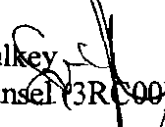



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

SUBJECT: Transmittal Memorandum
Consent Agreement and Final Order
In the Matter of **Broadway Atlantic One, LLC.**
Docket No. RCRA-03-2010-0343

FROM: Marcia E. Mulkey 
Regional Counsel (3RC00)

Abraham Ferdas, Director 
Land and Chemicals Division (3LC00)

TO: Renée Sarajian
Regional Judicial Officer (3RC00)

The attached Consent Agreement and Final Order ("CAFO") have been negotiated 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 22.18(b)(2) and (3).

The CAFO resolve violations of RCRA Subtitle I, 42 U.S.C. §§ 6991-6991m, and the District of Columbia's federally authorized underground storage tank program by Respondent in connection with its underground storage tanks at Respondent's facility located at 807 V. Street, NW, Washington, DC (the "Facility"). Please refer to the CAFO for further details concerning the violations at this Facility.

Under the terms of the settlement, Respondent will pay a civil penalty in the amount of \$27,238.40. This settlement was determined after consideration of the statutory factors set forth in Section 9006(c) of RCRA, 42 U.S.C. § 6991e(c), and other settlement adjustment factors set forth in the "U.S. Penalty Guidance for Violation of UST Regulations" dated November, 1990 ("UST Penalty Policy").

We concur with the terms of the enclosed Consent Agreement and Final Order. Accordingly, we recommend that you sign the Final Order and return it to the Office of Regional Counsel for further processing.

cc: Alexis Alonzo, Esq.
Louis F. Ramalho, Esq.

authorized UST program regulations are set forth in the District of Columbia Municipal Regulations, Title 20, Chapters 55 *et seq.*, and will be cited hereinafter as 20 DCMR §§ 5500 *et seq.*

EPA has given the District of Columbia notice of the issuance of this CAFO in accordance with Section 9006(a)(2) of RCRA, 42 U.S.C. § 6991e(a)(2).

GENERAL PROVISIONS

1. For purposes of this proceeding only, Respondent admits the jurisdictional allegations set forth in this CAFO.
2. Respondent neither admits nor denies the specific factual allegations and conclusions of law set forth in this CAFO, except as provided in Paragraph 1, above.
3. Respondent agrees not to contest EPA's jurisdiction with respect to the execution of this Consent Agreement ("CA"), the issuance of the attached Final Order ("FO"), or the enforcement thereof.
4. For the purposes of this proceeding only, Respondent hereby expressly waives its right to a hearing on any issue of law or fact set forth in this CA and any right to appeal the accompanying FO.
5. Respondent consents to the issuance of this CAFO and agrees to comply with its terms and conditions. The Respondent certifies to EPA by its signature herein that Respondent, as of the date of this CA, is in compliance with the provisions of RCRA, Subtitle I, 42 U.S.C. §§ 6991-6991m, and the District of Columbia's federally authorized underground storage tank program set forth at 20 DCMR, §§ 5500 *et seq.* at the Facility referenced herein.
6. Respondent shall bear its own costs and attorney's fees.
7. The provisions of this CAFO shall be binding upon Respondent, and its officers, directors, employees, successors and assigns.
8. This CAFO shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit, nor does this CAFO constitute a waiver, suspension or modification of the requirements of RCRA Subtitle I, 42 U.S.C. §§ 6991-6991m, or any regulations promulgated thereunder.
9. Complainant shall have the right to institute further actions to recover appropriate relief if Complainant obtains evidence that the information provided and/or representations made by Respondent to EPA regarding matters at issue in this CAFO are false or, in any material respect, inaccurate. Respondent is aware that the submission of false or misleading information to the United States government may subject Respondent to separate civil and/or criminal liability.

10. Respondent agrees not to deduct for civil taxation purposes the civil penalty specified in this Consent Agreement and the attached Final Order.
11. EPA has given the District of Columbia prior notice of the issuance of this CAFO in accordance with Section 9006(a)(2) of RCRA, 42 U.S.C. § 6991e(a)(2).

FACTUAL ALLEGATIONS AND CONCLUSIONS OF LAW

12. The United States Environmental Protection Agency - Region III ("EPA" or the "Region") and EPA's Office of Administrative Law Judges have jurisdiction over this matter pursuant to Section 9006 of RCRA, 42 U.S.C. § 6991e, 40 C.F.R. Part 280 and 40 C.F.R. § 22.1(a)(4) and 4(c).
13. Respondent is a "person" as defined in Section 9001(5) of RCRA, 42 U.S.C. § 6991(5), and 20 DCMR § 6899.1.
14. At all times relevant to this CAFO, Respondent has been the "owner" and/or "operator," as those terms are defined in Section 9001(3) and (4) of RCRA, 42 U.S.C. § 6991(3) and (4), and 20 DCMR § 6899.1, of the "underground storage tanks" ("USTs") and "UST systems" as those terms are defined in Section 9001(10) of RCRA, 42 U.S.C. § 6991(10), and 20 DCMR § 6899.1, located at the Facility.
15. On May 29, 2009, representatives of the United States Environmental Protection Agency (EPA) conducted a Compliance Evaluation Inspection (CEI) of Respondent's Facility.
16. At the time of the May 29, 2009 CEI, and at all times relevant to the applicable violations alleged herein, two (2) USTs were located at the Facility as described in the following subparagraphs:
 - A. A two thousand (2000) gallon fiberglass reinforced plastic tank that was installed in or before 1989, 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 20 DCMR § 6899.1 (hereinafter "UST No. 1");
 - B. A six thousand (6000) gallon fiberglass reinforced plastic tank that was installed in or before 1989 and that, at all times relevant hereto, routinely contained and was used to store diesel fuel, a "regulated substance" as that term is defined in Section 9001(7) of RCRA, 42 U.S.C. § 6991(7), and 20 DCMR § 6899.1 (hereinafter "UST No. 2");
17. On August 4, 2009, EPA issued Respondent a Request for Information letter pursuant to Section 9005 of RCRA, as amended, 42 U.S.C. § 6991d, regarding UST compliance at the Respondent's Facility.
18. At all times relevant to the applicable violations alleged herein, USTs Nos. 1 and 2 located at Facility have been "petroleum UST systems" and "existing tank systems" as these terms are defined in 20 DCMR § 6899.1.

19. USTs Nos. 1 and 2 located at the Facility were, at all times relevant to the applicable violations alleged in this CAFO, used to store "regulated substance(s)" at Respondent's Facility, as defined in Section 9001(7) of RCRA, 42 U.S.C. § 6991(7), and 20 DCMR § 6899.1, and were not "empty" as that term is defined at 20 DCMR § 6100.7.
20. On May 4, 2010, Respondent removed USTs Nos. 1 and 2 from the Facility in accordance with the UST closure requirements of 20 DCMR §6101.

COUNT 1

(Failure to conduct release detection on USTs Nos. 1 and 2)

21. The allegations of Paragraphs 1 through 20 of this CAFO are incorporated herein by reference.
22. 20 DCMR § 6000.1 provides that each owner and operator of a new or existing UST system shall provide a method, or combination of methods, of release detection that meets the requirements described therein.
23. Pursuant to 20 DCMR §§ 6003.1 through 6003.5, tanks which are part of a petroleum UST system must be monitored at least every 30 days for releases using one of the methods listed in 20 DCMR §§ 6008 through 6012, except that: (1) prior to December 22, 1995, certain UST systems could have been monitored using a combination of inventory control and tank tightness testing in compliance with the requirements of 20 DCMR §§ 6005 through 6007; and (2) tanks with a capacity of 550 gallons or less may use weekly tank gauging conducted in accordance with 20 DCMR § 6006.
24. From October 31, 2006 through May 4, 2010, Respondents USTs Nos. 1 and 2 were not monitored in compliance with any of the methods set forth in 20 DCMR § 6003.3 through 6003.5 and/or 20 DCMR §§ 6005 through 6012.
25. Respondent's acts and/or omissions as alleged in Paragraph 24, above, constitute a violation by Respondent of 20 DCMR §§ 6000.1 and 6003.

COUNT 2

(Failure to install overfill prevention equipment on USTs Nos. 1 and 2)

26. The allegations of Paragraphs 1 through 25 of this CAFO are incorporated herein by reference.
27. 20 DCMR § 5705.1 provides, except as provided in 20 DCMR § 5705.3, that each owner and operator must use spill prevention equipment (such as a spill catchment basin) that will prevent release of regulated substances when the transfer hose is detached from the fill pipe to prevent spilling associated with the transfer of regulated substances to an UST system.

28. 20 DCMR § 5705.2 provides, except as provided in 20 DCMR § 5705.3, that to prevent overfilling associated with the transfer of regulated substances, each owner and operator must use overfill prevention equipment that does the following:
- (a) Automatically shuts off flow into the tank when the tank is no more than ninety-five percent (95%) full; or
 - (b) Alerts the transfer operator when the tank is no more than ninety percent (90%) full by restricting the flow into the tank or triggering a high-level alarm.
29. 20 DCMR § 5803.1 provides that all existing UST systems shall comply with new UST system spill and overfill prevention equipment requirements specified in 20 DCMR § 5705 to prevent spilling and overfilling associated with product transfer to the UST system.
30. From October 31, 2006 through May 4, 2010, Respondent failed to install certain overfill prevention equipment for USTs Nos. 1 and 2 as described in 20 DCMR § 5705.1 and/or 20 DCMR § 5705.2. Such USTs did not fall within the exception in 20 DCMR § 5705.3, and such USTs were not in compliance with the closure requirements of 20 DCMR Chapter 61.
31. Respondent's act and/or omission as alleged in Paragraph 30, above, constitute a violation by Respondent of 20 DCMR § 5705.1 and/or 5705.2 and § 5803.1.

COUNT 3

(Failure to provide financial responsibility of USTs Nos. 1 and 2)

32. The allegations of Paragraphs 1 through 31 of this CAFO are incorporated herein by reference.
33. 20 DCMR §§ 6700.1 and 6700.10 through 6700.17 provide that owners and operators of petroleum UST systems are required, with exceptions not here relevant, to demonstrate financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs. Subject to the limitations set forth in 20 DCMR §§ 6701.1 through 6701.7, an owner or operator may demonstrate financial responsibility using any of the mechanisms set forth in 20 DCMR §§ 6703 through 6711.
34. From October 31, 2006 through May 4, 2010, Respondent did not demonstrate financial responsibility for any of the USTs described in Paragraph 33, above, by any of the methods set forth in 20 DCMR §§ 6703 through 6711.
35. Respondent's act and/or omission as alleged in Paragraph 34, above, constitutes a violation by Respondent of 20 DCMR § 6700.1 and §§ 6700.10 through 6700.17.

CIVIL PENALTY

36. In settlement of Complainant's claims for civil penalties for the violations alleged in this CA, Respondent agrees to pay a civil penalty in the amount of Twenty Seven Thousand Two Hundred Thirty Eight Dollars and Forty Cents (\$27,238.40). If Respondent pays the entire civil penalty of Twenty Seven Thousand Two Hundred Thirty Eight Dollars and Forty Cents (\$27,238.40) within thirty (30) calendar days of the date on which this CAFO is mailed or hand-delivered to Respondent, no interest will be assessed against Respondent pursuant to 40 C.F.R. § 13.1 l(a)(l).
37. 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.
38. In accordance with 40 C.F.R. § 13.11(a), interest on any civil penalty assessed in a CAFO begins to accrue on the date that a copy of the CAFO is mailed or hand-delivered to the Respondent. However, EPA will not seek to recover interest on any amount of such civil penalty that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11 (a).
39. 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. § 13.1 l(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.
40. 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. § 13.1 l(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).
41. The aforesaid settlement amount was based upon Complainant's consideration of a number of factors, including, but not limited to, the statutory factors of the seriousness of Respondent's violations and any good faith efforts by Respondent to comply with all applicable requirements as provided in RCRA Section 9006(c), 42 U.S.C. § 6991e(c), and with EPA's Penalty Guidance for Violations of UST Regulations ("UST Guidance") dated November 4, 1990.
42. Respondent shall pay the amount described in Paragraph 36, above, by sending a certified or cashier's check payable to the "United States Treasury," as follows:
 - a. All payments made by check and sent by regular mail shall be addressed to:

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

Contact: Eric Volck 513-487-2105

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

U.S. Bank
Government Lockbox 979077
U.S. EPA Fines & Penalties
1005 Convention Plaza Mail
Station SL-MO-C2GL
St. Louis, MO 63101

Contact 314-418-1028

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

Cincinnati Finance
U.S. EPA, MS-NWD
26 W. MX. King Drive
Cincinnati, OH 45268-0001

- d. All payments by electronic funds transfer ("EFT") shall be directed to:

Federal Reserve Bank of New York
ABA No. 021030004
Account No. 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York NY 10045

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

- e. All payments made through the automatic clearinghouse ("ACH"), also known as Remittance Express ("REX"), shall be directed to:

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

Physical Location of U.S. Treasury facility:
5700 Rivertech Court
Riverdale, MD 20737

Contact, Jesse White, 301-887-6548 or REX, 1-866-234-5681

- f. On-line Payment Option:

WWW.PAY.GOV/PAYGOV

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

- g. Additional payment guidance is available at:

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

- h. Payment by Respondent shall reference Respondent’s name and address, and the EPA Docket Number of this CAFO. A copy of Respondent’s check or a copy of Respondent’s electronic transfer shall be sent simultaneously to:

Regional Hearing Clerk (3RC00)
EPA Region III
1650 Arch Street
Philadelphia, Pennsylvania 19103 - 2029, and

Louis F. Ramalho
Senior Assistant Regional Counsel
U.S. Environmental Protection Agency - Region III
1650 Arch Street
Philadelphia, PA 19103-2029.

FULL AND FINAL SATISFACTION

43. This CAFO constitutes a settlement by EPA of its claims for civil penalties pursuant to 9006(a) of RCRA, 42 U.S.C. § 6991e(a), for the violations alleged in this Consent Agreement.

RESERVATION OF RIGHTS

44. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. In addition, this settlement is subject to all limitations on the scope of resolution and to the

reservation of rights set forth in Section 22.18(c) of the Consolidated Rules of Practice. Further, EPA reserves any rights and remedies available to it under RCRA, the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this CAFO, following its filing with the Regional Hearing Clerk.

OTHER APPLICABLE LAWS

45. 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

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

ENTIRE AGREEMENT

47. 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

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

[No further text on this page. The next page is the signature page.]

For Respondent:

BROADWAY ATLANTIC ONE, LLC,
a Delaware limited liability company

By: Walton Atlantic Mezz I, L.L.C.,
a Delaware limited liability company,
its sole member

By: Walton Atlantic Mezz II, L.L.C.,
a Delaware limited liability company,
its sole member

By: Eighth and V Investors IV, L.L.C.,
a Delaware limited liability company,
its sole member

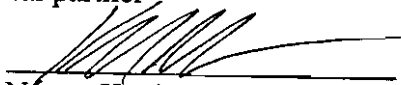
By: Walton V Street Investors IV, L.L.C.,
a Delaware limited liability company,
its managing member

By: Walton Acquisition REOC Holdings IV, LLC,
a Delaware limited liability company,
its sole member

By: Walton Street Real Estate Fund IV, L.P.,
a Delaware limited partnership,
its managing member

By: Walton Street Managers IV, L.P.,
a Delaware limited partnership,
its general partner

By: WSC Managers IV, Inc.,
a Delaware corporation,
its general partner

By: 
Name: Kevin J. Mulhall
Title: Vice President

17 JUL 2011

Date

For Complainant:

U.S. Environmental Protection Agency,
Region III

Date



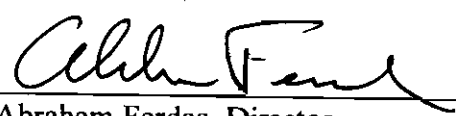
Louis F. Ramalho
Senior Assistant Regional Counsel

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

Date

8/5/10

By:

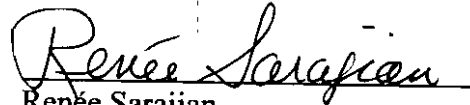


Abraham Ferdas, Director
Land and Chemicals Division, EPA Region III

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:

8/10/10



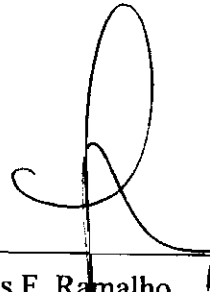
Renée Sarajian
Regional Judicial Officer
U.S. EPA, Region III

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on the date listed below, the original of the foregoing Consent Agreement and Final Order, EPA Docket No. RCRA-03-2010-0343, was filed with the Regional Hearing Clerk, U.S. EPA - Region III, 1650 Arch Street, Philadelphia, Pennsylvania, 19103-2029, and that a true and correct copy was sent via first class mail to the following:

Alexis R. Alonzo, Esq.
Pircher, Nichols & Meeks
1925 Century Park East, Suite 1700
Los Angeles, CA 90067

8-10-10
Date



Louis F. Ramalho
Sr. Assistant Regional Counsel
U.S. EPA - Region III
1650 Arch Street
Philadelphia, PA 19103-2029

PHILADELPHIA, PA
OCT 10 2010