

JURISDICTION

3. The U.S. Environmental Protection Agency (“EPA”) has jurisdiction over the above-captioned matter, as described in Paragraph 1, above.
4. The Consolidated Rules of Practice govern this administrative adjudicatory proceeding pursuant to 40 C.F.R. § 22.1(a)(4).
5. EPA has given the Commonwealth of Virginia Department of Environmental Quality (“VADEQ”) notice of the issuance of this Consent Agreement and Final Order in accordance with Section 9006(a)(2) of RCRA, 42 U.S.C. § 6991e(a)(2).

GENERAL PROVISIONS

6. For purposes of this proceeding only, Respondent admits the jurisdictional allegations set forth in this Consent Agreement and Final Order.
7. Except as provided in Paragraph 6, above, Respondent neither admits nor denies the specific factual allegations set forth in this Consent Agreement.
8. Respondent agrees not to contest the jurisdiction of EPA with respect to the execution of this Consent Agreement, the issuance of the attached Final Order, or the enforcement of this Consent Agreement and Final Order.
9. For purposes of this proceeding only, Respondent hereby expressly waives its right to contest the allegations set forth in this Consent Agreement and Final Order and waives its right to appeal the accompanying Final Order.
10. Respondent consents to the assessment of the civil penalty stated herein, to the issuance of any specified compliance order herein, and to any conditions specified herein.
11. Respondent shall bear its own costs and attorney’s fees in connection with this proceeding.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

12. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice, Complainant alleges and adopts the Findings of Fact and Conclusions of Law set forth immediately below.
13. Section 9006(d) of RCRA, 42 U.S.C. § 6991e(d), authorizes EPA to assess civil penalties against any owner or operator of an underground storage tank (“UST”) who fails to comply with, *inter alia*, any requirement or standard of a State program that has been approved pursuant to Section 9004 of RCRA, 42 U.S.C. § 6991c, for the violations alleged herein.

14. Effective October 28, 1998, pursuant to Section 9004 of RCRA, 42 U.S.C. § 6991c, and 40 C.F.R. Part 281, Subpart A, EPA approved the Commonwealth of Virginia 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 Virginia UST management program which EPA approved have become requirements of RCRA Subtitle I and are, accordingly, enforceable by EPA pursuant to Section 9006 of RCRA, 42 U.S.C. § 6991e. Virginia's authorized UST management program regulations are set forth in the Virginia Code as "Underground Storage Tanks: Technical Standards and Corrective Action Requirements" ("VA UST Regulations"), 9 VAC § 25-580-10 *et seq.*¹
15. At all times relevant to the alleged violations in this Consent Agreement and Final Order, Respondent has been a Virginia corporation.
16. At all times relevant to the alleged violations in this Consent Agreement and Final Order, Respondent has been a "person" as defined by Section 9001(5) of RCRA, 42 U.S.C. § 6991(5), and 9 VAC § 25-580-10.
17. At all times relevant to the alleged violations in this Consent Agreement and Final Order, Respondent has been the "owner" and/or "operator," as those terms are defined by Section 9001(3) and (4) of RCRA, 42 U.S.C. § 6991(3) and (4), and 9 VAC § 25-580-10, of "USTs" and "UST systems," as those terms are defined in Section 9001(10) of RCRA, 42 U.S.C. § 6991(10), and 9 VAC § 25-580-10, at Gene's Orange Market facility located at 2037 Philpott Road, South Boston, VA 24592 ("the Facility").
18. On August 9, 2022, under the authority of Section 9005(a) of RCRA, 42 U.S.C. § 6991d(a), an EPA inspector conducted a compliance evaluation inspection at the Facility ("CEI").
19. At the time of the August 9, 2022 CEI, and at all times relevant to the applicable violations alleged herein, two (2) USTs, as described below, each of which contained a "regulated substance" as that term is defined in Section 9001(7) of RCRA, 42 U.S.C. § 6991(7), and 9 VAC § 25-580-10, were located at the Facility:

Tank #	Material Stored	Capacity (gal.)	Installation Date	Tank Construction Material	Piping Construction Material
1	Regular gas	8,000	1/1/90	StiP3	Fiberglass-reinforced plastic
2	Non-ethanol gas	8,000	1/1/90	StiP3	Fiberglass-reinforced plastic

¹ Effective May 3, 2021, EPA approved revisions to the Commonwealth of Virginia's Underground Storage Tank (UST) program. Since the alleged violations of this Consent Agreement and Final Order occurred during a period of time that straddles May 3, 2021, these newly approved revisions apply to part of the alleged violations in this Agreement.

20. At all times relevant to the alleged violations in this Consent Agreement and Final Order, USTs 1 and 2 are “new tank systems,” as defined in 9 VAC 25-580-10, which states that a “new tank system” means a tank system used to contain an accumulation of regulated substances or for which installation has commenced after December 22, 1988.
21. All of the USTs at the Facility were Stip3 (coated steel construction with anodes) tanks and utilized fiberglass-reinforced plastic piping that routinely contained regulated substances conveyed using a pressurized piping system.
22. All of the USTs at the Facility used an INCON TS-1001 automatic tank gauge system (“ATG system”) set to perform 0.20 gallons per hour tightness testing on both USTs daily to detect leaks.
23. At all times relevant to the alleged violations in this Consent Agreement and Final Order, all the USTs at the Facility and the respective underground piping associated with each UST were a “petroleum UST system,” as the terms is defined in 9 VAC § 25-580-10.

COUNT I

(Failure to test the ATG system annually for proper operation for USTs 1 and 2)

24. The information and allegations in the preceding paragraphs of this Consent Agreement are incorporated herein by reference.
25. 9 VAC § 25-580-130.A.3.a. states, in relevant part, that owners and operators of UST systems must provide a method, or combination of methods, of release detection that:

*“Beginning on January 1, 2021, is operated and maintained, and electronic and mechanical components are tested for proper operation, in accordance with one of the following: (i) manufacturer's instructions; (ii) a code of practice developed by a nationally recognized association or independent testing laboratory; or (iii) requirements determined by the department to be no less protective of human health and the environment than the two options listed in subdivisions 1 and 2 of this subsection. A test of the proper operation must be performed at least annually and, at a minimum, as applicable to the facility, cover the following components and criteria:
a. Automatic tank gauge and other controllers: test alarm; verify system configuration; test battery backup;...”*
26. At the time of the August 9, 2022 CEI, EPA noted that from at least January 1, 2022 until June 9, 2023, Respondent failed to test the ATG system for proper operation for USTs 1 and 2 at the Facility.
27. Respondent violated 9 VAC § 25-580-130.A.3.a. by failing to test the ATG system annually for proper operation for USTs 1 and 2 at the Facility.

28. In failing to comply with 9 VAC § 25-580-130.A.3.a., Respondent has violated Subtitle I of RCRA, 42 U.S.C. §§ 6991-6991m, and is subject to the assessment of penalties under Section 9006(d)(2) of RCRA, 42 U.S.C. § 6991e(d)(2).

COUNT II

(Failure to perform monthly walkthrough inspections)

29. The information and allegations in the preceding paragraphs of this Consent Agreement are incorporated herein by reference.
30. 9 VAC § 25-580-85.A.1.a. states, in relevant part, that:
- “A. To properly operate and maintain UST systems, not later than January 1, 2021, owners and operators must meet one of the following:*
- 1. Conduct a walkthrough inspection that, at a minimum, checks the following equipment as specified below:*
- a. Every 30 days (Exception: spill prevention equipment at UST systems receiving deliveries at intervals greater than every 30 days may be checked prior to each delivery):*
- (1) Spill prevention equipment – visually check for damage; remove liquid or debris; check for and remove obstructions in the fill pipe; check the fill cap to make sure it is securely on the fill pipe; and, for double walled spill prevention equipment with interstitial monitoring, check for a leak in the interstitial area; and*
- (2) Release detection equipment – check to make sure the release detection equipment is operating with no alarms or other unusual operating conditions present and ensure records of release detection testing are reviewed and current; ...”*
31. At the time of the August 9, 2022 CEI, EPA noted that from at least May 3, 2021 until August 1, 2022, Respondent failed to perform walkthrough inspections at the Facility.
32. Respondent violated 9 VAC § 25-580-85.A.1.a. by failing to perform walkthrough inspections at the Facility.
33. In failing to comply with 9 VAC § 25-580-85.A.1.a., Respondent violated Subtitle I of RCRA, 42 U.S.C. §§ 6991-6991m, and is subject to the assessment of penalties under Section 9006(d)(2) of RCRA, 42 U.S.C. § 6991e(d)(2).

COUNT III

(Failure to test the overflow functionality)

34. The information and allegations in the preceding paragraphs of this Consent Agreement are incorporated herein by reference.
35. 9 VAC § 25-580-82.A.2 states, in relevant part, that:
- “...Overflow prevention equipment must be inspected at least once every three years. At a minimum, the inspection must ensure that overflow prevention equipment is set to activate*

at the correct level specified in subdivision 3 of 9 VAC 25-580-50 and will activate when regulated substance reaches that level.”

36. At the time of the August 9, 2022 CEI, the most recent overfill functionality test at the Facility for USTs 1 and 2 had been performed on May 2, 2018.
37. From at least May 3, 2021 until March 13, 2023, Respondent failed to test the overfill functionality at least once every three years for USTs 1 and 2 at the Facility.
38. Respondent violated 9 VAC § 25-580-82.A.2 by failing to test the overfill functionality for USTs 1 and 2 at the Facility at least once every three years.
39. In failing to comply with 9 VAC § 25-580-82.A.2, Respondent violated Subtitle I of RCRA, 42 U.S.C. §§ 6991-6991m, and is subject to the assessment of penalties under Section 9006(d)(2) of RCRA, 42 U.S.C. § 6991e(d)(2).

COUNT IV

(Failure to equip UST systems with adequate overfill prevention equipment)

40. The information and allegations in the preceding paragraphs of this Consent Agreement are incorporated herein by reference.
41. 9 VAC § 25-580-50.3.a.(2) provides that all UST systems must be equipped with adequate overfill prevention equipment, defined as either a) an automatic shut off of input flow when the tank is no more than 95% full, b) an alert to transfer operators when the tank is no more than 90% full, or c) a restriction on the flow 30 minutes prior to overfilling, an alert to transfer officer with high level alarm one minute before overfilling, or an automatic shut off of flow into the tank.
42. At the time of the August 9, 2022 CEI, USTs 1 and 2 at the Facility were not equipped with adequate overfill protection equipment. USTs 1 and 2 were initially equipped with ball float overfill prevention equipment but this equipment could not be confirmed in place during the inspection.
43. On March 13, 2023, Respondent installed an overfill alarm system meeting the requirements of 9 VAC § 25-580-50.3.a.(2) for USTs 1 and 2 at the Facility
44. From at least the August 9, 2022 inspection until March 13, 2023, Respondent failed to have adequate overfill protection equipment for USTs 1 and 2 at the Facility.
45. Respondent violated 9 VAC § 25-580-50.3.a.(2) by failing to have adequate overfill prevention equipment for USTs 1 and 2 at the Facility.
46. In failing to comply with 9 VAC § 25-580-50.3.a.(2), Respondent violated Subtitle I of RCRA, 42 U.S.C. §§ 6991-6991m, and is subject to the assessment of penalties under Section 9006(d)(2) of RCRA, 42 U.S.C. § 6991e(d)(2).

COUNT V

(Failure to inspect the cathodic protection system)

47. The information and allegations in the preceding paragraphs of this Consent Agreement are incorporated herein by reference.

48. 9 VAC § 25-580-90.2.a. states, in relevant part that:

“All UST systems equipped with cathodic protection systems must be inspected for proper operation by a qualified cathodic protection tester in accordance with the following requirements:

a. Frequency. All cathodic protection systems must be tested within six months of installation and at least every three years thereafter...”

49. At the time of the August 9, 2022 CEI, the cathodic protection system had last been inspected for proper operation after being modified or repaired on March 11, 2021 and was due for a six-month inspection on September 11, 2021. The cathodic protection system was next inspected for proper operation on August 17, 2022 which was 340 days past due.

50. From at least the September 11, 2021 through August 16, 2022, Respondent failed to inspect the cathodic protection system for proper operation for USTs 1 and 2 at the Facility.

51. Respondent violated 9 VAC § 25-580-90.2.a. by failing to inspect the cathodic protection system for proper operation for USTs 1 and 2 at the Facility.

52. In failing to comply with 9 VAC § 25-580-90.2.a., Respondent violated Subtitle I of RCRA, 42 U.S.C. §§ 6991-6991m, and is subject to the assessment of penalties under Section 9006(d)(2) of RCRA, 42 U.S.C. § 6991e(d)(2).

COUNT VI

(Failure to test the spill prevention equipment)

53. The information and allegations in the preceding paragraphs of this Consent Agreement are incorporated herein by reference.

54. 9 VAC § 25-580-82.A.1.b states, in relevant part:

“Spill prevention equipment (such as a catchment basin, spill bucket, or other spill containment device) and containment sumps used for interstitial monitoring of piping must prevent releases to the environment by meeting one of the following:

a. The equipment is double walled and the integrity of both walls is periodically monitored as described in 9 VAC 25-580-85 A 1 a (1) at a frequency not less than the frequency of the walkthrough inspections described in 9VAC25-580-85. Within 30 days

of discontinuing periodic monitoring under this subdivision, owners and operators must conduct a test in accordance with subdivision A 1 b of this section and begin meeting the requirements of that subdivision; or

b. The spill prevention equipment and containment sumps used for interstitial monitoring of piping are tested at least once every three years to ensure the equipment is liquid tight by using vacuum, pressure, or liquid testing [emphasis added] in accordance with one of the following criteria...

55. At the time of the August 9, 2022 CEI, the records provided by Respondent indicated that the spill prevention equipment at the Facility were spill buckets which were due for the once every three years liquid testing by May 3, 2021. Respondent liquid tested the spill buckets on August 17, 2022 which was 471 days past due.
56. From at least the May 3, 2021 through August 16, 2022, Respondent failed to liquid test the spill prevention equipment once every three years for USTs 1 and 2 at the Facility.
57. Respondent violated 9 VAC § 25-580-82.A.1.b by failing to liquid test once every three years the spill prevention equipment for USTs 1 and 2 at the Facility.
58. In failing to comply with 9 VAC § 25-580-82.A.1.b, Respondent violated Subtitle I of RCRA, 42 U.S.C. §§ 6991-6991m, and is subject to the assessment of penalties under Section 9006(d)(2) of RCRA, 42 U.S.C. § 6991e(d)(2).

COUNT VII

(Failure to maintain documentation of operator training)

59. The information and allegations in the preceding paragraphs of this Consent Agreement are incorporated herein by reference.
60. 9 VAC § 25-580-120.2.h states, in relevant part:

*“Owners and Operators must maintain the following information...
h. Documentation of operator training required by 9 VAC 25-580-125, including verification of training for current Class A, Class B, and Class C operators, and current list of operators and written instructions or procedures for Class C operators (9 VAC 25-580-125).”*
61. At the time of the August 9, 2022 CEI, Respondent failed to maintain documentation of operator training. Documentation of operator training was required to be maintained since May 3, 2021. Respondent provided documentation of operator training having occurred on October 17, 2022 which was 532 days past due.
62. From at least the May 3, 2021 through October 16, 2022, Respondent failed to maintain documentation of operator training.
63. Respondent violated 9 VAC § 25-580-120.2.h by failing to maintain documentation of

operator training.

64. In failing to comply with 9 VAC § 25-580-120.2.h, Respondent violated Subtitle I of RCRA, 42 U.S.C. §§ 6991-6991m, and is subject to the assessment of penalties under Section 9006(d)(2) of RCRA, 42 U.S.C. § 6991e(d)(2).

CIVIL PENALTY

65. In settlement of EPA's claims for civil penalties for the violations alleged in this Consent Agreement, Respondent consents to the assessment of a civil penalty in the amount of **Fifty-Nine Thousand Seven Hundred and Ninety dollars (\$59,790.00)**, which Respondent shall be liable to pay in accordance with the terms set forth below.
66. The civil penalty is based upon EPA's consideration of a number of factors, including the penalty criteria ("statutory factors") set forth in Sections 9006(c) and (e) of RCRA, 42 U.S.C. §§ 6991e(c) and (e), which includes the seriousness of the violation, any good faith efforts to comply with the applicable requirements, the compliance history of the owner or operator and any other factors considered appropriate. In developing a proposed penalty for the violations alleged in this Consent Agreement, EPA will take into account the particular facts and circumstances of this case with specific reference to EPA's November 1990 *U.S. E.P.A. Penalty Guidance for Violations of UST Regulations* ("UST Penalty Policy"), the 2018 *Interim Consolidated Enforcement Penalty Policy for Underground Storage Tank Regulations* ("Enforcement Penalty Policy") (collectively the "UST Penalty Policies), the appropriate *Adjustment of Civil Monetary Penalties for Inflation*, pursuant to 40 C.F.R. Part 19, and the applicable EPA memoranda addressing EPA's civil penalty policies to account for inflation.
67. Payment of the civil penalty amount, and any associated interest, administrative fees, and late payment penalties owed, shall be made by either cashier's check, certified check or electronic wire transfer, in the following manner:
- a. All payments by Respondent shall include reference to Respondent's name and address, and the Docket Number of this action, *i.e.*, EPA Docket Number RCRA-03-2023-0139;
 - b. All checks shall be made payable to the "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
Cincinnati Finance Center
P.O. Box 979078
St. Louis, MO 63197-9000

- d. For additional information concerning other acceptable methods of payment of

the civil penalty amount see:

<https://www.epa.gov/financial/makepayment>

- e. A copy of Respondent's check or other documentation of payment of the penalty using the method selected by Respondent for payment shall be sent simultaneously by email to:

Jeffrey S. Nast
Sr. Assistant Regional Counsel
nast.jeffrey@epa.gov

and

U.S. EPA Region III Regional Hearing Clerk
R3_Hearing_Clerk@epa.gov

- 68. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest 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. Accordingly, Respondent's failure to make timely payment of the penalty as specified herein shall result in the assessment of late payment charges including interest, penalties and/or administrative costs of handling delinquent debts.
- 69. Payment of the civil penalty is due and payable immediately upon receipt by Respondent of a true and correct copy of the fully executed and filed Consent Agreement and Final Order. Receipt by Respondent or Respondent's legal counsel of such copy of the fully executed Consent Agreement and Final Order, with a date stamp indicating the date on which the Consent Agreement and Final Order was filed with the Regional Hearing Clerk, shall constitute receipt of written initial notice that a debt is owed EPA by Respondent in accordance with 40 C.F.R. § 13.9(a).
- 70. INTEREST: In accordance with 40 C.F.R § 13.11(a)(1), interest on the civil penalty assessed in this Consent Agreement and Final Order will begin to accrue on the date Respondent is notified of its debt to the United States as established upon the ratification and filing of the fully executed Consent Agreement and Final Order with the Regional Hearing Clerk. However, EPA will not seek to recover interest on any amount of the civil penalties 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).
- 71. ADMINISTRATIVE COSTS: The costs of the EPA's administrative handling of overdue debts will be charged and assessed monthly throughout the period a debt is overdue. 40 C.F.R. § 13.11(b). If payment is not received within 30 calendar days of the effective date of this CA, EPA will also 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.

72. LATE PAYMENT PENALTY: A late payment penalty of six percent per year will be assessed monthly on any portion of the civil penalty that remains delinquent more than ninety (90) calendar days. 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).
73. Respondent agrees not to deduct for federal tax purposes the civil penalty assessed in this Consent Agreement and Final Order.
74. The parties consent to service of the Final Order by e-mail at the following valid e-mail address: nast.jeffrey@epa.gov (for Complainant), and genesmarket635@gmail.com (for Respondent).

GENERAL SETTLEMENT CONDITIONS

75. By signing this Consent Agreement, Respondent acknowledges that this Consent Agreement and Final Order will be available to the public and represents that, to the best of Respondent's knowledge and belief, this Consent Agreement and Final Order does not contain any confidential business information or personally identifiable information from Respondent.
76. Respondent certifies that any information or representation it has supplied or made to EPA concerning this matter was, at the time of submission true, accurate, and complete and that there has been no material change regarding the truthfulness, accuracy or completeness of such information or representation. EPA shall have the right to institute further actions to recover appropriate relief if EPA obtains evidence that any information provided and/or representations made by Respondent to the EPA regarding matters relevant to this Consent Agreement and Final Order, including information about Respondent's ability to pay a penalty, are false or, in any material respect, inaccurate. This right shall be in addition to all other rights and causes of action that EPA may have, civil or criminal, under law or equity in such event. Respondent and its officers, directors and agents are aware that the submission of false or misleading information to the United States government may subject a person to separate civil and/or criminal liability.

CERTIFICATION OF COMPLIANCE

77. Respondent certifies to EPA, upon personal investigation and to the best of its knowledge and belief, that it currently is in compliance with regard to the violations alleged in this Consent Agreement.

OTHER APPLICABLE LAWS

78. Nothing in this Consent Agreement and Final Order shall relieve Respondent of its obligation to comply with all applicable federal, state, and local laws and regulations, nor shall it restrict EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on the validity of any federal, state or local permit. This Consent Agreement and Final Order does not constitute a waiver, suspension or modification of the requirements of RCRA Subtitle I, or any regulations promulgated thereunder.

RESERVATION OF RIGHTS

79. This Consent Agreement and Final Order resolves only EPA's claims for civil penalties for the specific violations alleged against Respondent in this Consent Agreement and Final Order. 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. 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, 40 C.F.R. § 22.18(c). EPA reserves any rights and remedies available to it under RCRA Subtitle I, the regulations promulgated thereunder and any other federal law or regulation to enforce the terms of this Consent Agreement and Final Order after its effective date.

EXECUTION /PARTIES BOUND

80. This Consent Agreement and Final Order shall apply to and be binding upon the EPA, the Respondent and the officers, directors, employees, contractors, successors, agents and assigns of Respondent. By his or her signature below, the person who signs this Consent Agreement on behalf of Respondent is acknowledging that he or she is fully authorized by the Respondent to execute this Consent Agreement and to legally bind Respondent to the terms and conditions of this Consent Agreement and Final Order.

EFFECTIVE DATE

81. The effective date of this Consent Agreement and Final Order is the date on which the Final Order, signed by the Regional Administrator of EPA, Region III, or his designee, the Regional Judicial Officer, is filed along with the Consent Agreement with the Regional Hearing Clerk pursuant to the Consolidated Rules of Practice.

ENTIRE AGREEMENT

82. This Consent Agreement and Final Order constitutes the entire agreement and understanding between the Parties regarding settlement of all claims for civil penalties pertaining to the specific violations alleged herein and there are no representations, warranties, covenants, terms, or conditions agreed upon between the Parties other than those expressed in this Consent Agreement and Final Order.

In the matter of: *Gene's Orange Market, LLC*

RCRA-03-2023-0139

For Respondent:

Gene's Orange Market, LLC

Date: 9-11-23

By: 
Carl Eugene "Gene" Morris, Jr., Owner

For the Complainant:

After reviewing the Consent Agreement and other pertinent matters, I, the undersigned Director of the Enforcement and Compliance Assurance Division of the United States Environmental Protection Agency, Region III, agree to the terms and conditions of this Consent Agreement and recommend that the Regional Administrator, or his designee, the Regional Judicial Officer, issue the attached Final Order.

By: _____
[*Digital Signature and Date*]
Karen Melvin, Director
Enforcement and Compliance Assurance Division
U.S. EPA – Region III
Complainant

Attorney for Complainant:

By: _____
[*Digital Signature and Date*]
Jeffrey S. Nast
Sr. Assistant Regional Counsel
U.S. EPA – Region III



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
FOUR PENN CENTER – 1600 JOHN F. KENNEDY BLVD.
PHILADELPHIA, PENNSYLVANIA 19103**

FILED
Sep 26, 2023
11:00 am
U.S. EPA REGION III
HEARING CLERK

In the Matter of:	:	
	:	
	:	U.S. EPA Docket No. RCRA-03-2023-0139
Gene’s Orange Market, LLC	:	
2037 Philpott Road	:	Proceeding under Section 9006 of the Resource
South Boston, VA 24592	:	Conservation and Recovery Act, 42 U.S.C.
	:	Section 6991e
Respondent.	:	
	:	
Gene’s Orange Market	:	
2037 Philpott Road	:	
South Boston, VA 24592	:	
	:	
Facility.	:	
	:	

FINAL ORDER

Complainant, the Director of the Enforcement & Compliance Assurance Division, U.S. Environmental Protection Agency, Region III, and Respondent, Gene’s Orange Market, LLC 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 upon the representations of the parties in the attached Consent Agreement, the penalty agreed to therein is based upon consideration of, *inter alia*, EPA’s November 1990 *U.S. E.P.A. Penalty Guidance for Violations of UST Regulations* (“UST Penalty Policy”), and the 2018 *Interim Consolidated Enforcement Penalty Policy for Underground Storage Tank Regulations* (“Enforcement Penalty Policy”) (collectively the “UST Penalty Policies) which reflects the statutory penalty criteria and factors set forth Section 9006(c) of the Resource Conservation and Recovery Act (“RCRA”), and the appropriate *Adjustment of Civil Monetary Penalties for Inflation*, pursuant to 40 C.F.R. Part 19, and the applicable EPA memoranda addressing EPA’s civil penalty polices to account for inflation.

NOW, THEREFORE, PURSUANT TO Section 9006(d) of RCRA, 42 U.S.C. § 6991e(d), and Section 22.18(b)(3) of the Consolidated Rules of Practice, **IT IS HEREBY ORDERED** that Respondent pay a civil penalty in the amount of **FIFTY-NINE THOUSAND SEVEN-HUNDRED AND NINETY DOLLARS (\$59,790.00)**, in accordance with the payment

provisions set forth in the Consent Agreement and in 40 C.F.R. § 22.31(c), and comply with the terms and conditions of the Consent Agreement.

This Final Order constitutes the final Agency action in this proceeding. This Final Order shall not in any case affect the right of the Agency or the United States to pursue appropriate injunctive or other equitable relief, or criminal sanctions for any violations of the law. This Final Order resolves only those causes of action alleged in the Consent Agreement and does not waive, extinguish or otherwise affect Respondent's obligation to comply with all applicable provisions of RCRA and the regulations promulgated thereunder.

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

Date: _____

By: _____

[Digital Signature and Date]

Joseph J. Lisa

Regional Judicial and Presiding Officer

U.S. EPA Region III

In the matter of: Gene's Orange Market, LLC

RCRA-03-2023-0139

Melissa Toffel
RCRA Branch, Enforcement and Compliance Assurance Division
U.S. EPA, Region III
toffel.melissa@epa.gov

[Digital Signature and Date]
Bevin Esposito
Regional Hearing Clerk
U.S. EPA, Region III