

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

UPS
CONFIRMATION RECEIPT REQUESTED

Stuart M. Nathan
Assistant Attorney General
State of Maryland
Office of Attorney General
Dept. of Public Safety & Correctional Services
115 Sudbrook Lane
Suite A
Pikesville, MD 21208

NOV 07 2013

Re: Consent Agreement and Final Order
In the Matter of the State of Maryland
Department of Public Safety and Correctional Services
Docket No. RCRA-03-2014-0023

REGIONAL HEARING CLERK
EPA REGION III, PHILA. PA

2013 NOV -7 PM 3:51

RECEIVED

Dear Mr. Nathan:

Enclosed please find a true and correct copy of the Consent Agreement and Final Order filed today with the Regional Hearing Clerk in settlement of the above referenced matter. Please note that, in addition to the changes made to the two typographical errors in Paragraphs 18 and 19 as discussed between the parties with the Regional Judicial Officer, Renee Sarajian, EPA also assigned a new docket number to this matter since the case settled in the 2014 fiscal year.

If you have any questions or require further information, please feel to call me at (215) 814-2681.

Sincerely,


Louis F. Ramalho
Sr. Assistant Regional Counsel

Enclosures

cc: Melissa Toffel (3LC70)

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 Md. Dept. of Public Safety
And Correctional Services
U.S. EPA Docket No. RCRA-03-2014-0023

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

John A. Armstead, 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. §§ 22.18(b)(2) and (3).

The CAFO resolve violations of RCRA Subtitle I, 42 U.S.C. §§ 6991-6991m, and the State of Maryland's federally authorized underground storage tank program by Respondent in connection with its underground storage tanks at Respondent's facility located at 18601 Roxbury Road, Hagerstown, MD, also known as the Hagerstown Prison Complex (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 \$10,500. 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: Stuart M. Nathan, Esq. Louis F. Ramalho, Esq.
Counsel for Respondent Counsel for Complainant

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 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.

EPA has given the State of Maryland 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 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 a hearing on any issue of law or fact set forth in this CA and any right to appeal the accompanying FO.
5. Respondent consents to the issuance of this CAFO and agrees to comply with its terms and conditions.
6. Respondent shall bear its own costs and attorney's fees.
7. Respondent certifies to EPA by its signature herein that it is presently in compliance with the provisions of RCRA at the Facilities 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 I, 42 U.S.C. §§ 6991-6991i, or any regulations promulgated thereunder.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

10. Respondent is a "person" as defined in Section 9001(6) of RCRA, 42 U.S.C. § 6991(6), and COMAR § 26.10.02.04B(40).
11. At all times relevant to this CA, 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 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(1) of RCRA, 42 U.S.C. § 6991(1), and COMAR § 26.10.02.04B(64) and (66), located at 18601 Roxbury Road, Hagerstown, Maryland (the "Facility").
12. On June 19, 2012, an EPA representative conducted a Compliance Evaluation Inspection ("CEI") of the Facility pursuant to Section 9005 of RCRA, 42 U.S.C. § 6991d.
13. At the time of the June 19, 2012 CEI, and at all times relevant to the alleged violations herein, the following two (2) USTs, as described below, were located at the Facility:
 - A. a one thousand (1,000) gallon fiberglass tank referred to as Tank #35 by Respondent that was installed in or about 1999 and that, at all times relevant hereto, routinely contained waste oil, a "regulated substance" as that term is defined in Section 9001(2) of RCRA, 42 U.S.C. § 6991(2), and COMAR § 26.10.02.04B(48) (hereinafter "UST No. 1"), and
 - B. a one thousand (1,000) gallon fiberglass tank referred to as Tank #34 by Respondent that was installed in or about 1999 and that, at all times relevant hereto, routinely contained diesel fuel, a "regulated substance" as that term is defined in Section 9001(2) of RCRA, 42 U.S.C. § 6991(2), and COMAR § 26.10.02.04B(48) (hereinafter "UST No. 2").
14. From 1999 until the date of this CAFO, USTs Nos. 1 and 2 have been "petroleum UST systems" and "new tank systems" as these terms are defined in COMAR § 26.10.02.04B(43) and (31), respectively.
15. USTs Nos. 1 and 2 are and were, at all times relevant to this CAFO, used to store "regulated substance(s)" at Respondent's Facility, as defined in Section 9001(2) of RCRA, 42 U.S.C. § 6991(2), and COMAR § 26.10.02.04B(48).

COUNT I

(Failure to perform automatic line leak detector testing annually on
UST No. 2)

16. The allegations of Paragraphs 1 through 15 of the CA are incorporated herein by reference.

17. 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.
18. 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.
19. Respondent failed to test annually the automatic line leak detectors from September 1, 2008 to December 12, 2010 and from December 13, 2010 to August 22, 2012 for UST No. 2.
20. From September 1, 2008 to December 12, 2010 and from December 13, 2010 to August 22, 2012, the underground piping for UST No. 2 conveyed regulated substances under pressure.
21. Respondent's acts and/or omissions as alleged in Paragraphs 19 and 20, above, constitute violations by Respondent of COMAR § 26.10.05.02C(2)(a) and COMAR § 26.10.05.05B.

COUNT II

(Failure to perform release detection on
UST No. 1)

22. The allegations of Paragraphs 1 through 21 of the CA are incorporated herein by reference.
23. 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.
24. COMAR § 26.10.05.02B provides, in pertinent part, 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.

25. From October 1, 2008 until June 22, 2009, from November 19, 2009 until April 26, 2010, from May 26, 2010 until September 26, 2011, and from November 11, 2011 until July 30, 2012, Respondent did not use any release detection methods specified in COMAR § 26.10.05.02B(1)-(3) and/or COMAR § 26.10.05.04E-I on UST No. 1.
26. Respondent's acts and/or omissions as alleged in Paragraph 25, above, constitute violations by Respondent of COMAR § 26.10.05.02B.

COMPLIANCE ORDER

Pursuant to Section 9006 of RCRA, 42 U.S.C. § 6991e, Respondent is hereby ordered to:

27. At all times after the effective date of this CAFO, comply with the release detection requirements of COMAR § 26.10.05 for UST No. 1 (also known as Tank 35) located at the Facility subject to this CAFO or close such USTs/UST systems in accordance with COMAR § 26.10.10.
28. At all times after the effective date of this CAFO, comply with the line leak detector requirements in accordance with COMAR § 26.10.05.02.C(2)(a) and COMAR § 26.10.05.05B for UST No. 2 located at the Facility subject to this CAFO.
29. Within forty-five (45) calendar days after the effective date of this CAFO, submit a report to EPA which documents and certifies whether or not Respondent is in compliance with the terms of this CAFO.

30. Any notice, report, certification, data presentation, or other document submitted by Respondent pursuant to this CAFO which discusses, describes, demonstrates, supports any finding or makes any representation concerning Respondent's compliance or noncompliance with any requirement of this CAFO shall be certified by Respondent.
31. The certification of the responsible officer required above shall be in the following form:

I certify that the information contained in or accompanying this [type of submission] is true, accurate, and complete. As to [the/those] identified portions of this [type of submission] for which I cannot personally verify [its/their] accuracy, I certify under penalty of law that this [type of submission] and all attachments were prepared in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

Signature:

Name:

Title:

32. All documents and reports to be submitted pursuant to this CAFO shall be sent to the following persons:
- a. Documents to be submitted to EPA shall be sent either by overnight mail or by certified mail, return receipt requested to:
- Ms. Melissa Toffel (3LC70)
U. S. Environmental Protection Agency Region III
1650 Arch Street
Philadelphia, Pennsylvania 19103
- b. One copy of all documents submitted to EPA shall be sent by first class mail to:
- Mr. Chris Ralston
Administrator, Oil Control Program
Maryland Department of the Environment

Montgomery Park Business Center
1800 Washington Blvd., Suite 620
Baltimore, MD 21230

CIVIL PENALTY

33. 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 Ten Thousand Five Hundred Dollars (\$10,500.00). The civil penalty amount is due and payable immediately upon Respondent's receipt of a true and correct copy of this CAFO. If Respondent pays the entire civil penalty of Ten Thousand Five Hundred Dollars (\$10,500.00) 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. § 13.11(a)(1).
34. 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.
35. 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).
36. The costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period a debt is overdue. 40 C.F.R. § 13.11(b). Pursuant to Appendix 2 of EPA's *Resources Management Directives - Cash Management*, Chapter 9, EPA will assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) days the penalty remains unpaid.
37. 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).
38. 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.

39. Respondent shall pay the civil penalty set forth in Paragraph 33, above, by sending either a cashier's check, certified check, or electronic wire transfer, in the following manner:

- a. All payments by Respondents shall reference each Respondent's name and address, and the Docket Number of this action, *i.e.*, RCRA-03-2014-0023;
- 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 to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000
Contact: Eric Volck 513-487-2105

- d. 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-C2-GL
St. Louis, MO 63101

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

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

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

Federal Reserve Bank of New York, ABA = 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

- G. All electronic payments made through the Automated Clearinghouse (ACH), also known as Remittance Express (REX), shall be directed to:

US Treasury REX / Cashlink
ACH Receiver, ABA = 051036706
Account No.: 310006
Environmental Protection Agency
CTX Format Transaction Code 22 – Checking

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

- H. On-Line Payment Option:

WWW.PAY.GOV/PAYGOV
Enter sfo 1.1 in the search field. Open and complete the form.

- I. Additional payment guidance is available at:

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

- J. 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

OTHER APPLICABLE LAWS

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

RESERVATION OF RIGHTS

41. Nothing in this CAFO shall be construed as limiting the authority of EPA to undertake action against any person, including the 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.

FULL AND FINAL SATISFACTION

42. This settlement shall constitute full and final satisfaction of all civil claims for penalties which Complainant has under RCRA Sections 9006, 42 U.S.C. § 6991e, for the violations alleged in this CA.

PARTIES BOUND

43. This CA and the accompanying FO shall apply to and be binding upon the EPA, the Respondent, and Respondent's successors and assigns. By his or her signature below, the person signing this CA on behalf of Respondent acknowledges that he or she is fully authorized to enter into this CA and to bind the Respondent to the terms and conditions of this CA and the accompanying FO.

EFFECTIVE DATE

44. The effective date of this CAFO is the date on which the FO is filed with the Regional Hearing Clerk after signature by the Regional Administrator or his designee, the Regional Judicial Officer.

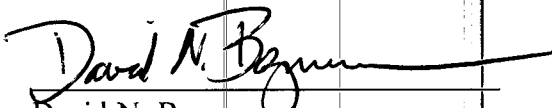
ENTIRE AGREEMENT

45. This CAFO constitutes 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 CAFO.

For Respondent:

Maryland Department of Public Safety
and Correctional Services

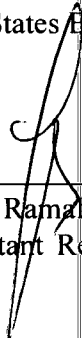
Date: 10/4/13

By: 
David N. Bezanson
Assistant Secretary for Capital Programs

For Complainant:

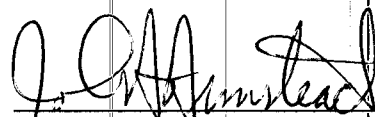
United States Environmental Protection Agency, Region III

Date: 10/31/13

By: 
Louis F. Ramalho
Sr. Assistant Regional Counsel

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

11.5.13
Date

By: 
John A. Armstead, Director
Land and Chemicals Division, EPA Region III

Docket No. RCRA-03-2014-0023

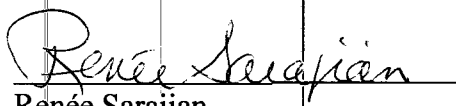
NOW, THEREFORE, PURSUANT TO Section 22.18(b)(3) of the Consolidated Rules of Practice and Section 9006(c) of the Resource Conservation and Recovery Act, 42 U.S.C. § 6991e(c) ("RCRA"), and having determined, based on the representations of the

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) and (d) of RCRA, 42 U.S.C.

§ 6991e(c) and (d), **IT IS HEREBY ORDERED** that Respondent comply with the terms and conditions of the attached Consent Agreement and to pay a civil penalty of Ten Thousand Five Hundred Dollars (\$10,500.00), 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: 11/7/13


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


CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on the date listed below, the original of the foregoing Consent Agreement and Final Order, **Docket No. RCRA-03-2014-0023**, 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 to the following parties:

Counsel for Respondent:

Stuart M. Nathan
Assistant Attorney General
State of Maryland
Office of Attorney General
Dept. of Public Safety & Correctional Services
115 Sudbrook Lane
Suite A
Pikesville, MD 21208

Date *11-7-13*


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

REGIONAL HEARING CLERK
EPA REGION III, PHILA. PA

2013 NOV -7 PM 3:51

RECEIVED