



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
Environmental Sciences Center  
701 Mapes Road  
Fort Meade, Maryland 20755-5350

14 FEB 2008

VIA HAND DELIVERY

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

Re: United States Department of the Army  
Consent Agreement/Final Order  
Docket No. RCRA-03-2008-0102

Dear Ms. Guy:

Enclosed for filing please find an original and one copy of a Consent Agreement and Final Order which, in accordance with Section 22.13(b) and 22.18(b)(2) of the Consolidated Rules of Practice Governing the Administrative Assessment of Penalties and the Revocation, Termination or Suspension of Permit, 40 C.F.R. Sections 22.13(b) and 22.18(b)(2), both initiates and concludes this action. Please do not hesitate to contact me at (410) 305-3016 if you have any questions regarding this filing.

Sincerely,

A handwritten signature in black ink, appearing to read "Daniel L. Isales".

Daniel L. Isales  
Assistant Regional Counsel

Enclosures

cc: Susan A. Bivins, Esquire





UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
Environmental Sciences Center  
701 Mapes Road  
Fort Meade, Maryland 20755-5350

14 FEB 2008

Lori Weidner  
Cincinnati Finance Management Center (CFMC)  
U.S. Environmental Protection Agency  
26 W. Martin Luther King Drive  
Cincinnati, OH 45268

Re: United States Department of the Army  
Consent Agreement/Final Order  
Docket No. RCRA-03-2008-0102

Dear Ms. Weidner:

Enclosed please find a copy of a Consent Agreement and Final Order which, in accordance with 40 C.F.R. Sections 22.13(b) and 22.18(b)(2), both initiates and concludes this action. Also enclosed please find the Enforcement Accounts Receivable Control Number Form prepared for this matter. Please do not hesitate to contact me at (410) 305-3016 if you have any questions regarding this matter.

Sincerely,

A handwritten signature in black ink that reads "Daniel L. Isales".

Daniel L. Isales  
Assistant Regional Counsel

Enclosures

cc: Lydia Guy, Regional Hearing Clerk





exceptions, specific provisions of Title 40 of the 2001 Code of Federal Regulations by reference. See 9 VAC 20-60-18.

On September 28, 1998 (effective October 28, 1998) (63 Fed. Reg. 51528), pursuant to Section 9004 of RCRA, 42 U.S.C. § 6991c, and 40 C.F.R. Part 281, Subpart A, the Commonwealth of Virginia was granted final authorization by EPA 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. §§ 6991-6991i. The provisions of the Commonwealth of Virginia 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. § 6991c. The provisions of the Commonwealth of Virginia's authorized underground storage tank program are cited as Underground Storage Tanks: Technical Standards and Corrective Action Requirements ("VA UST Regulations"), 9 VAC § 25-580-10 *et seq.*

Respondent was previously notified regarding the RCRA allegations recited herein under cover letter dated January 12, 2007. In accordance with Sections 3008(a)(2) and 9006(a)(2) of RCRA, 42 U.S.C. §§ 6928(a)(2) and 6991e(a)(2), EPA has notified the Commonwealth of Virginia of EPA's intent to enter into a CAFO with Respondent resolving the RCRA violations set forth herein.

### General Provisions

1. For purposes of this proceeding only, Respondent admits the jurisdictional allegations set forth in this CAFO.
2. Respondent neither admits nor denies the specific factual allegations and conclusions of law set forth in this CAFO, except as provided in Paragraph 1, above.
3. Respondent agrees not to contest EPA's jurisdiction with respect to the execution of this CA, the issuance of the attached Final Order, or the enforcement of the CAFO.
4. For the purposes of this proceeding only, Respondent hereby expressly waives its right to contest the allegations 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 and conditions.
6. Respondent shall bear its own costs and attorney's fees.
7. Respondent certifies to EPA by its signature herein that it is presently in compliance with the provisions of RCRA referenced herein.

8. The provisions of this CAFO shall be binding upon Complainant and Respondent, its officers, directors, employees, successors, and assigns.
9. This CAFO shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit; nor does this CAFO constitute a waiver, suspension or modification of the requirements of RCRA, Subtitle C, 42 U.S.C. §§ 6921- 6939e, RCRA, Subtitle I, 42 U.S.C. §§ 6991-6991i, or any regulations promulgated thereunder.

**EPA's Findings of Fact and Conclusions of Law**

10. In accordance with the Consolidated Rules at 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3), Complainant makes the findings of fact and conclusions of law which follow.
11. Respondent is the owner and operator of the United States Army Transportation Center located at Fort Eustis, Virginia (the "Facility").
12. EPA conducted an inspection of Respondent's Facility on April 24-27, 2006.

**COUNT I (RCRA SUBTITLE C-OPERATING WITHOUT A PERMIT)**

13. Paragraphs 1-12 of this CAFO are incorporated by reference as though fully set forth herein.
14. Respondent is and has been at all times relevant to this CAFO the "owner" and "operator" of a "facility," as those terms are defined by 9 VAC 20-60-260, which, with exceptions not relevant to this term, incorporates by reference 40 C.F.R. § 260.10.
15. Respondent is a department, agency and/or instrumentality of the United States and is a "person" as defined by Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), and 9 VAC 20-60-260, which, with exceptions not relevant to this term, incorporates by reference 40 C.F.R. § 260.10.
16. Respondent is and, at all times relevant to this CAFO, has been a "generator" of, and has engaged in the "storage" in "containers" of, materials that are "solid wastes" and "hazardous waste" at the Facility, as those terms are defined in 9 VAC 20-60-260 and 261, which incorporate by reference 40 C.F.R. §§ 260.10 and 261.2 and .3, including the hazardous waste referred to herein.
17. Section 3005(a) and (e) of RCRA, 42 U.S.C. § 6925(a) and (e), and 9 VAC 20-60-270 (which incorporates by reference 40 C.F.R. § 270.1(b)) provide, in pertinent part, that a

person may not operate a hazardous waste storage, treatment or disposal facility unless such person has first obtained a permit for such facility or has qualified for interim status.

18. 9 VAC 20-60-262, which incorporates by reference 40 C.F.R. § 262.34(a), provides that a generator may accumulate hazardous waste on site for 90 days or less without a permit or without having interim status provided that, *inter alia*:
  - a. The waste is placed in containers and the generator complies with 40 C.F.R. § 265, Subparts I, AA, BB and CC;
  - b. The date upon which each period of accumulation begins is clearly marked and visible for inspection on each container;
  - c. While being accumulated on-site, each container and tank is labeled or marked clearly with the words "Hazardous Waste;" and
  - d. The generator complies with the requirements for owners or operators set forth in 40 C.F.R. Part 265, Subparts B, C, and D, § 265.16, and § 268.7(a)(5).

#### **Container Labeling**

19. 9 VAC 20-60-262, which incorporates by reference 40 C.F.R. § 262.34(c)(1)(ii), requires that each container and/or tank is labeled or marked clearly with the words, "Hazardous Waste" while being accumulated on-site.
20. At the time of the inspection, the EPA inspector observed a container with methanol in the Bacteriology Lab at the McDonald Community Health Center.
21. At the time of the inspection, the EPA inspector observed several containers with waste solvent cleaner for paint spray guns located near the spray paint booth area at the Training AudioVisual Support Center.
22. The containers at both the Bacteriology Lab at the McDonald Community Health Center and near the spray paint booth area at the Training AudioVisual Support Center contained hazardous waste, but were not labeled as "Hazardous Waste."
23. Respondent failed to label the containers at the Bacteriology Lab at the McDonald Community Health Center, and near the spray paint booth area at the Training AudioVisual Support Center, with the words "Hazardous Waste," as required by 9 VAC 20-60-262, which incorporates by reference 40 C.F.R. § 262.34(c)(1)(ii).

### Open Containers

24. 9 VAC 20-60-264, which incorporates by reference 40 C.F.R. § Section 264.173(a), provides that a container holding hazardous waste must always be closed during storage, except when it is necessary to add or remove waste.
25. At the time of the inspection, the EPA inspector observed several containers containing waste solvent cleaner near the spray paint booth area at the Training AudioVisual Support Center, which were open even though it was not necessary to add or remove waste.
26. Respondent violated 9 VAC 20-60-264, which incorporates by reference 40 C.F.R. § 264.173(a), by failing to keep the several containers containing waste solvent cleaner near the spray paint booth area at the Training AudioVisual Support Center closed during storage, even though it was not necessary to add or remove waste.
27. Because Respondent did not properly label the containers of hazardous waste referred to in Paragraphs 19-23, above, with the words "Hazardous Waste," and failed to keep the containers of hazardous waste referred to in Paragraphs 24-26, above, closed during storage except when necessary to add or remove waste from such containers, Respondent failed to satisfy the conditions set forth at 9 VAC 20-60-262, which incorporates by reference 40 C.F.R. § 262.34, for a generator to qualify for an exemption from the permit and/or interim status requirements of RCRA Section 3005(a) and (e), 42 U.S.C. § 6925(a) and (e), and 9 VAC 20-60-270 for the hazardous waste management activities described in Paragraphs 13-26, above.
28. Respondent does not have, and at the time of the violations alleged herein, did not have, a permit or interim status to store hazardous waste at the Facility as required by 9 VAC 20-60-270, which incorporates by reference 40 C.F.R. § 270.1(b), and Section 3005(a) and (e) of RCRA, 42 U.S.C. § 6925(a) and (e).
29. Because of the activities alleged in Paragraphs 13-28, above, Respondent violated 9 VAC 20-60-270, which incorporates by reference 40 C.F.R. § 270.1(b), by operating a hazardous waste storage facility without a permit or interim status from at least April 24, 2006 until April 27, 2006.

### COUNT II (RCRA SUBTITLE I-RECORDKEEPING)

30. Paragraphs 1 through 29 of the CAFO are incorporated by reference as though fully set forth herein.
31. Respondent is a department, agency and/or instrumentality of the United States and is a "person" as defined by Section 9001(6) of RCRA, 42 U.S.C. § 6991(6).

32. Respondent is, and at the time of the violations alleged in this CAFO, was the “owner” and/or “operator” of six “underground storage tanks” (“USTs” and “UST systems”), as defined in Section 9001(1), (3), and (4) of RCRA, 42 U.S.C. § 6991(1), (3), and (4) and 9 VAC § 25-580-10, which are located at the AAFES Service Station Building (Building 1380) at the Facility.
33. Respondent’s USTs referenced in Paragraph 32, above, are and were at all times relevant hereto “petroleum UST systems” used to store “regulated substances” as defined in 9 VAC 25-580-10, and Section 9001(2) of RCRA, 42 U.S.C. § 6991(2).
34. 9 VAC 25-580-180(2) (40 C.F.R. § 280.45 (b)) requires that for release detection record keeping the results of any sampling, testing, or monitoring must be maintained for at least one (1) year or for another reasonable period of time determined by the implementing agency, except that the results of tank tightness testing conducted in accordance with subsection 3 of 9 VAC 25-580-160 must be retained until the next test is conducted.
35. 9 VAC 25-580-120(2)(c) (40 C.F.R. § 280.34(b)(4)) requires that the owner and operator must maintain records of recent compliance with release detection requirements.
36. 9 VAC 25-580-120(3) (40 C.F.R. § 280.40) requires that the owner and/or operator must keep the required release detection compliance records at the UST site and immediately available for inspection by the implementing agency, or at a readily available alternative site.
37. At the time of the inspection, the EPA inspector requested a copy of the last twelve months (March 2005 – March 2006) of leak detection records for Tanks 1-6 located at the AAFES Service Station (Building 1380). For Tanks 1-6, the Facility provided the records for the following months: 8/16/04, 9/27/04, 10/01/04, 5/30/05, 6/6/05, 7/8/05, 1/06, 2/1/06, 3/8/06, and 4/2/06. The Facility was unable to provide the last twelve months of leak detection records for Tanks 1-6. The records were neither immediately available at the time of the inspection, nor readily available at an alternative site. Subsequent to the inspection, the Facility was able to provide EPA with some of the missing records.
38. At all times relevant to the violations set forth in this Count, Tanks 1-6 located at the AAFES Service Station (Building 1380) have routinely contained greater than 1 inch of regulated substances and 0.3 percent by weight of the total capacity, and thus have not been “empty” as defined in 9 VAC 25-580-310.1 and 40 C.F.R. § 280.70(a).
39. Respondent’s failure to have available the last twelve months of leak detection records for Tanks 1-6 constitutes a violation of 9 VAC 25-580-180(2) (40 C.F.R. § 280.45 (b)), 9 VAC 25-580-120(3) (40 C.F.R. § 280.40), and 9 VAC 25-580-120(2)(c) (40 C.F.R. § 280.34(b)(4)).

## CIVIL PENALTY

40. Respondent consents to the assessment of a civil penalty of **SIX THOUSAND FIVE HUNDRED AND SEVENTY SEVEN DOLLARS (\$6,577.00)** in full satisfaction of all claims for civil penalties for the violations alleged in the above two counts of this CAFO. 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. In order to avoid the assessment of interest, administrative costs and late payment penalties in connection with such civil penalty, 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.
41. For the violation alleged in Count I, EPA considered a number of factors including, but not limited to, the statutory factors set forth in Section 3008(a)(3) of the RCRA, 42 U.S.C. § 6928(a)(3), *i.e.*, the seriousness of Respondent's violations and the good faith efforts by Respondent to comply with the applicable requirements of the RCRA, and the *RCRA Civil Penalty Policy* (2003). EPA has also considered the *Adjustments of Civil Penalties for Inflation and Implementing the Debt Collection Improvement Act of 1996* ("DCIA"), 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") which specify that for violations occurring after January 30, 1997, statutory penalties and penalties under the RCRA Civil Penalty Policy for, *inter alia*, RCRA Subtitle C violations, were increased 10% above the maximum amount to account for inflation and, statutory penalties for, *inter alia*, RCRA Subtitle C violations occurring after March 15, 2004, were increased by and an additional 17.23% above the maximum amount to account for inflation. For the violation alleged in Count II, EPA considered a number of factors, including, but not limited to: the statutory factors of the seriousness of Respondent's violations and any good faith efforts by Respondent to comply with all applicable requirements as provided in RCRA Section 9006(d), 42 U.S.C. § 6991e(d), and EPA's Penalty Guidance for Violations of UST Regulations ("UST Guidance") dated November 4, 1990. EPA has also considered the DCIA, as set forth in 40 C.F.R. Part 19, and the 2004 Skinner Memorandum which specify that for violations occurring after January 30, 1997, statutory penalties and penalties under the UST Guidance were increased 10% above the maximum amount to account for inflation and, statutory penalties for violations occurring after March 15, 2004, were increased by an additional 17.23% above the maximum amount to account for inflation.
42. Payment of the civil penalty amount required under the terms of paragraph 40, 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-03-2008-0102);

- 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

The Customer Service contact for the above method of payment is Natalie Pearson at 314-418-4087.

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

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

The Customer Service contact for the above method of payment is Natalie Pearson at 314-418-4087.

- e. All electronic wire transfer payments shall be directed to:

Federal Reserve Bank of New York  
ABA = 021030004  
Account = 68010727  
SWIFT address = FRNYUS33  
33 Liberty Street  
New York, NY 10045  
Field Tag 4200 of the Fedwire message should read “D 68010727  
Environmental Protection Agency”

The Federal Reserve Bank of New York Customer Service phone number for the above method of payment is 212-720-5000.

- f. All payments through the Automated Clearinghouse (ACH), also known as

Remittance Express (REX), shall be directed to:

Automated Clearinghouse (ACH) for receiving U.S. currency  
PNC Bank  
808 17th Street NW  
Washington, DC 20074

ABA = 051036706  
Transaction Code 22 - checking  
Environmental Protection Agency  
Account 310006  
CTX Format

The Customer Service contact for the above method of payment is Jesse White at 301-887-6548.

- g. There is an on-line payment option available through the Department of the Treasury. This payment option can be accessed from: WWW.PAY.GOV. Enter sfo 1.1 in the search field and complete all required fields in the form.
- h. At the same time that any payment is made, Respondent shall mail copies of any corresponding check, or written notification confirming any electronic wire transfer, to:

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

and to

Daniel L. Isales (3EC10)  
Environmental Science Center  
U.S. Environmental Protection Agency, Region III  
701 Mapes Road  
Fort Meade, MD 20755-5350

- 43. 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.

44. 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).
45. The costs of EPA's administrative handling of overdue debts will be charged and assessed monthly throughout the period a debt is overdue. 40 C.F.R. § 13.11(b). Pursuant to Appendix 2 of EPA's *Resources Management Directives - Cash Management*, Chapter 9, EPA will assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) days the penalty remains unpaid.
46. 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).

#### **EFFECT OF SETTLEMENT**

47. Payment of the penalty specified in paragraph 40, above, in the manner set forth in paragraph 42, above, shall constitute full and final satisfaction of all civil claims for penalties which Complainant may have under RCRA Subtitle C and RCRA Subtitle I, for the specific violations alleged in Counts I - II, above. Compliance with this CAFO shall not be a defense to any action commenced at any time for any other violation of the federal laws and regulations administered by EPA.

#### **RESERVATION OF RIGHTS**

48. This CAFO resolves only the civil claims for monetary 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**

49. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to Sections 3008 and 9006 of RCRA, 42 U.S.C. §§ 6928 and 6991e, for the specific violations alleged in this CAFO. This CAFO constitutes the entire agreement and understanding of the parties regarding settlement of all claims pertaining to specific violations alleged herein, and there are no representations, warranties, covenants, terms, or conditions agreed upon between the parties other than those expressed in this CAFO.

**ANTIDEFICIENCY ACT**

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

**AUTHORITY TO BIND THE PARTIES**

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

**EFFECTIVE DATE**

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

**For Respondent:**

The United States Department of the Army

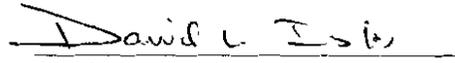
17 Jan 08  
Date

  
\_\_\_\_\_  
Andrew W. Bowes  
Colonel, TC  
Garrison Commander

**For Complainant:**

U.S. Environmental Protection Agency,  
Region III

1/30/08  
Date

  
Daniel L. Isaacs  
Daniel L. Isaacs  
Assistant Regional Counsel  
U.S. EPA - Region III

Accordingly, I hereby recommend that the Regional Administrator or his designee, the Regional Judicial Officer, issue the Final Order attached hereto.

2-7-08  
Date

  
Samantha P. Beers, Director  
Samantha P. Beers, Director  
Office of Enforcement, Compliance, and  
Environmental Justice  
U.S. EPA - Region III



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

2/13/08  
Date

  
Renée Sarajian  
Regional Judicial Officer  
U.S. Environmental Protection Agency, Region III

**IN RE:**

United States Department of the Army

**Respondent;**

United States Army Transportation Center  
Fort Eustis, Virginia,

Facility

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2008 FEB 14 11:10:30  
EPA

**Docket No. RCRA-03-2008-0102**

**CERTIFICATE OF SERVICE**

I certify that on the date noted below, I sent a true and correct copy of the Consent Agreement and Final Order to the following:

**ORIGINAL AND ONE COPY FILED, VIA HAND DELIVERY**

Lydia Guy  
Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region III  
1650 Arch Street  
Philadelphia, PA 19103

**COPY SERVED, VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED**

Susan A. Bivins  
Chief, Administrative Law  
2732 Madison Avenue  
Fort Eustis, VA 23604

Dated: February 14, 2008

Daniel Isaies  
Daniel Isaies  
Assistant Regional Counsel  
U.S. EPA, Region III  
Environmental Science Center  
701 Mapes Road  
Fort Meade, MD 20755-5350  
(410) 305-3016