

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

IN RE:

Pennsylvania Department of Corrections
2520 Lisburn Road
P.O. Box 598
Camp Hill, PA 17001-0598

Respondent;

Docket No. CWA-03-2010-0027

State Correctional Institution at Dallas
1000 Follies Road
Dallas, Pennsylvania 18612

Facility.

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CONSENT AGREEMENT

Preliminary Statement

This Consent Agreement ("CA") is entered into by the Director for the Office of Enforcement, Compliance, and Environmental Justice, U.S. Environmental Protection Agency, Region III ("EPA" or "Complainant") and the Pennsylvania Department of Corrections ("Respondent"), pursuant to Sections 309(g) and 311(b)(6) of the Clean Water Act ("CWA"), 33 U.S.C. §§ 1319(g) and 1321(b)(6), Sections 3008(a)(1) and (g) and 9006 of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. §§ 6928(a)(1) and (g) and 6991e, Section 113 of the Clean Air Act ("CAA"), 42 U.S.C. § 7413, 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 accompanying Final Order (collectively "CAFO") resolve violations of the CWA, RCRA, and the CAA in connection with Respondent's facility located at the State Correctional Institution at Dallas, 1000 Follies Road, Dallas, Pennsylvania 18612.

CWA Background

Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of "pollutants" from a point source within the meaning of Section 502(6) of the CWA, 33 U.S.C. § 1362(6), into the waters of the United States by any person except in accordance with certain sections of the CWA, or in compliance with, *inter alia*, a National Pollutant Discharge Elimination ("NPDES") permit issued by EPA or an authorized state pursuant to Section 402 of the CWA, 33 U.S.C.

§ 1342. Under Section 402(a) of the CWA, 33 U.S.C. § 1342(a), the Administrator of EPA may issue an NPDES permit that authorizes the discharge of pollutants into waters of the United States, subject to the conditions and limitations set forth in such permits, including effluent limitations, but only upon compliance with applicable requirements of Section 301 of the CWA, 33 U.S.C. § 1311, or under such other conditions as the Administrator determines are necessary to carry out the provisions of the CWA.

Section 402(k) of the CWA, 33 U.S.C. § 1342(k), provides that compliance with the terms and conditions of a permit issued pursuant to that section shall be deemed compliance with, *inter alia*, Section 301 of the CWA, 33 U.S.C. § 1311. Effluent limitations, as defined in Section 502(11) of the CWA, 33 U.S.C. § 1362(11), are restrictions on the quantity, rate, and concentration of chemical, physical, biological, and other constituents of wastewater discharges. Section 402(b) of the CWA, 33 U.S.C. § 1342(b), authorizes EPA to delegate permitting and inspection authority to States that meet certain requirements. Pennsylvania is authorized by the Administrator of EPA, pursuant to Section 402(b) of the CWA, 33 U.S.C. § 1342(b), to administer the NPDES permit program for discharges into navigable waters within its jurisdiction. The Pennsylvania Department of Environmental Protection (“PADEP”) is the “approval authority” as defined in 40 C.F.R. § 403.3. On November 10, 2005, PADEP issued NPDES Permit Number PA0030139 to Respondent. This permit was in effect at the time of an EPA inspection, which occurred on November 13-14, 2006 (“EPA Inspection”).

Section 311(j)(1)(C) of the CWA, 33 U.S.C. § 1321(j)(1)(C), provides that the President shall issue regulations “establishing procedures, methods, and equipment and other requirements for equipment to prevent discharges of oil . . . from vessels and from onshore and offshore facilities, and to contain such discharges . . .” 40 C.F.R. Part 112, which includes the Spill Prevention Control and Countermeasure (“SPCC”) regulations and which implements Section 311(j) of the CWA, 33 U.S.C. § 1321(j), sets forth procedures, methods and requirements to prevent the discharge of oil from non-transportation-related facilities into or upon the navigable waters of the United States, within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7), and 40 C.F.R. § 110.1, and adjoining shorelines in such quantities that by regulation have been determined may be harmful to the public health or welfare or environment of the United States by owners or operators who are engaged in drilling, producing, gathering, storing, processing, refining, transferring, distributing or consuming oil or oil products. These regulations took effect on January 10, 1974. In promulgating 40 C.F.R. § 110.3, which implements Section 311(b)(4) of the CWA, 33 U.S.C. § 1321(b)(4), EPA has determined that discharges of harmful quantities include oil discharges that cause either (1) a violation of applicable water quality standards or (2) a film, sheen upon, or discoloration of the surface of the water or adjoining shorelines, or (3) a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines.

Pursuant to Sections 309(g)(4)(A) and 311(b)(6)(C) of the CWA, 33 U.S.C. §§ 1319(g)(4)(A) and 1321(b)(6)(C), and 40 C.F.R. § 22.45(b), EPA has provided public notice and notice and an opportunity to comment on the Consent Agreement prior to issuing the Final Order. In addition, pursuant to Section 309(g)(1)(A) of the CWA, 33 U.S.C. §§ 1319(g)(1)(A),

EPA has consulted with Pennsylvania regarding this action, and, in addition, will mail a copy of this document to the appropriate PADEP official.

RCRA Background

On January 30, 1986, pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), and 40 C.F.R. Part 271, Subpart A, Pennsylvania was granted final authorization to administer a state hazardous waste management program ("PaHWMR") in lieu of the federal hazardous waste management program established under RCRA, Subtitle C. A revised set of PaHWMR was authorized by EPA on September 26, 2000, and became effective on November 27, 2000. A more recent revised set of PaHWMR was authorized by EPA on January 20, 2004, and became effective on March 22, 2004. The provisions of the authorized PaHWMR set forth at 25 Pa. Code Ch. 260a-266a, 266b, and 268a-270a, through such authorization, have become requirements of RCRA, Subtitle C and are, accordingly, enforceable by EPA pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a). The PaHWMR incorporates by reference, with certain exceptions, specific provisions of Title 40 of the 1999 Code of Federal Regulations. See 25 Pa. Code § 260a.3(e). The factual allegations and legal conclusions in this CA are based on provisions of the PaHWMR in effect at the time of the violations alleged herein.

Pursuant to Section 9004 of RCRA, 42 U.S.C. § 6991c, and 40 C.F.R. Part 281, Subpart A, Pennsylvania was granted final authorization to administer a state underground storage tank management program ("Pennsylvania Authorized UST Management Program") in lieu of the federal underground storage tank management program established under Subtitle I of RCRA, 42 U.S.C. §§ 6991-6991i. This authorization was effective on September 11, 2003. See 68 Fed. Reg. 53520 (September 11, 2003) and 40 C.F.R. § 282.88. Through this final authorization, the provisions of the Pennsylvania Authorized UST Management Program became requirements of RCRA Subtitle I and are, accordingly, enforceable by EPA pursuant to Section 9006 of RCRA, 42 U.S.C. § 6991e. As of the date of EPA's authorization of Pennsylvania's Authorized UST Management Program, these provisions were codified in Chapter 245 of Title 25 of the Pennsylvania Code, and will be cited herein as 25 PA Code §§ 245.1 et seq. Section 9006(a)-(d) of RCRA, 42 U.S.C. § 6991e(a)-(d), authorizes EPA: (a) to take an enforcement action whenever it is determined that a person is in violation of any requirement of RCRA Subtitle I, EPA's regulations thereunder, or any regulation of a state underground storage tank program which has been authorized by EPA; and (b) to assess a civil penalty against any person who violates any requirement of RCRA Subtitle I.

Respondents were previously provided notice regarding the RCRA allegations recited herein under cover letter dated December 3, 2007. In accordance with Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2), and Section 9006(a)(2) of RCRA, 42 U.S.C. § 6991e(a)(2), EPA has notified Pennsylvania of EPA's intent to enter into a CAFO with Respondents to resolve the RCRA violations set forth herein.

CAA Background

EPA is authorized by Section 113 of the CAA, 42 U.S.C. § 7413, to take action to ensure that air pollution sources comply with all federally applicable air pollution control requirements. These include requirements promulgated by EPA and those contained in federally enforceable state implementation plans ("SIP") or permits. The Pennsylvania SIP, approved by EPA at 40 C.F.R. Part 52, Subpart NN, provides for the issuance of installation and non-attainment operating permits for stationary sources of air pollution.

Respondent was previously notified regarding the CAA allegations recited herein under cover letter dated December 3, 2007. EPA has notified Pennsylvania of EPA's intent to enter into a CAFO with Respondents to resolve the CAA 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 CA 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 signatures herein that it is presently in compliance with the provisions of the CWA, RCRA, and CAA 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 the CWA, RCRA, CAA, 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 following Findings of Fact and Conclusions of Law:
11. Respondent is the owner and/or operator of a correctional facility located on 1000 Follies Road, Dallas, Pennsylvania 18612 (the "Facility").
12. Respondent is a person within the meaning of:
 - A. Sections 311(a)(7) and 502(5) of the CWA, 33 U.S.C. §§ 1321(a)(7) and 1362(5);
 - B. Sections 1004(15) and 9001(6) of RCRA, 42 U.S.C. §§ 6903(15) and 6991(6);
and
 - C. Section 302(e) of the CAA, 42 U.S.C. § 7602(e).
13. EPA conducted a multimedia inspection of the Facility on November 13-14, 2006.

COUNT I (CWA-SPCC)

14. The allegations contained in Paragraphs 1 through 13 of this CAFO are incorporated by reference herein as though fully set forth at length.
15. Respondent is the owner and operator, within the meaning of Section 311(a)(6) of the CWA, 33 U.S.C. § 1321(a)(6), and 40 C.F.R. § 112.2, of an onshore facility. A small, unnamed tributary to Harvey's Creek runs through the Facility.
16. The Facility has an aggregate above-ground storage capacity greater than 1,320 gallons of oil in containers, each with a shell capacity of at least 55 gallons.
17. The unnamed tributary to Harvey's Creek which runs through the Facility is a navigable water of the United States, within the meaning of 40 C.F.R. § 112.2 and Section 502(7) of the CWA, 33 U.S.C. § 1362(7).
18. Respondent is engaged in drilling, producing, gathering, storing, processing, refining, transferring, distributing, using or consuming oil or oil products located at the Facility.
19. The Facility is a non-transportation-related facility within the meaning of 40 C.F.R. § 112.2, Appendix A, as incorporated by reference within 40 C.F.R. § 112.2.
20. The Facility is therefore a non-transportation-related onshore facility which, due to its location, could reasonably be expected to discharge oil to a navigable water of the United States or its adjoining shorelines in a harmful quantity ("an SPCC-regulated facility").
21. Respondent began operating the Facility in 1960.

22. Pursuant to the CWA and 40 C.F.R. § 112.1(b), Respondent, as the owner and operator of an SPCC-regulated facility, is subject to the SPCC regulations.
23. 40 C.F.R. § 112.5(a) requires the owner or operator of an SPCC-regulated facility to amend its SPCC plan in accordance with the general requirements of 40 C.F.R. § 112.7, and with any specific section of the SPCC regulations applicable to the facility, within six months following a change in the facility's design, construction, operation or maintenance which materially affects its potential for a discharge as described in 40 C.F.R. § 112.1(b).
24. In November 2005, Respondent changed the Facility's design, construction, and operation in a manner which materially affected its potential for a discharge, as described in 40 C.F.R. § 112.1(b), by installing and operating an above-ground 20,000 gallon heating oil tank located outside of the Facility's boilerhouse.
25. On November 13-14, 2006, EPA inspected the Facility and found that Respondent had failed to amend its SPCC plan in accordance with the general requirements of 40 C.F.R. § 112.7, and with any specific section of the SPCC regulations applicable to the Facility, within six months following the change described in Paragraph 24, above.
26. Respondent violated 40 C.F.R. § 112.5(a) by failing to amend its SPCC plan in accordance with the general requirements of 40 C.F.R. § 112.7, and with any specific section of the SPCC regulations applicable to the Facility, within six months following the change described in Paragraph 24, above.

COUNT II (CWA-NPDES)

27. The allegations contained in Paragraphs 1 through 26 of this CAFO are incorporated by reference herein as though fully set forth at length.
28. Respondent's CWA NPDES Permit Number PA0030139 provides that effluent discharges from the Facility shall be limited and monitored as specified by the terms of the NPDES permit.
29. According to Discharge Monitoring Reports from January 2006 through December 2007, Respondent exceeded, or was otherwise not in compliance with, its NPDES permit effluent limitations on forty (40) occasions. The following table sets forth each permit exceedance.

Date	Parameter	Reported Value	Discharge Limitation
Feb. 2006	Monthly Average Ammonia Concentration	9.0 mg/L	5.0 mg/L
Feb. 2006	Monthly Average Ammonia lbs/day	29.4 lbs/day	28.1 lbs/day
Mar. 2006	Monthly Average Ammonia Concentration	8.0 mg/L	5.0 mg/L
May 2006	Monthly Average Ammonia Concentration	5.0 mg/L	2.5 mg/L
May 2006	Monthly Average Ammonia lbs/day	14.4 lbs/day	9.4 lbs/day
June 2006	Monthly Average Ammonia Concentration	5.3 mg/L	2.5 mg/L
June 2006	Monthly Average Ammonia lbs/day	18.2 lbs/day	9.4 lbs/day
July 2006	Total Residual Chlorine	.24 mg/L	.23 mg/L
July 2006	Monthly Average Ammonia Concentration	4.0 mg/L	2.5 mg/L
July 2006	Monthly Average Ammonia lbs/day	12.0 lbs/day	9.4 lbs/day
Aug. 2006	Total Residual Chlorine	.24 mg/L	.23 mg/L
Aug. 2006	pH	5.8 Std. Units	6.0 Std. Units minimum
Sept. 2006	pH	5.8 Std. Units	6.0 Std. Units minimum
Oct. 2006	Total Residual Chlorine	.24 mg/L	.23 mg/L
Nov. 2006	Total Residual Chlorine	.29 mg/L	.23 mg/L
Dec. 2006	Total Residual Chlorine	.33 mg/L	.23 mg/L
Jan. 2007	Total Residual Chlorine	.35 mg/L	.23 mg/L
Feb. 2007	Total Residual Chlorine	.33 mg/L	.23 mg/L
Mar. 2007	Total Residual Chlorine	.34 mg/L	.23 mg/L

Date	Parameter	Reported Value	Discharge Limitation
Apr. 2007	Total Residual Chlorine	.45 mg/L	.23 mg/L
May 2007	Total Residual Chlorine	.41 mg/L	.23 mg/L
May 2007	Monthly Average Ammonia Concentration	6.1 mg/L	2.5 mg/L
May 2007	Monthly Average Ammonia lbs/day	21.3 lbs/day	9.4 lbs/day
June 2007	Total Residual Chlorine	.53 mg/L	.23 mg/L
June 2007	Monthly Average Ammonia Concentration	4.3 mg/L	2.5 mg/L
June 2007	Monthly Average Ammonia lbs/day	15.0 lbs/day	9.4 lbs/day
July 2007	Total Residual Chlorine	.49 mg/L	.23 mg/L
July 2007	Monthly Average Ammonia Concentration	4.0 mg/L	2.5 mg/L
July 2007	Monthly Average Ammonia lbs/day	13.4 lbs/day	9.4 lbs/day
Aug. 2007	Total Residual Chlorine	.46 mg/L	.23 mg/L
Aug. 2007	Monthly Average Ammonia Concentration	4.6 mg/L	2.5 mg/L
Aug. 2007	Monthly Average Ammonia lbs/day	17.3 lbs/day	9.4 lbs/day
Sept. 2007	Total Residual Chlorine	.46 mg/L	.23 mg/L
Sept. 2007	Monthly Average Ammonia Concentration	4.3 mg/L	2.5 mg/L
Sept. 2007	Monthly Average Ammonia lbs/day	15.6 lbs/day	9.4 lbs/day
Oct. 2007	Total Residual Chlorine	.54 mg/L	.23 mg/L
Oct. 2007	Monthly Average Ammonia Concentration	4.0 mg/L	2.5 mg/L

Date	Parameter	Reported Value	Discharge Limitation
Oct. 2007	Monthly Average Ammonia lbs/day Parameter	14.2 lbs/day	9.4 lbs/day
Nov. 2007	Total Residual Chlorine	.52 mg/L	.23 mg/L
Dec. 2007	Total Residual Chlorine	.45 mg/L	.23 mg/L

30. As set forth in Paragraph 29, above, Respondent violated Section A of its NPDES permit by discharging pollutants in excess of, or otherwise not in compliance with, its permit effluent limitations in violation of Sections 301(a) and 402 of the CWA, 33 U.S.C. §§ 1311(a) and 1342.

COUNT III (RCRA-UNIVERSAL WASTE)

31. The allegations contained in Paragraphs 1 through 30 of this CAFO are incorporated by reference herein as though fully set forth at length.
32. Respondent is a department of the Commonwealth of Pennsylvania and is a "person" as defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).
33. Respondent is, and at all times relevant to this Complaint, has been a "generator," and has engaged in the "storage" of, "hazardous wastes" at the Facility as those terms are defined in 25 Pa. Code § 260a.10, which incorporates by reference 40 C.F.R. § 260.10.
34. 25 Pa. Code § 266b.1 incorporates by reference 40 C.F.R. § 273, including the definitions set forth at 40 C.F.R. § 273.9. The definition of universal waste at 40 C.F.R. § 273.9 includes, among other items, batteries (as described at 40 C.F.R. § 273.2) and lamps (as described at 40 C.F.R. § 273.5).
35. According to 25 Pa. Code § 266b.1, which incorporates by reference 40 C.F.R. § 273, Subpart B, a facility must follow specific requirements to properly manage spent lamps and batteries. According to 40 C.F.R. § 273.14, a small quantity handler of universal waste must label or mark the universal waste to identify the type of universal waste. According to 40 C.F.R. § 273.14(e), each lamp or a container or package in which such lamps are contained must be labeled or marked clearly with one of the following phrases: "Universal Waste-Lamp(s)," or "Waste Lamp(s)," or "Used Lamp(s)." According to 40 C.F.R. § 273.14(a), universal waste batteries (i.e., each battery), or a container in which the batteries are contained, must be labeled or marked clearly with any one of the following phrases: "Universal Waste-Battery(ies)," or "Waste Battery(ies)," or "Used Battery(ies)."
36. At the time of the EPA inspection on November 13-14, 2006 inspection, the EPA inspectors observed universal waste, specifically fluorescent light bulbs, in the basement

of the Old Welding School at the Facility which were in a box that was closed, but not labeled appropriately.

37. At the time of the EPA inspection on November 13-14, 2006, the EPA inspectors observed universal waste, specifically spent batteries, in storage sheds located near the emergency generator building and the Old Welding Shop which were not labeled appropriately.
38. Respondent violated 25 Pa. Code § 266b.1, which incorporates by reference 40 C.F.R. § 273.14(a) (batteries) and (e) (fluorescent light bulbs), by failing to label or mark clearly the universal waste stored at the Facility.

COUNT IV (RCRA-UNIVERSAL WASTE)

39. The allegations contained in Paragraphs 1 through 38 of this CAFO are incorporated by reference herein as though fully set forth at length.
40. According to 25 Pa. Code § 266b.1, which incorporates by reference 40 C.F.R. § 273.15(a), a small quantity handler of universal waste may accumulate universal waste for no longer than one year from the date the universal waste was generated. 40 C.F.R. § 273.15(c) requires that a small quantity handler of universal waste must be able to demonstrate the length of time that the universal waste has been accumulated from the date it becomes a waste or is received; such demonstration can be accomplished by a variety of means, including, among others, placing the universal waste in a container and marking or labeling the container with the earliest date that any universal waste in the container became a waste or was received, marking or labeling each individual universal waste item with the date it became a waste or was received, or maintaining an inventory system, as further described in 40 C.F.R. § 273.15(c)(4).
41. At the time of the November 13-14, 2006 inspection, the EPA inspectors observed universal waste, specifically fluorescent light bulbs in the basement of the Old Welding School at the Facility. In addition, at the time of the EPA inspection on November 13-14, 2006, the EPA inspectors observed universal waste, specifically spent batteries, in storage sheds located near the emergency generator building and the Old Welding Shop.
42. At the time of the November 13-14, 2006 inspection, the Respondent failed to demonstrate the length of time that the universal waste had been accumulated or received at the basement of the Old Welding School and in storage sheds located near the emergency generator building and the Old Welding Shop the Facility.
43. Respondent violated 25 Pa. Code § 266b.1, which incorporates by reference 40 C.F.R. § 273.15(c), by failing to be able to demonstrate the length of time that the universal waste (batteries and fluorescent light bulbs) had been accumulated from the date it became a waste or was received.

COUNT V (RCRA-UNDERGROUND STORAGE TANKS-LEAK DETECTION)

44. The allegations contained in Paragraphs 1 through 43 of this CAFO are incorporated by reference herein as though fully set forth at length.
45. Respondent is a department of the Commonwealth of Pennsylvania and is a "person" as defined by 9001(6) of RCRA, 42 U.S.C. § and 6991(6), and as defined by 25 PA Code § 245.1.
46. Respondent is, and was at all times relevant hereto, the "owner" and "operator" of three underground storage tanks ("USTs") as defined in 25 PA Code § 245.1 and Section 9001(1), (3), and (4) of RCRA, 42 U.S.C. § 6991(1), (3), and (4), at its Facility, which includes two one-thousand-gallon gasoline tanks and one one-thousand-gallon diesel tank, and their associated pipping.
47. Respondent's USTs at its Facility referenced above in Paragraph 46 are, and were at all times relevant hereto, "petroleum systems" used to store "regulated substances" as defined in 25 PA Code § 245.1 and "petroleum" "USTs" used to store "regulated substances" as defined in Section 9001(1), (2) and (8) of RCRA, 42 U.S.C. § 6991(1), (2) and (8). Moreover, Respondent's USTs at its Facility referenced above in Paragraph 46 are, and were at all times relevant hereto, "underground storage tank systems," which are defined at 25 PA Code § 245.1 as, "an underground storage tank, connected pipping and ancillary equipment and containment system."
48. 25 PA Code § 245.441 sets forth general requirements for underground storage tank systems. The regulations provide, in relevant part, that owner and operators of new and existing underground storage tank systems shall provide a method, or combination of methods, of release detection that can detect a release from any portion of the tank and the connected underground piping that routinely contains product. Moreover, such release detection is to be installed, calibrated, operated and maintained in accordance with the manufacturer's instructions and is to meet certain performance standards as defined in the regulations.
49. Respondent's leak detection equipment was not operational from March 2005 until December 7, 2005. Although Respondent attempted to provide for an alternative method of leak detection by using manual tank gauging, these efforts did not meet the regulatory standards. Accordingly, from March 2005 until December 7, 2005, Respondent failed to provide a method of leak detection that can detect a release from any portion of the tank and connected underground pipping for its three USTs referenced in Paragraph 46, above, at the Facility.
50. Respondent violated 25 PA Code § 245.441 by failing to provide release detection for its three USTs and associated pipping at the Facility that can detect a release from any portion of the tank and connected underground pipping.

COUNT VI (RCRA-UNDERGROUND STORAGE TANKS-RECORDKEEPING)

51. The allegations contained in Paragraphs 1 through 50 of this CAFO are incorporated by reference herein as though fully set forth at length.
52. 25 PA Code § 245.446(2) requires that owners and operators of an UST system maintain records demonstrating the results of any sampling, testing, or monitoring of USTs for at least one year, with the exception of tank tightness testing, which are to be maintained until the next test is conducted.
53. From December 7, 2005 until November 2006, Respondent failed to maintain records for the leak detection equipment associated with the three USTs referenced in Paragraph 46, above.
54. Respondent violated 25 PA Code § 245.446(2), from December 7, 2005 until November 2006, by failing to maintain leak detection records for its three USTs referenced in Paragraph 46, above, at the Facility.

COUNT VII (CAA)

55. The allegations contained in Paragraphs 1 through 54 of this CAFO are incorporated by reference herein as though fully set forth at length.
56. EPA is authorized by Section 113 of the CAA, 42 U.S.C. § 7413, to take action to ensure that air pollution sources comply with all federally applicable air pollution control requirements. These include requirements promulgated by EPA and those contained in federally enforceable SIPs or permits.
57. Title V of the CAA, and implementing regulations at 40 C.F.R. Part 70, require that states develop and submit to EPA operating permit programs, and that EPA act to approve or disapprove each program.
58. Provisions included by state permitting authorities in Title V permits issued under a program approved by EPA are enforceable by EPA unless denoted in the permit as a state or local requirement that is not federally enforceable.
59. EPA fully approved the Title V operating permit programs for Pennsylvania, on August 29, 1996. 40 C.F.R. Part 70, Appendix A.
60. Pennsylvania's SIP was first officially submitted to EPA by Pennsylvania on January 27, 1972. The SIP was subsequently approved by EPA at 40 C.F.R. § 52.2020.
61. The Pennsylvania Department of Corrections, is the "owner" and "operator," as those terms are defined at 25 Pa. Code § 121.1, of a correctional facility located on 1000 Follies Road, Dallas, PA 18612.

62. PADEP issued a Title V permit to the Facility on November 14, 2003; the Facility's Title V permit number is 42-079-00055. The permit expires on November 14, 2008. The Facility's permit describes three boilers in its powerhouse which are listed as utilizing anthracite coal.
63. In November 2005 the Facility installed two fuel oil boilers in its parking lot outside of its powerhouse, which when operated are air contamination sources subject to the Pennsylvania SIP. The two fuel oil boilers were not included in the Facility's Title V air permit and Respondent had not requested any modification of its Title V permit prior to installation of the two fuel oil boilers. Respondent began operating the two fuel oil burners without plan approval and without a permit issued by Commonwealth of Pennsylvania.
64. The Pennsylvania SIP includes 25 Pa. Code §§ 127.11, 127.443, and 127.444.
65. 25 Pa. Code §127.11 provides as follows, "Except as provided in §§ 127.11a and 127.215 (relating to reactivation of sources; and reactivation), a person may not cause or permit the construction or modification of an air contamination source, the reactivation of an air contamination source after the source has been out of operation or production for 1 year or more, or the installation of an air cleaning device on an air contamination source, unless the construction, modification, reactivation or installation has been approved by the Department."
66. 25 Pa. Code §127.443(a) provides as follows, "A person may not cause or permit the operation of a source the construction, modification or reactivation of which, or the installation of an air cleaning device on which, is subject to § 127.11 (relating to plan approval requirements), unless the Department has issued a permit to operate the source."
67. 25 Pa. Code §127.444 provides as follows, "A person may not cause or permit the operation of a source subject to this article unless the source and air cleaning devices identified in the application for the plan approval and operating permit and the plan approval issued to the source are operated and maintained in accordance with specifications in the application and conditions in the plan approval and operating permit issued by the Department. A person may not cause or permit the operation of an air contamination source subject to this chapter in a manner inconsistent with good operating practices."
68. In November 2005, Respondent violated 25 Pa. Code §§ 127.11, 127.443, and 127.444 by installing and operating two fuel oil boilers in the parking lot outside of the Facility's powerhouse without approval from the Commonwealth of Pennsylvania and in contravention of the Title V permit in effect at the time. Subsequent to the inspection, in January and February 2007, Respondent did obtain the necessary permits to operate from PADEP.

CIVIL PENALTY

69. Respondent consents to the assessment of a civil penalty of ONE HUNDRED AND EIGHTY THREE THOUSAND FOUR HUNDRED SIXTY SEVEN DOLLARS (\$183,467.00) in full satisfaction of all claims for civil penalties for the violations alleged in the above listed seven counts of this CAFO. Respondents must pay the civil penalty no later than SIXTY (60) calendar days from the effective date of this CAFO.
70. For the violation in Count I, EPA considered the statutory penalty factors set forth at Section 311(b)(8) of the CWA, 33 U.S.C. § 1321, *i.e.*, the seriousness of the violation or violations, the economic benefit to the violator, if any resulting from the violation, the degree of culpability involved, any other penalty for the same incident, any history of prior violations, the nature, extent, and degree of success of any efforts of the violator to minimize or mitigate the effects of the discharge, the economic impact of the penalty on the violator, and any other matters as justice may require. EPA considered the *Civil Penalty Policy for Section 311(b)(3) and Section 311(j) of the Clean Water Act* (1998). 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 were increased 10% above the statutory 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.
71. For the violations alleged in Count II, EPA considered a number of factors including, but not limited to, the statutory factors set forth in Section 309(g) of the CWA, 33 U.S.C. § 1319(g), *i.e.*, the nature, circumstances, extent and gravity of the violation(s), Respondent's ability to pay, prior history of compliance, degree of culpability, economic benefit or savings resulting from the violations, and such other matters as justice may require. EPA considered the *Interim Clean Water Act Settlement Penalty Policy* (1995). 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 Interim Clean Water Act Settlement Policy were increased 10% above the statutory 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.
72. For the violations alleged in Counts III - IV, EPA considered a number of factors including, but not limited to, the statutory factors set forth in Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), *i.e.*, the seriousness of Respondents' violations and the good faith efforts by Respondents to comply with the applicable requirements of RCRA, the authorized PaHWMR, and the *RCRA Civil Penalty Policy* (2003). 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 March 15, 2004, statutory

penalties and penalties under the RCRA Civil Penalty Policy for, *inter alia*, RCRA Subtitle C violations, were increased by an additional 17.23% above the statutory maximum amount to account for inflation.

73. For the violations alleged in Counts V - VI, 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.
74. For the violation alleged in Count VII, EPA considered a number of factors, including, but not limited to, the penalty assessment criteria in Section 113(e) of the CAA, 42 U.S.C. § 7413(e), including the seriousness of Respondent's violations and Respondent's good faith efforts to comply, and the *Clean Air Act Stationary Source Civil Penalty Policy* (1991). 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 Clean Air Act Stationary Source Civil Penalty Policy, were increased 10% above the statutory maximum amount to account for inflation and, statutory penalties for, *inter alia*, CAA violations occurring after March 15, 2004, were increased by an additional 17.23% above the statutory maximum amount to account for inflation.
75. Payment of the civil penalty amount of \$8,156.00 for Count I 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, the Docket Number of this action (Docket No. CWA-03-2010-0027), and "Oil Spill Liability Trust Fund - 311;"
 - b. All checks shall be made payable to the "**Environmental Protection Agency;**"
 - c. All payments made by check and sent by regular mail shall be addressed and mailed to:

U.S. Environmental Protection Agency, Region III
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. At the same time that any payment is made, Respondent shall mail a letter confirming that payment was made 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

76. Payment of the civil penalty amount of \$175,311.00 for Counts II through VII 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 their name and address and the Docket Number of this action (Docket No. CWA-03-2010-0027);
- 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, Region III
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 shall be directed to:

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. At the same time that any payment is made, Respondent shall mail a letter confirming that payment was made 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

77. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest on outstanding debts owed to the United States.
78. 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 sixty (60) 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).

EFFECT OF SETTLEMENT

79. Payment of the penalty specified in Paragraph 69, above, in the manner set forth in Paragraphs 75 and 76, above, shall constitute full and final satisfaction of all civil claims for penalties which Complainant may have under the CWA, RCRA, and the CAA for the specific violations alleged in Counts I through VII, 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

80. 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 the CWA, RCRA, CAA, 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

81. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to Sections 309 and 311 of the CWA, 33 U.S.C. §§ 1319 and 1321, Sections 3008(a) and 9006 of the RCRA, 42 U.S.C. §§ 6928(a) and 6991e, and Section 113 of the CAA, 42 U.S.C. § 7413, for the specific violations alleged in this CAFO.

AUTHORITY TO BIND THE PARTIES

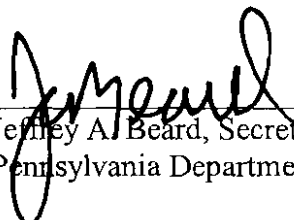
82. The undersigned representatives of the Respondent certify that they are fully authorized to enter into the terms and conditions of this CA and to bind Respondent to it.

EFFECTIVE DATE

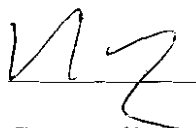
83. EPA will provide public notice and an opportunity to comment in accordance with 40 C.F.R. § 22.45. In accordance with Sections 309(g)(5) and 311(b)(6)(D) of the CWA, 33 U.S.C. §§ 1319(g)(5) and 1321(b)(6)(D), the Final Order will become final thirty (30) days after its issuance and the CAFO will become effective on that same date. Those submitting comments to the CAFO, if any, shall have the rights afforded to them by 40 C.F.R. § 22.45(c)(4).

For Respondent Pennsylvania Department of Corrections:


9/14/09
Date


Jeffrey A. Beard, Secretary
Pennsylvania Department of Corrections


11/6/09
Date


 Robert J. Crouse 11/6/09
Comptroller

1/6/10
Date


The Honorable Edward G. Rendell, Governor
Commonwealth of Pennsylvania

Approved for Form and Legality


Office of Chief Counsel


Office of General Counsel

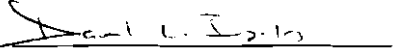
FUND 100130900
COST CTR 1112524025
CF 6332100
G/V 6332100
V 165896
9183,467.00


Office of Attorney General

For Complainant:

**U.S. Environmental Protection Agency,
Region III**


3/22/10
Date



Daniel L. Isaacs
Senior Assistant Regional Counsel

Accordingly, I hereby recommend that the Regional Administrator or his designee issue the Final Order (Docket No. CWA-03-2010-0027) attached hereto.

3/22/10
Date



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

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

IN RE:

Pennsylvania Department of Corrections
 2520 Lisburn Road
 P.O. Box 598
 Camp Hill, PA 17001-0598

Respondent;

Docket No. CWA-03-2010-0027

State Correctional Institution at Dallas
 1000 Follies Road
 Dallas, Pennsylvania 18612

Facility.

FINAL ORDER

Complainant, the Director for the Office of Enforcement, Compliance, and Environmental Justice, U.S. Environmental Protection Agency - Region III, and Respondent, the Pennsylvania Department of Corrections, 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, with specific reference to Sections 22.13(b) and 22.18(b)(2) and (3). The terms of the foregoing Consent Agreement are accepted by the undersigned and incorporated into this Final Order as if fully set forth at length herein.

Based on the representations of the parties set forth in the Consent Agreement, I have determined that the penalty assessed herein is based upon a consideration of the factors set forth in Section 309(g) of the CWA, 33 U.S.C. § 1319(g), EPA's 1995 *Interim Clean Water Act Settlement Penalty Policy*, the factors set forth in Section 311 of the CWA, 33 U.S.C. § 1321, EPA's 1998 *Civil Penalty Policy for Section 311(b)(3) and Section 311(j) of the Clean Water Act*, the factors set forth in Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), EPA's 2003 *RCRA Civil Penalty Policy*, the statutory factors set forth in Section 9006(d) of RCRA, 42 U.S.C. § 6991e(d), EPA's November 1990 *Penalty Guidance for Violations of UST Regulations*, the factors set forth in Section 113(e) of the Clean Air Act, 42 U.S.C. § 7413(e), EPA's 1991 *Clean Air Act Stationary Source Civil Penalty Policy*, and the Consolidated Rules of Practice. IT IS HEREBY ORDERED that Respondent pay a penalty of ONE HUNDRED AND EIGHTY THREE THOUSAND FOUR HUNDRED SIXTY SEVEN DOLLARS (\$183,467.00), in accordance

with the foregoing Consent Agreement. Payment shall be made in the manner set forth in the foregoing Consent Agreement. Payment shall reference Respondent's name and address as well as the EPA Docket Number of this Final Order (Docket No. CWA-03-2010-0027).

In accordance with Sections 309(g)(5) and 311(b)(6)(D) of the CWA, 33 U.S.C. §§ 1319(g)(5) and 1321(b)(6)(D), this Final Order will become final thirty (30) days after its issuance and the CAFO will become effective on that same date.

3/30/10

Date



Shawn M. Garvin
Regional Administrator
U.S. Environmental Protection Agency, Region III