

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

In the Matter of:)	
)	
Armed Forces Retirement Home)	
3700 N. Capitol St, NW)	U.S. EPA Docket Number
Washington, D.C. 20317)	RCRA-03-2009-0181
)	
RESPONDENT,)	
)	
)	
Fuel Services Building)	Proceeding Under Section 9006 of the
3700 N. Capitol St, NW)	Resource Conservation and Recovery Act,
Washington, D.C. 20317)	as amended, 42 U.S.C. Section 6991e
)	
)	
FACILITY.)	
)	
)	

CONSENT AGREEMENT

This Consent Agreement ("CA") is entered into by the Director, Land and Chemicals Division, U.S. Environmental Protection Agency, Region III ("Complainant") and the Armed Forces Retirement Home ("Respondent"), pursuant to Section 9006 and 9007 of the Resource Conservation and Recovery Act ("RCRA"), as amended, 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 "CAFO"), resolve violations of RCRA Subtitle I, 42 U.S.C. §§ 6991-6991m, and the District of Columbia's federally authorized underground storage tank ("UST") program by Respondent in connection with its underground storage tanks at Respondent's facility located at 3700 North Capitol Street, NW, Washington, D.C. (the "Facility").

Effective May, 4, 1998, pursuant to Section 9004 of RCRA, 42 U.S.C. § 6991c, and 40 C.F.R. Part 281, Subpart A, the District of Columbia was granted final authorization to administer a state UST management program *in lieu* of the Federal UST management program

established under Subtitle I of RCRA, 42 U.S.C. §§ 6991-6991m. The provisions of the District of Columbia UST management program, through this final authorization, are enforceable by EPA pursuant to Section 9006 of RCRA, 42 U.S.C. § 6991e. The District of Columbia's 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.*

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, and Respondent admits the jurisdictional allegations set forth in this 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. In addition, Respondent waives its right to confer with the Administrator pursuant to RCRA § 6001(b)(2), 42 U.S.C. § 6961(b)(2).
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. The provisions of this CAFO shall be binding upon Respondent, and its officers, directors, employees, successors and assigns. The person signing this CA on behalf of the Respondent certifies to EPA by his 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 20 DCMR §§ 5500 *et seq.* at the Facility referenced herein.
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 the 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. 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

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).

11. 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 set forth herein.
12. Respondent, Armed Forces Retirement Home, is a department, agency, and/or instrumentality of the United States as referred to in Section 9007 of RCRA, 42 U.S.C. § 6991f, and is a "person" as defined in Section 9001(5) of RCRA, 42 U.S.C. § 6991(5), and 20 DCMR § 6899.1.
13. On April 2, 2008, EPA performed a Compliance Evaluation Inspection ("CEI") at the Facility. At the time of the April 2, 2008 CEI, and at all times relevant to the violations alleged herein, one compartmentalized UST system was located at the Facility as described in the following subparagraph:
 - A. A six thousand (6,000) gallon double-walled fiberglass reinforced plastic composite tank that was installed in or about 1991, 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"), and
 - B. A two thousand (2,000) gallon double-walled fiberglass reinforced plastic composite tank that was installed in or about 1991, 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").

14. At all times relevant to the violations alleged herein, USTs Nos. 1 and 2 have been "petroleum UST systems" and "existing tank systems" as these terms are defined in 20 DCMR § 6899.1, respectively.
15. Respondent's USTs Nos. 1 and 2 are and were, at all times relevant to the violations alleged in this CAFO, used to store a "regulated substance", as defined in Section 9001(7) of RCRA, 42 U.S.C. § 6991(7), and 20 DCMR § 6899.1, and have not been "empty" as that term is defined at 20 DCMR § 6100.7.

COUNTS 1-2

(Failure to perform release detection on UST)

16. The allegations of Paragraphs 1 through 15 of this CAFO are incorporated herein by reference.
17. 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.
18. 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.
19. From June 1, 2004 through May 5, 2008, Respondent's USTs No. 1 and 2 have not been 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.
20. Respondent's acts and/or omissions as alleged in Paragraph 19, above, constitute violations by Respondent of 20 DCMR §§ 6000.1 and 6003.

COUNTS 3-4

(Failure to perform line tightness testing or monthly monitoring on piping for USTs Nos. 1 and 2)

21. The allegations of Paragraphs 1 through 20 of this CAFO are incorporated herein by reference.
22. 20 DCMR § 6000.2 provides that the owner and operator of each UST system, regardless of the date of installation, shall immediately comply with the release detection requirements for all pressurized piping as set forth in §§ 6004.2 and 6004.3.

23. 20 DCMR § 6004.1 provides that the owner and operator of a petroleum UST system shall regularly monitor all underground piping that contains or conveys regulated substances for releases in accordance with 20 DCMR § 6004.
24. 20 DCMR § 6004.3 provides that underground piping that conveys regulated substances under pressure shall have an annual line tightness test conducted in accordance with § 6013.3 or have monthly monitoring conducted in accordance with § 6013.4.
25. From June 1, 2004 until May 5, 2008, the piping for USTs Nos. 1 and 2 was underground and routinely conveyed regulated substances under pressure.
26. Respondent failed to perform an annual line tightness testing in accordance with 20 DCMR § 6013.3 or have monthly monitoring conducted in accordance with 20 DCMR § 6013.4 from June 1, 2004 until May 5, 2008 for the underground piping associated with USTs Nos. 1 and 2.
27. Respondent's acts and/or omissions as alleged in Paragraph 26, above, constitute violations by Respondent of 20 DCMR § 6004.3.

COUNTS 5-6

(Failure to perform automatic line leak detector testing annually on piping for USTs Nos. 1 and 2)

28. The allegations of Paragraphs 1 through 27 of this CAFO are incorporated herein by reference.
29. 20 DCMR § 6004.2 provides that underground piping that conveys regulated substances under pressure shall be equipped with an automatic line leak detector, in accordance with § 6013.2 of this chapter.
30. 20 DCMR § 6013.2 provides, in pertinent part, that the owner or operator shall conduct an annual test of the operation of the leak detector, in accordance with the manufacturer's requirements.
31. From June 1, 2004 until May 5, 2008, the piping for USTs Nos. 1 and 2 was underground and routinely conveyed regulated substances under pressure.
32. Respondent failed to perform an annual test of the automatic line leak detectors for the underground piping associated with USTs Nos. 1 and 2 from June 1, 2004 until May 5, 2008.
33. Respondent's acts and/or omissions as alleged in Paragraph 32, above, constitute violations by Respondent of 20 DCMR § 6004.2 and 20 DCMR § 6013.2.

COUNTS 7-8

(Failure to meet the UST system performance standards for spill and overfill prevention for USTs)

34. The allegations of Paragraphs 1 through 33 of this CAFO are incorporated herein by reference.
35. 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 .
36. 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 that 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.
37. 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.
38. From June 1, 2004 through May 5, 2008, Respondent failed to maintain certain overfill prevention equipment for USTs No. 1 and 2 at the Facility as described in 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.
39. Respondent's acts and/or omissions as alleged in Paragraph 38, above, constitute violations by Respondent of 20 DCMR § 5705.2, and/or § 5803.1.

CIVIL PENALTY

40. 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 Sixty One Thousand Four Hundred Twelve Dollars (\$61,412.00). The civil penalty amount is due and payable immediately upon Respondent's receipt of a true and correct copy of this CAFO.
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 40, above, by sending a certified or cashier's check payable to the "United States Treasury," as follows:

a. All payments by Respondent shall reference Respondent's name and address, and the Docket Number of this action, *i.e.*, RCRA-03-2009-0181;

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: Eric Volck, 513-487-2105

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
Government Lockbox 979077
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, MO 63101

Contact: Natalie Pearson, 314-418-1028

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

- h. On-Line Payment Option:

WWW.PAY.GOV

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

- j. Additional payment guidance is available at:

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

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.

For Respondent:

Armed Forces Retirement Home

21 May 2009
Date

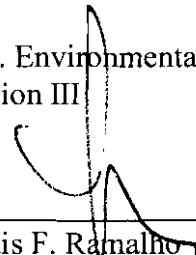


David Watkins
Director

For Complainant:

U.S. Environmental Protection Agency,
Region III

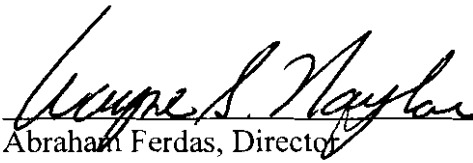
6/16/09
Date



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.

6/18/09
Date

By: 

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

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

In the Matter of:)

Armed Forces Retirement Home)
 3700 N. Capitol St, NW)
 Washington, D.C. 20317)

U.S. EPA Docket Number
 RCRA-03-2009-0181

RESPONDENT,)

Fuel Services Building)
 3700 N. Capitol St, NW)
 Washington, D.C. 20317)

Proceeding Under Section 9006 of the
 Resource Conservation and Recovery Act,
 as amended, 42 U.S.C. Section 6991e

FACILITY.)

FINAL ORDER

FINAL ORDER

*98-11-26
 86-11-11-0096*


Complainant, the Director, Land and Chemicals Division, U.S. Environmental Protection Agency - Region III, and Respondent, Armed Forces Retirement Home, have executed a document entitled "Consent Agreement" which I hereby ratify as a Consent Agreement in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of

Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules of Practice"), 40 C.F.R. Part 22. The terms of the foregoing Consent Agreement are accepted by the undersigned and incorporated herein as if set forth at length.

NOW, THEREFORE, PURSUANT TO Section 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 (e) of RCRA, 42 U.S.C. § 6991e(c) and (e), **IT IS HEREBY ORDERED** that Respondent pay a civil penalty of Sixty One Thousand Four Hundred Twelve Dollars (\$61,412.00) 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: 6/22/09

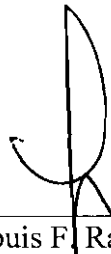

Renée Sarajian
Regional Judicial Officer
U.S. EPA, Region III

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-03-2009-0181, 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:

Mr. David Watkins, Director
Armed Forces Retirement Home
3700 N. Capitol Street
Washington, DC 20011-8400

6/23/09
Date



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