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**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

**REGION III**

**1650 Arch Street**

**Philadelphia, Pennsylvania 19103-2029**

2008 SEP 30 PM 2:12

REGIONAL HEARING ROOM  
EPA REGION III PHILA, PA

In the Matter of:	)	
	)	
United States Air Force and	)	
	)	U.S. EPA Docket Number
Army and Air Force Exchange Service,	)	RCRA-03-2008-0410FF
	)	
RESPONDENTS.	)	Proceeding Under Section 9006 of the
	)	Resource Conservation and Recovery Act,
USAF Building 1685	)	42 U.S.C. Section 6991e
1685 Brookley Avenue	)	
Andrews Air Force Base, MD 20762	)	
	)	
USAF Building 1206	)	
1206 South Dakota Avenue	)	
Andrews Air Force Base, MD 20762	)	
	)	
USAF Building 3286	)	
3286 East Perimeter Road	)	
Andrews Air Force Base MD 20762	)	
	)	
USAF Building 5013	)	
1841 Westover Drive	)	
Andrews Air Force Base, MD 20762	)	
	)	
USAF Building 2487	)	
Taxiway Echo	)	
Andrews Air Force Base, MD 20762	)	
	)	
FACILITIES.	)	

**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 United States Air Force (“USAF”) and the Army and Air Force Exchange Service (“AAFES”) (collectively, “Respondents”), pursuant to Section 9006 and Section 9007 of the Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. § 6991e and § 6991f, 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 “CA/FO”), resolve violations of RCRA Subtitle I, 42 U.S.C. §§ 6991-6991m, and the State of Maryland’s federally authorized underground storage tank program with respect to the underground storage tanks at the following facilities: USAF Building 1685, 1685 Brookley Avenue, Andrews Air Force Base, MD 20762 (“Building 1685”); USAF Building 1206, 1206 South Dakota Avenue, Andrews Air Force Base, MD 20762 (“Building 1206”); USAF Building 3286, 3286 East Perimeter Road, Andrews Air Force Base, MD 20762 (“Building 3286”); USAF Building 5013, 1841 Westover Drive, Andrews Air Force Base, MD 20762 (“Building 5013”); and USAF Building 2487, Taxiway Echo, Andrews Air Force Base, MD 20762 (“Building 2487”).

Section 9007 of RCRA, 42 U.S.C. § 6991f, provides, *inter alia*, that each department, agency, and instrumentality of the executive, legislative, and judicial branches of the Federal Government (1) having jurisdiction over any underground storage tank system, or (2) engaged in any activity resulting, or which may result, in the installation, operation, management, or closure of any underground storage tank, release response activities related thereto, or in the delivery, acceptance, or deposit of any regulated substance to an underground storage tank or underground storage tank system shall be subject to, and comply with, all Federal, State, interstate, and local requirements, both substantive and procedural, respecting underground storage tanks in the same manner, and to the same extent, as any person is subject to such requirements.

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 established under Subtitle I of RCRA, 42 U.S.C. §§ 6991-6991m. 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 administered by the Maryland Department of the Environment (“MDE”), and are set forth in the Code of Maryland Regulations and will be cited as “COMAR” followed by the applicable section of the regulations.

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.

**GENERAL PROVISIONS**

1. For purposes of this proceeding only, Respondents admit the jurisdictional allegations set forth in this CA/FO.
2. Respondents neither admit nor deny the specific factual allegations and conclusions of law set forth in this CA/FO, except as provided in Paragraph 1, above.
3. Respondents agree not to contest EPA's jurisdiction with respect to the execution of this CA, the issuance of the attached Final Order ("FO"), or the enforcement of the CA/FO.
4. For the purposes of this proceeding only, Respondents hereby expressly waive their right to a hearing on any issue of law or fact set forth in this CA and any right to appeal the accompanying FO. In addition, Respondents waive their right to confer with the Administrator pursuant to RCRA § 6001(b)(2), 42 U.S.C. § 6961(b)(2).
5. Respondents consent to the issuance of this CA/FO, and agree to comply with its terms and conditions.
6. Each party shall bear its own costs and attorney's fees.
7. The person signing this CA on behalf of each Respondent certifies to EPA by his or her signature herein that such Respondent, as of the date of its execution of this CA, is in compliance with the provisions of RCRA, Subtitle I, 42 U.S.C. §§ 6991-6991m, and the State of Maryland's federally authorized underground storage tank program at each Facility referenced herein. This certification is based on the personal knowledge of the signer or an inquiry of the person or persons responsible for the Facility's compliance with Subtitle I of RCRA.
8. The provisions of this CA/FO shall be binding upon EPA and Respondents.
9. This CA/FO shall not relieve Respondents of their obligation to comply with all applicable provisions of federal, state or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit, nor does this CA/FO 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 Respondents to EPA regarding matters at issue in the CA/FO are false or, in any material respect, inaccurate.

11. EPA has given the State of Maryland notice of the issuance of this CA/FO in accordance with Section 9006(a)(2) of RCRA, 42 U.S.C. § 6991e(a)(2).

**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, and 40 C.F.R. § 22.1(a)(4) and .4(c).
13. USAF is a "person" as defined in Section 9001(5) of RCRA, 42 U.S.C. § 6991(5), and COMAR § 26.10.02.04B(40). AAFES is a "person" as defined in Section 9001(5) of RCRA, 42 U.S.C. § 6991(5), and COMAR § 26.10.02.04B(40).
14. At all times relevant to this CA/FO, USAF 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 COMAR § 26.10.02.04B(37) and (39), 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 COMAR § 26.10.02.04B(64) and (66), located at the following facilities: USAF Building 1685, 1685 Brookley Avenue, Andrews Air Force Base, MD 20762 ("Building 1685"); USAF Building 1206, 1206 South Dakota Avenue, Andrews Air Force Base, MD 20762 ("Building 1206"); USAF Building 3286, 3286 East Perimeter Road, Andrews Air Force Base, MD 20762 ("Building 3286"); USAF Building 5013, 1841 Westover Drive, Andrews Air Force Base, MD 20762 ("Building 5013"); and USAF Building 2487, Taxiway Echo, Andrews Air Force Base, MD 20762 ("Building 2487"). At all times relevant to this CA/FO, AAFES has been the operator of the USTs and UST systems located at Building 1685.
15. On February 21 and 23, 2007, EPA representatives conducted a Compliance Evaluation Inspection ("CEI") of Building 1685, Building 1206, Building 3286, Building 5013, and Building 2487 pursuant to Section 9005 of RCRA, 42 U.S.C. § 6991d.
16. At the time of the February 2007 CEI of Building 1685, and at all times relevant to the applicable violations alleged herein, the following USTs were located at Building 1685:
  - A. four (4) ten thousand (10,000) gallon double-walled fiberglass-reinforced plastic ("FRP") tanks that were installed in 1997 and that, at all times relevant hereto, routinely contained and was used to store gasoline, a "regulated substance" as that term is defined in Section 9001(7) of RCRA, 42 U.S.C. § 6991(7), and COMAR § 26.10.02.04B(48) (hereinafter "USTs Nos. 001, 002, 003, and 004").
17. At the time of the February 2007 CEI of Building 1206, and at all times relevant to the

applicable violations alleged herein, the following USTs were located at Building 1206:

- A. a twenty thousand (20,000) gallon double-walled FRP tank that was installed in December 1999 and that, at all times relevant hereto, routinely contained and were used to store biodiesel, a “regulated substance” as that term is defined in Section 9001(7) of RCRA, 42 U.S.C. § 6991(7), and COMAR § 26.10.02.04B(48) (hereinafter “UST No. 078”); and
  - B. a twenty thousand (20,000) gallon double-walled FRP tank that was installed in December 1999 and that, at all times relevant hereto, routinely contained and were used to store gasoline, a “regulated substance” as that term is defined in Section 9001(7) of RCRA, 42 U.S.C. § 6991(7), and COMAR § 26.10.02.04B(48) (hereinafter “UST No. 079”).
18. At the time of the February 2007 CEI of Building 3286, and at all times relevant to the applicable violations alleged herein, the following USTs were located at Building 3286:
- A. a twenty thousand (20,000) gallon double-walled FRP tank that was installed in October 1999 and that, at all times relevant hereto, routinely contained and were used to store gasoline, a “regulated substance” as that term is defined in Section 9001(7) of RCRA, 42 U.S.C. § 6991(7), and COMAR § 26.10.02.04B(48) (hereinafter “UST No. 024”); and
  - B. a twenty thousand (20,000) gallon double-walled FRP tank that was installed in October 1999 and that, at all times relevant hereto, routinely contained and were used to store biodiesel, a “regulated substance” as that term is defined in Section 9001(7) of RCRA, 42 U.S.C. § 6991(7), and COMAR § 26.10.02.04B(48) (hereinafter “UST No. 025”).
19. At the time of the February 2007 CEI of Building 5013, and at all times relevant to the applicable violations alleged herein, the following USTs were located at Building 5013:
- A. a fifty thousand (50,000) gallon single-walled steel tank that was installed in April 1988 and that, at all times relevant hereto, routinely contained and were used to store jet propellant, a “regulated substance” as that term is defined in Section 9001(7) of RCRA, 42 U.S.C. § 6991(7), and COMAR § 26.10.02.04B(48) (hereinafter “UST No. 093”); and
  - B. a six thousand (6,000) gallon single-walled steel tank that was installed in 1989 and that, at the times indicated below in Count 9, contained and was used to store jet propellant, a “regulated substance” as that term is defined in Section 9001(7) of RCRA, 42 U.S.C. § 6991(7), and COMAR § 26.10.02.04B(48) (hereinafter “UST

No. T-003")

- C. a fifty thousand (50,000) gallon single-walled steel tank that was installed in April 1988 and that, at all times relevant hereto, routinely contained and were used to store jet propellant, a "regulated substance" as that term is defined in Section 9001(7) of RCRA, 42 U.S.C. § 6991(7), and COMAR § 26.10.02.04B(48) (hereinafter "UST No. 094").
20. At the time of the February 2007 CEI of Building 2487, and at all times relevant to the applicable violations alleged herein, the following USTs were located at Building 2487:
- A. a ten thousand (10,000) gallon double-walled FRP tank that was installed in April 1988 and that, at all times relevant hereto, routinely contained and were used to store jet propellant, a "regulated substance" as that term is defined in Section 9001(7) of RCRA, 42 U.S.C. § 6991(7), and COMAR § 26.10.02.04B(48) (hereinafter "UST No. 089").
21. At all times relevant to the applicable violations alleged herein, USTs Nos. 093, 094, and 089 have been "petroleum UST systems" and "existing UST systems" as these terms are defined in COMAR § 26.10.02.04B(43) and (19), respectively.
22. At all times relevant to the applicable violations alleged herein, USTs Nos. 001, 002, 003, 004, 024, 025, 078, T-003, and 079 have been "petroleum UST systems" and "new tank systems" as these terms are defined in COMAR § 26.10.02.04B(43) and (31), respectively.
23. USTs Nos. 001, 002, 003, 004, 024, 025, 078, and 079 are not and were not, at all times relevant to the applicable violations alleged in this CA/FO, "empty" as that term is defined at COMAR § 26.10.10.01A. UST No. T-003 was not, at the times identified in Count 9, "empty" as that term is defined at COMAR § 26.10.10.01A.

**COUNT # 1**

(Failure to maintain release detection records for USTs Nos. 001, 002, 003, and 004)

24. The allegations of Paragraphs 1 through 23 of this CA/FO are incorporated herein by reference.
25. Pursuant to COMAR § 26.10.05.01A 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.
26. COMAR § 26.10.05.02B provides, among other things, that USTs shall be monitored at least every 30 days for releases using one of the methods listed in COMAR

§ 26.10.05.04E-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 § 26.10.05.04B or C (Inventory Control or Manual Tank Gauging) shall use tank tightness testing, conducted in accordance with COMAR § 26.10.05.04D (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 § 26.10.03.02B (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 § 26.10.05.04B or C (Inventory Control or Manual Tank Gauging) and annual tank tightness testing, conducted in accordance with COMAR § 26.10.05.04D (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 § 26.10.05.04C.
27. COMAR § 26.10.04.05C(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.
28. 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.

29. From April 2006 until March 2008, Respondents performed release detection for the USTs Nos. 001, 002, 003, and 004 at Building 1685.
30. From April 2006 until March 2008, Respondents failed to maintain records of release detection monitoring for USTs Nos. 001, 002, 003, and 004 in accordance with COMAR § 26.10.05.06 and COMAR § 26.10.04.05C(4).
31. Respondents' acts and/or omissions as alleged in Paragraph 30, above, constitute violations by Respondents of COMAR § 26.10.04.05C(4) and COMAR § 26.10.05.06.

**COUNT # 2**

(Failure to perform automatic line leak detector testing annually on piping for USTs Nos. 001, 002, 003, and 004)

32. The allegations of Paragraphs 1 through 31 of this CA/FO are incorporated herein by reference.
33. COMAR § 26.10.05.02C(1) provides that underground piping that routinely contains regulated substances shall be monitored for releases. Further, COMAR § 26.10.05.02C(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 § 26.10.05.05B; and
  - B. Have an annual line tightness test conducted in accordance with COMAR § 26.10.05.05C or have monthly monitoring conducted in accordance with COMAR § 26.10.05.05D.
34. COMAR § 26.10.05.05B 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.
35. From November 8, 2002 until August 30, 2008, the piping for USTs Nos. 001, 002, 003 and 004 was underground and routinely contained and conveyed under pressure regulated substances.
36. Respondents conducted a test of the automatic line leak detectors for the piping associated with USTs Nos. 001, 002, 003, and 004 only on November 8, 2006 and January 9, 2008.



37. Respondents failed to perform an annual test of the automatic line leak detectors for the underground piping for USTs Nos. 001, 002, 003 and 004 from September 30, 2003 until November 7, 2006.
38. Respondents failed to perform an annual test of the automatic line leak detectors for the underground piping for USTs Nos. 001, 002, 003 and 004 from November 9, 2006 until January 8, 2008.
39. Respondents' acts and/or omissions as alleged in Paragraphs 37 and 38, above, constitute violations by Respondents of COMAR § 26.10.05.02C(2)(a) and COMAR § 26.10.05.05B.

**COUNT # 3**

(Failure to maintain release detection records for USTs Nos. 078 and 079)

40. The allegations of Paragraphs 1 through 39 of this CA/FO are incorporated herein by reference.
41. From June 2006 until February 2008, USAF performed release detection for the USTs Nos. 078 and 079 at Building 1206.
42. From June 2006 until February 2008, USAF failed to maintain records of release detection monitoring for USTs Nos. 078 and 079 in accordance with COMAR § 26.10.05.06 and COMAR § 26.10.04.05C(4).
43. USAF's acts and/or omissions as alleged in Paragraph 42, above, constitute violations by USAF of COMAR § 26.10.04.05C(4) and COMAR § 26.10.05.06.

**COUNT # 4**

(Failure to perform automatic line leak detector testing annually on piping for UST No. 078)

44. The allegations of Paragraphs 1 through 43 of this CA/FO are incorporated herein by reference.
45. From January 8, 2002 until January 8, 2008, the piping for UST No. 078 was underground and routinely contained and conveyed under pressure regulated substances.
46. USAF conducted a test of the automatic line leak detectors for the piping associated with UST No. 078 only on January 9, 2008.
47. USAF failed to perform an annual test of the automatic line leak detectors for the underground piping for UST No. 078 from September 30, 2003 until January 8, 2008.

48. USAF's acts and/or omissions as alleged in Paragraph 47, above, constitute violations by USAF of COMAR § 26.10.05.02C(2)(a) and COMAR § 26.10.05.05B.

**COUNT # 5**

(Failure to perform automatic line leak detector testing annually on piping for UST No. 079)

49. The allegations of Paragraphs 1 through 48 of this CA/FO are incorporated herein by reference.
50. From January 8, 2002 until January 8, 2008, the piping for UST No. 079 was underground and routinely contained and conveyed under pressure regulated substances.
51. USAF conducted a testing of the automatic line leak detectors for the piping associated with UST No.079 only on November 8, 2006 and January 9, 2008.
52. USAF failed to perform an annual test of the automatic line leak detectors for the underground piping for UST No. 079 from September 30, 2003 until November 7, 2006
53. USAF failed to perform an annual test of the automatic line leak detectors for the underground piping for UST No. 079 from November 9, 2006 until January 8, 2008.
54. USAF's acts and/or omissions as alleged in Paragraphs 52 and 53, above, constitute violations by USAF of COMAR § 26.10.05.02C(2)(a) and COMAR § 26.10.05.05B.

**COUNT # 6**

(Failure to maintain release detection records for USTs Nos. 024 and 025)

55. The allegations of Paragraphs 1 through 54 of this CA/FO are incorporated herein by reference.
56. From October 2006 until July 2008, USAF performed release detection for the USTs Nos. 024 and 025 at Building 3286.
54. From October 2006 until July 2008, USAF failed to maintain records of release detection monitoring for USTs Nos. 024 and 025 in accordance with COMAR § 26.10.05.06 and COMAR § 26.10.04.05C(4).
55. USAF's acts and/or omissions as alleged in Paragraph 54, above, constitute violations by USAF of COMAR § 26.10.04.05C(4) and COMAR § 26.10.05.06.

**COUNT # 7**

(Failure to perform automatic line leak detector testing annually on piping for UST No. 024)

56. The allegations of Paragraphs 1 through 55 of this CA/FO are incorporated herein by reference.
57. From November 8, 2002 until January 8, 2008, the piping for UST No. 024 was underground and routinely contained and conveyed under pressure regulated substances.
58. USAF conducted a test of the automatic line leak detectors for the piping associated with UST No.024 only on November 8, 2006 and January 9, 2008.
59. USAF failed to perform an annual test of the automatic line leak detectors for the underground piping for UST No. 024 from September 30, 2003 until November 7, 2006
60. USAF failed to perform an annual test of the automatic line leak detectors for the underground piping for UST No. 024 from November 9, 2006 until January 8, 2008.
61. USAF's acts and/or omissions as alleged in Paragraphs 59 and 60, above, constitute violations by USAF of COMAR § 26.10.05.02C(2)(a) and COMAR § 26.10.05.05B.

**COUNT # 8**

(Failure to perform automatic line leak detector testing annually on piping for UST No. 025)

62. The allegations of Paragraphs 1 through 61 of this CA/FO are incorporated herein by reference.
63. From January 8, 2002 until January 8, 2008, the piping for UST No. 025 was underground and routinely contained and conveyed under pressure regulated substances.
64. USAF conducted a test of the automatic line leak detectors for the piping associated with UST No. 025 only on January 9, 2008.
65. USAF failed to perform an annual test of the automatic line leak detectors for the underground piping for UST No. 026 from September 30, 2003 until January 8, 2008.
66. USAF's acts and/or omissions as alleged in Paragraph 65, above, constitute violations by USAF of COMAR § 26.10.05.02C(2)(a) and COMAR § 26.10.05.05B.

**COUNT # 9**

(Failure to register an UST with MDE)

67. The allegations of Paragraphs 1 through 66 of this CA/FO are incorporated herein by reference.

68. COMAR § 26.10.03.03(A) requires that, on or before July 1, 1990, the owner, operator, or person-in-charge of an UST must register the UST with MDE.
69. COMAR § 26.10.02.02(B) excludes certain USTs from the requirements of COMAR § 26.10.02 through COMAR § 26.10.11, including the registration requirement of COMAR § 26.10.03.03(A).
70. COMAR § 26.10.02.02(B)(6) excludes emergency spill or overfill containment UST systems that are expeditiously emptied after use from the requirements of COMAR 26.10.02 through COMAR § 26.10.11.
71. UST No. T-003 was installed at Building 5013 to serve as an emergency spill or overfill containment UST system.
72. From August 2006 until December 2007, USAF failed to expeditiously empty UST No. T-003, which was being used to store gasoline and water.
73. From August 2006 until December 2007, USAF failed to fulfill the exclusion requirements for emergency spill or overfill containment UST systems in accordance with COMAR § 26.10.02.02(B).
74. From August 2006 until December 2007, UST No. T-003 was not registered with MDE.
75. USAF's acts and/or omissions as alleged in Paragraphs 72 through 73, above, constitutes a violation by USAF of COMAR § 26.10.03.03(A).

**COUNT # 10**

(Failure to perform release detection on UST No. 089)

76. The allegations of Paragraphs 1 through 75 of this CA/FO are incorporated herein by reference.
77. From February 2006 until July 2007 the method of release detection selected by USAF for the UST No. 089 was Automatic Tank Gauging in accordance with COMAR § 26.10.05.04(E).
78. USAF failed to perform Automatic Tank Gauging for UST No. 089 in accordance with COMAR § 26.10.05.04(E) for the following time periods: February 2006 through September 2006, December 2006, and May 2007 through July 2007.
79. During the periods of time indicated in Paragraph 78, above, USAF did not use any of the other release detection methods specified in COMAR § 26.10.05.02B(1)-(3) and/or

COMAR § 26.10.05.04F-I on UST No. 089.

80. USAF's acts and/or omissions as alleged in Paragraphs 78 and 79, above, constitute violations by USAF of COMAR §§ 26.10.05.01A and .02B.

**CIVIL PENALTY**

81. In settlement of Complainant's claims for civil penalties for the violations alleged in this CA, each Respondent agrees to pay a civil penalty as follows. Both Respondents are jointly and severally liable for payment of a civil penalty in the amount of **\$32,572.00** in settlement of Complainant's claims based on the violations alleged in Counts 1 and 2 of the CA/FO. Payment of such civil penalty shall be made by Respondents either in one (1) payment of \$32,572.00 on behalf of both Respondents, or two (2) separate payments, one by each Respondent, the combined amount of which is \$32,572.00. USAF is solely liable for payment of a civil penalty in the amount of **\$61,802.00** in settlement of Complainant's claims based on the violations alleged in Counts 3 through 10 of the CA/FO. The civil penalty amount(s) is/are due and payable immediately upon Respondents' receipt of a true and correct copy of this CA/FO, fully executed by the parties, signed by the Regional Judicial Officer, and filed with the Regional Hearing Clerk. Respondents must pay the civil penalty amount(s) no later than thirty (30) calendar days after the date on which a copy of this CA/FO is mailed or hand-delivered to Respondents.
82. The aforesaid settlement amount was based upon Complainant's consideration of a number of factors, including, but not limited to, the statutory factors of the seriousness of Respondents' violations and any good faith efforts by Respondents to comply with all applicable requirements as provided in RCRA § 9006(c), 42 U.S.C. § 6991e(c), the maximum civil penalties established under RCRA § 9006(d), 42 U.S.C. § 6991e(d), Respondents' compliance history and any other factors EPA considers appropriate as provided in RCRA § 9006(e), 42 U.S.C. § 6991e(e), as well as applicable portions of EPA's Penalty Guidance for Violations of UST Regulations ("UST Guidance") dated November 4, 1990.
83. Payment of the civil penalty amount(s) described in Paragraph 81, above, shall be made by either cashier's check, certified check or electronic wire transfer, in the following manner:
- A. All payments by Respondents shall reference their names and addresses, and the Docket Number of this action, *i.e.*, RCRA-03-2008-0410FF;
  - 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  
CTX Format

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](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 81 shall be sent simultaneously to:

Brianna Tindall  
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

**FULL AND FINAL SATISFACTION**

84. Pursuant to 40 C.F.R. § 22.18(c), this CA/FO constitutes a full and final resolution of Respondents' liability for Federal civil penalties pursuant to 9006(a) of RCRA, 42 U.S.C.

§ 6991e(a), for the specific violations and matters alleged in this Consent Agreement.

**RESERVATION OF RIGHTS**

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

**ADEQUACY OF FUNDS; ANTIDEFICIENCY ACT**

86. Failure to obtain adequate funds or appropriations from Congress does not release Respondents from their obligation to comply with RCRA, the applicable regulations thereunder, or with this CA/FO. Nothing in this CA/FO shall be interpreted to require obligation or payment of funds in violation of the Antideficiency Act, 31 U.S.C. § 1341.

**OTHER APPLICABLE LAWS**

87. Nothing in this CA/FO shall relieve Respondents of any duties otherwise imposed on them by applicable federal, state or local law and/or regulations.

**AUTHORITY TO BIND THE PARTIES**

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

**ENTIRE AGREEMENT**

89. 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**

90. This CA/FO shall become effective upon filing with the Regional Hearing Clerk.



In the Matter of:  
United States Air Force

For Respondent:

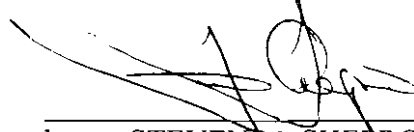
9/17/08  
Date

17

RECEIVED

Consent Agreement  
Docket No. 30-2008-3410FF

United States Air Force  
1000 S. GLENN  
PHILADELPHIA, PA



by: STEVEN M. SHEPRO, Colonel  
Commander

In the Matter of:

18

United States Air Force

~~Confidential Agreement~~  
RECEIVED

Docket No. RCRA-03-2008-0410FF

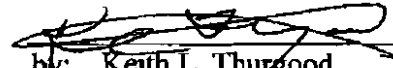
2008 SEP 30 PM 3:13

REGIONAL OFFICE  
EPA REGION III  
PHILADELPHIA, PA

For Respondent:

Army and Air Force Exchange Service

9-29-2008  
Date

  
by: Keith L. Thurgood  
MG, U.S. Army  
Commander

In the Matter of:  
United States Air Force

19

RECEIVED


Consent Agreement  
Docket No. 30 CRM 3018 0410FF

For Complainant:

Environmental Protection Agency  
Region III

9/22/08

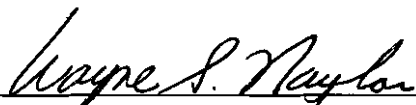
Date

  
by: Brianna Tindall  
Assistant Regional Counsel

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

9/30/08

Date

  
Abraham Ferdas, Director,  
Land and Chemicals Division  
EPA Region III

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

<b>In the Matter of:</b>	)	
	)	
<b>United States Air Force and</b>	)	
	)	
<b>Army and Air Force Exchange Service,</b>	)	<b>U.S. EPA Docket Number</b>
	)	<b>RCRA-03-2008-0410FF</b>
	)	
<b>RESPONDENTS.</b>	)	<b>Proceeding Under Section 9006 of the</b>
	)	<b>Resource Conservation and Recovery</b>
<b>USAF Building 1685</b>	)	<b>Act, as amended, 42 U.S.C. Section</b>
<b>1685 Brookley Avenue</b>	)	<b>6991e</b>
<b>Andrews Air Force Base, MD 20762</b>	)	
	)	
<b>USAF Building 1206</b>	)	
<b>1206 South Dakota Avenue</b>	)	
<b>Andrews Air Force Base, MD 20762</b>	)	
	)	
<b>USAF Building 3286</b>	)	
<b>3286 East Perimeter Road</b>	)	
<b>Andrews Air Force Base MD 20762</b>	)	
	)	
<b>USAF Building 5013</b>	)	
<b>1841 Westover Drive</b>	)	
<b>Andrews Air Force Base, MD 20762</b>	)	
	)	
<b>USAF Building 2487</b>	)	
<b>Taxiway Echo</b>	)	
<b>Andrews Air Force Base, MD 20762</b>	)	
	)	
<b>FACILITIES.</b>	)	

**FINAL ORDER**


Complainant, the Director, Land and Chemicals Division, U.S. Environmental Protection Agency - Region III, and Respondents, the United States Air Force and the Army and Air Force Exchange Service, 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 of Suspensions  
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) - (e) of RCRA, 42 U.S.C. § 6991e(c) - (e), **IT IS HEREBY ORDERED** that Respondents pay the civil penalty amounts, as specified in the attached Consent Agreement and in accordance with the payment provisions set forth in the attached Consent Agreement, and comply with each of the additional terms and conditions as specified in the attached Consent Agreement.

The effective date of this Final Order and the accompanying Consent Agreement is the date on which the Final Order, signed by the Regional Administrator of U.S. EPA Region III or the Regional Judicial Officer, is filed with the Regional Hearing Clerk of U.S. EPA - Region III.

Date: 9/30/08

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

In the Matter of:  
United States Air Force

3

Consent Agreement  
Docket No. RCRA-03-2008-0410FF

2008 SEP 30 PM 3: 13


**CERTIFICATE OF SERVICE**

I certify that on the date noted below, I sent by Overnight Delivery Service, a copy of the Consent Agreement and Final Order, **In the Matter of: U.S. Department of the United States Air Force, U.S. EPA Docket Number RCRA-03-2008-0353**, to the persons and addresses listed below. The original Consent Agreement and Final Order were hand-delivered to the Regional Hearing Clerk, U.S. EPA Region III.

**Captain Rhea Lagano**  
316 WG/JA  
1535 Command Drive, Suite AA-209  
Andrews Air Force Base, MD 20762

**Mike Whittington**  
General Counsels Office  
Army and Air Force Exchange Service  
3911 S. Walton Walker Blvd.  
Dallas, TX 75236-1598

Dated: 9/30/08

  
Brianna Tindall  
Assistant Regional Counsel  
Office of Regional Counsel  
EPA, Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029