrue during the period of any Dispute Resolution properly invoked pursuant to Paragraph 53 of this CAFO.

57. Respondent shall pay Additional Penalties within FIFTEEN (15) calendar days after Receipt of written demand by EPA for such penalties. The method of payment shall be in accordance with Paragraph 32 above.
58. Nothing in this CAFO shall be construed as prohibiting, altering or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this agreement or of the statutes and regulations upon which this agreement is based, or for Respondent's violation of any other provision of law.

Provisions in the Event of Delay or Anticipated Delay

59. If any event occurs which causes or may cause delays in the completion of the SEP as required under this CAFO, Respondent shall notify Complainant in writing not more than ten (10) calendar days after the delay or Respondent's knowledge of the anticipated delay, whichever is earlier. The notice shall describe in detail the anticipated length of the delay, the precise cause or causes of the delay, the measures taken and to be taken by Respondent to minimize the delay, and the timetable by which those measures shall be implemented. The Respondent shall adopt all reasonable measures to avoid or minimize any such delay. Failure by Respondent to comply with the notice requirements of this Paragraph shall render this Paragraph void and of no effect as to the particular incident involved and constitute a waiver of the Respondent's right to seek an extension of the time for performance of its obligation under this CAFO based on such incident.
60. If the Parties agree that the delay or anticipated delay in compliance with this CAFO has been or will be caused by circumstances entirely beyond the control of Respondent which could not be overcome by due diligence, the time for performance hereunder may be extended for a period no longer than the delay resulting from such circumstances. In such event the Parties shall stipulate to such extension of time.
61. In the event that EPA does not agree that the delay in achieving compliance with this CAFO has been or will be caused by circumstances entirely beyond the control of Respondent which could not be overcome by due diligence, EPA will notify Respondent in writing of its decision and such delays in the completion of the SEP shall not be excused.
62. The burden of proving that any delay is caused by circumstances entirely beyond the control of Respondent which could not be overcome by due diligence shall rest with the Respondent. Increased costs or expenses associated with the implementation of actions called for by this CAFO shall not, in any event, be a basis for changes in this CAFO or

extensions of time under Paragraph 60 of this CAFO. Delay in achievement of one interim step shall not necessarily justify or excuse delay in achievement of subsequent steps.

Certification Requirement

63. In all documents or reports, including, without limitation, the SEP Completion Report, submitted to EPA pursuant to this CAFO, Respondent shall, by its Director of the Management Services Division, sign and certify under penalty of law that the information contained in such document or report is true, accurate, and not misleading by signing the following statement:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment. I am duly authorized to certify this submission on behalf of Frederick County, Maryland.

Signature: _____

Name: _____

Title: _____

Language to be Included in Public Statements

64. Any public statement, oral or written, in print, film or other media, made by Respondent, making reference to this SEP shall include the following language: "This project was undertaken in connection with the settlement of an enforcement action taken by the U.S. Environmental Protection Agency for violations of Subtitle I of the Resource Conservation and Recovery Act ("RCRA") and the EPA-authorized underground storage tank regulations of the State of Maryland under RCRA Subtitle I."

No Reimbursements

65. Respondent certifies that it has not received and will not seek to receive reimbursement in the form of credit in any other federal, state or local grant, rebate, or any other payment or financial assistance from any governmental source for any of the expenses it incurs to fulfill the terms of this CAFO.

Reservation of Rights

66. This CAFO resolves only EPA's claims for civil penalties for the specific violations alleged in the CAFO. 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. Respondent reserves all available rights and defenses it may have to defend itself in any such action.

Full and Final Satisfaction

67. This CAFO constitutes a full, complete and final settlement by EPA of its claims for civil penalties pursuant to Section 9006(a) of RCRA, 42 U.S.C. § 6991e(a), for the specific 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 violations of the federal laws and regulations administered by EPA.

Notification of Compliance

68. If EPA determines that Respondent has fully complied with the conditions set forth herein, EPA shall promptly issue a Letter of Remittance Upon Satisfaction of Settlement Conditions, which shall state that Respondent has performed fully the conditions set forth herein for the implementation of the SEP and paid all penalty amounts due pursuant to the terms of this CAFO, and that Respondent has no further obligations under this CAFO.

Other Applicable Laws

69. 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

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

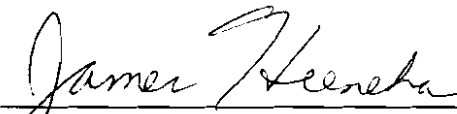
Effective Date

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


For Respondent Board of County Commissioners of Frederick County, Maryland:

Date: 1-22-09 By: 
Jan H. Gardner, President
Board of County Commissioners of Frederick County,
Maryland
*R. J. M.
1-22-09*

For Complainant United States Environmental Protection Agency, Region III:

Date: 1/30/09 By: 
James Heenehan
Assistant Regional Counsel

After reviewing the foregoing Consent Agreement and other pertinent information, the Director for the Land and Chemicals Division, EPA Region III, recommends that the Regional Administrator or the Regional Judicial Officer issue the Final Order attached hereto.

2/4/09
Date By: 
Abraham Ferdas, Director
Land and Chemicals Division

ATTACHMENT A

Frederick County Fleet Services Department Supplemental Environmental Proposal:
*Automatic Tank Gauging (ATG) for Above Ground Fuel Storage Tanks (ASTs), Frederick County
Maryland, Fleet Services Department*

ATTACHMENT A

**Frederick County Fleet Services Department
Supplemental Environmental Project**

Project Title:

Automatic Tank Gauging (ATG) for Above Ground Fuel Storage Tanks (AST), Frederick County Maryland, Fleet Services Department.

Proposed Project Basic Description:

In January 2008, the Frederick County Government (County) responded to the Environmental Protection Agency's (EPA) concerns with the County's testing and record keeping for three underground fuel storage tanks (UST) located at the County's main fuel site at 331 Montevue Lane, Frederick, Maryland 21702. As a result of subsequent discussions, the County has agreed to complete this Supplemental Environmental Project (SEP) as part of a settlement of EPA's claims as alleged in the Consent Agreement and Final Order to which this document is attached. When completed, this SEP will help Frederick County monitor and manage multiple County-owned AST's remotely situated from the County's Fleet Services' main Montevue Lane facility.

Only two County fuel sites have ASTs over 5,000 gallons. The Law Enforcement Complex (LEC) at 110 Airport Drive, East Frederick, Maryland 21701, has one 12,000-gallon AST and the Transit Facility at 1040 Rocky Springs Road, Frederick, Maryland 21702, has two 6,000-gallon ASTs. Neither site incorporates underground piping but all three tanks incorporate seven-gallon spill containment units at the tanks' fuel fill pipe. The ASTs at the LEC and Transit facilities are double walled, concrete encased tanks manufactured by ConVault. This type of construction is intended to maximize protection against leaks and environmental catastrophes. The tanks, as installed, do not have ATG with electronic means for overfill alarm, electronic leak detection/monitoring or continuous statistical leak detection (CSLD). Given the fact that these fuel sites are unmanned for much of the time they are in operation, the automatic remote monitoring, alarm notification, and CSLD feature of the SEP described herein will help maximize protection against undetected leaks after regular working hours or on weekends.

Under this SEP, Frederick County will add an ATG to three AST's at two separate County fuel sites (the LEC and the Transit Facility) as a means of enhancing the County's ability to monitor and manage tank conditions and fuel regardless of their location. The addition of ATG to these ASTs will not only provide greater monitoring capabilities by adding electronic reports and alarms but the remote monitoring feature will allow the County to receive alarm notification and monitor inventory levels in real time, enhancing reconciliation, recordkeeping and fulfillment of testing requirements. The tank monitoring systems at each remote site will be connected to a computer in the Fleet Services administrative office at 331 Montevue Lane in order to maintain constant monitoring capabilities.

The incorporation of ATG at the LEC and Transit Facility will minimize the risk of undetected petroleum leaking onto the soil, the groundwater and adjacent waterways by providing monitoring to ensure that prompt action can be taken in the event of a leak.

Automatic Tank Gauging/Monitoring Systems:

The County selected the Veeder-Root TLS-350 Plus for this project because it is the same system already in use for the County's three USTs at its Montevue Lane facility and because it will allow the County to choose the exact compliance and fuel management features needed for its specific situation. Additionally, the County will be adding the remote notification and alarm feature to the Veeder Root TLS 350 Plus system already used to monitor the three USTs at the County's Montevue Lane facility.

The TLS-350 Plus incorporates Continuous Statistical Leak Detection (CSLD) for 24-hour, automatic leak detection (.2 gal per hour) without tank shut down and with interstitial leak sensors for double-wall tanks. The County will use these features to ensure the integrity of the tanks situated at each of the sites. In addition, managing the fuel tanks and product for recordkeeping compliance will be more consistent and reliable.

Veeder Root's TLS-350 Plus fuel manager 'Inform' software provides the capability of monitoring inventory and enhancing the County's environmental compliance for fuel management, testing and alarms notification. The systems at each site will be connected to a centralized personal computer at Fleet Services' main administrative office at 331 Montevue Lane in Frederick. Routine daily notifications indicating tank conditions and fuel levels will be sent to Fleet Services' centralized fax machine in the County's administrative office on Montevue Lane in Frederick. Concurrently, a back up fax will be sent to the main supply room at our Montevue Lane facility. The system will be programmed to send a notice, alert or message to Fleet Services' after-hours emergency pager carried by one of two Fleet Services' Service Managers or the Fleet Services' Director 24-hours a day/7-days a week. Events that would trigger an alarm include product overfill, low product level, interstitial leak, CSLD completed or CSLD failure and the presence of water. A programmed daily report will run to check the CSLD functions and to verify the results of the .2 gal per hour test. For recordkeeping purposes, the daily printout will show tank levels and alarms as well as the CSLD function test. This plan allows for up to a total of seven staff members in the Administrative office and Parts room to receive routine and/or alert notifications.

The County will be using the following features of the TLS-350 Plus:

1. CSLD for continuous 24-hour leak detection
2. Leak detection capabilities
3. Fax and auto-dial to phone, pager, PDA or computer
4. Programmable alarms and sensors for:
 - Overfill
 - Low product
 - Water alert
 - Interstitial leak sensing
5. Data communications
6. System inventory and status reports

Breakdown of Cost:

Transit Site:

- Veeder Root TLS-350 Plus
- Four-input probe interface module
- Eight-input interstitial/liquid sensor interface module
- Two-input/two-relay output interface module
- SiteFax 300/1200/2400-buad fax/modem interface module
- Mag-plus in-tank probe-inventory only
- Diesel Mag plus in-tank probe installation kit
- 4" riser cap and ring kit overfill alarm
- Overfill alarm acknowledgment switch
- Freight

	Sub-total	\$9,157.19	
Labor to install tank monitor system, probes & startup		<u>1,030.00</u>	
Sub-Total for Transit Site			\$10,187.19

Law Enforcement Center:

- Veeder Root TLS-350 Plus
- Four-input probe interface module
- Eight-input interstitial/liquid sensor interface module
- Two-input/two-relay output interface module
- SiteFax 300/1200/2400-buad fax/modem interface module
- Mag-plus in-tank probe-inventory only
- 4" riser cap and ring kit
- Overfill alarm
- Overfill alarm acknowledgment switch
- Freight

	Sub-total	\$7,772.78	
Labor to install tank monitor, probes & startup		<u>910.00</u>	
Sub-Total for Law Enforcement Center Site			\$ 8,682.78

Dedicated PC to be located in Fleet Services office 820.00

Inform communications software 773.38

SUB-TOTAL for SEP \$20,463.35

The installation of the Veeder Root at the Transit facility and the LEC will require running electrical wiring through existing underground conduits into the maintenance shop's mechanical

room and run the wiring through the building from the mechanical room to the Veeder Root mounting location in the Parts Room.

The communication links will be run from the Veeder Root consoles at both the Transit and the LEC facilities through the County's intranet to Fleet Services' administrative office located at 331 Montevue Lane. Once in the Fleet Administrative office it will be connected to a dedicated PC.

The electrical wiring will be done by in-house staff from the County's Maintenance department. The work is estimated to take 24 hours of master electrician time at \$45.00 per hour (wages and benefits only) for a total of \$1,080.

The communication cabling will be done by in-house staff from the County's Information Technology department. The work is estimated to take 24 hours of voice/data technician time at \$40.00 per hour (wages and benefits only) for a total of \$960.

SUB-TOTAL for SEP	\$20,463.35
In-house Electrical Work	\$ 1,080.00
In-house Communication Cabling	<u>\$ 960.00</u>
TOTAL for SEP	<u>\$22,503.35</u>

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

In the Matter of: :
:
Frederick County, Maryland :
Fleet Services Department : **U.S. EPA Docket No.**
331 Montevue Lane : **RCRA-03-2009-0041**
Frederick, Maryland 21702 :
:
Respondent. :
:
Fleet Services Department : **FINAL ORDER**
331 Montevue Lane :
Frederick, Maryland 21702 :
:
Facility. :

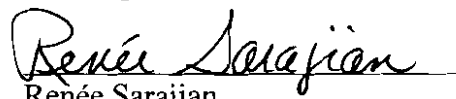
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OFFICE OF REGIONAL COUNSELOR

Complainant, the Director for the Land and Chemicals Division, U.S. Environmental Protection Agency - Region III, and Respondent, Board of County Commissioners of Frederick County, Maryland, a body corporate and politic of the State of Maryland, 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 9006(a) of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6991e(a), and the Consolidated Rules of Practice, and having determined, based on the representations in the Consent Agreement, that the civil penalty agreed to in the Consent Agreement is based on representations in the Consent Agreement that the penalty agreed to in the Consent Agreement is based upon factors set forth in Section 9006(c)-(e) of RCRA, 42 U.S.C. § 6991e(c)-(e), **IT IS HEREBY ORDERED** that Respondent pay a civil penalty of Four Thousand and Six Hundred Dollars (\$4,600.00) and comply with all of the terms and conditions of the Consent Agreement.

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

Date: 2/9/09



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

CERTIFICATE OF SERVICE

I certify that on the date noted below, I hand-delivered the original and one true and correct copy of the Consent Agreement and Final Order for *In the Matter of Frederick County* (Docket No. RCRA-03-2009-0041), to the Regional Hearing Clerk (3RC00), U.S. EPA Region III, 1650 Arch St., Philadelphia, PA, 19103, and that I sent a true and correct copy of same to the below Party via Federal Express:

Respondent: Richard McCain, Esq.
Office of the County Attorneys
Winchester Hall
12 East Church St.
Frederick, MD 21704

2/11/09
Date



James Heenehan
Sr. Assistant Regional Counsel (3RC30)
U.S. EPA Region III

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