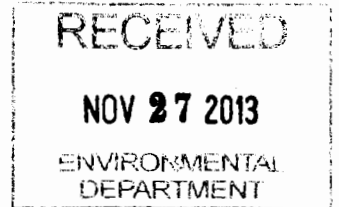


**BEFORE THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION III**



In the Matter of:	:	Consent Agreement and
	:	Final Order
Samana Gulf	:	
1401 Northeast Boulevard	:	U.S. EPA Docket Number
Wilmington, DE 19802,	:	RCRA-03-2014-0028
	:	
Facility,	:	Proceeding Under Section 9006 of the
	:	Resource Conservation and Recovery
Cumberland Farms, Inc. and	:	Act, as amended, 42 U.S.C. § 6991e
Gulf Oil Limited Partnership	:	
100 Crossing Boulevard	:	
Framingham, MA 01702	:	
	:	
Respondent.	:	

REGIONAL HEARINGS CLERK
ENVIRONMENTAL DEPARTMENT
REGION III PHILA. PA

2014 FEB 12 AM 11:18

RECEIVED

CONSENT AGREEMENT

I. PRELIMINARY STATEMENT

1. This Consent Agreement ("CA") is entered into by the Director of the Land and Chemicals Division, U. S. Environmental Protection Agency, Region III ("Complainant" or "EPA" or "Agency") and Cumberland Farms, Inc. and Gulf Oil Limited Partnership (together "Respondent"), pursuant to Section 9006 of the Resource Conservation and Recovery Act ("RCRA"), as amended, 42 U.S.C. § 6991e, and the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* ("Consolidated Rules of Practice"), 40 C.F.R. Part 22 (with specific reference to 40 C.F.R. §§ 22.13(b), 22.18(b)(2), and (3)).
2. This CA and the Final Order resolve Respondent's alleged violations of Subtitle I of RCRA, 42 U.S.C. §§ 6991-6991m, and the State of Delaware's federally authorized Underground Storage Tank ("UST") Program that occurred at the Respondent's Facility located at Samana Gulf, 1401 Northeast Boulevard, Wilmington, DE 19802 (after this referred to as the "Facility").
3. In accordance with 40 C.F.R. §§ 22.13(b), 22.18(b)(2), and (3), Complainant hereby simultaneously commences and resolves, as part of the settlement set forth herein, EPA's civil claims alleged in Section III ("Findings of Fact and Conclusions of Law") of this Consent Agreement.

II. GENERAL PROVISIONS

4. The settlement agreed to by the parties in this Consent Agreement reflects the desire of the parties to resolve this matter without litigation.
5. Respondent consents to the issuance of this CAFO and agrees to comply with its terms and conditions.
6. For purposes of this proceeding, Respondent admits the jurisdictional allegations set forth in this Consent Agreement and the attached Final Order, hereinafter collectively referred to as the "CAFO."
7. Except as provided in Paragraph 6 of this Consent Agreement, for purposes of this proceeding, Respondent neither admits nor denies the factual allegations and legal conclusions 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 CAFO.
9. For purposes of this proceeding only, Respondent hereby expressly waives any right to contest any issue of law or fact set forth in this Consent Agreement and any right to appeal the accompanying Final Order.
10. Each Party to this Consent Agreement shall bear its own costs and attorney's fees in connection with this proceeding.
11. The person signing this Consent Agreement on behalf of Respondent certifies to EPA by his or her signature herein that, to the best of their knowledge, the violations that are the subject of this Consent Agreement were corrected so that the Facility was in compliance as of April 15, 2013, the date of sale of the Facility, with the provisions of Subtitle I of RCRA, 42 U.S.C. §§ 6991-6991m, and the State of Delaware's UST Management Program regulations set forth at Delaware Administrative Code, Title 7, Department of Natural Resources and Environmental Control ("DNREC"), Division of Waste and Hazardous Substances, Tank Management Section at the Facility referenced in this Consent Agreement.
12. This Consent Agreement and the accompanying Final Order shall apply to and be binding upon the Respondent, Respondent's officers and directors, directors, employees, and Respondent's successors and assigns.
13. 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 Subtitle I of RCRA, 42 U.S.C. §§ 6991-6991m, or any regulations promulgated thereunder.
14. Respondent agrees not to deduct for civil taxation purposes the civil penalty specified in this Consent Agreement and attached Final Order.

15. The Respondent is aware that the submission of false or misleading information to the United States government may subject the Respondent to separate civil and/or criminal liability. Complainant reserves the right to seek and obtain appropriate relief if Complainant obtains evidence that the information provided and/or representations made by the Respondent to Complainant regarding the matters at issue in the Findings of Fact and Conclusions of Law are false or, in any material respect, inaccurate.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

16. In accordance with 40 C.F.R. §§ 22.13(b), 22.18(b)(2) and (3), Complainant alleges and adopts the Findings of Fact and Conclusions of Law set forth immediately below.

17. Pursuant to Section 9004 of RCRA, 42 U.S.C. § 6991c, and 40 C.F.R. Part 281, a state may administer a state UST management program in lieu of the Federal Underground Storage Tank Management Program established under Subtitle I of RCRA, 42 U.S.C. §§ 6991-6991m. Effective October 28, 1996, EPA granted the State of Delaware final authorization to administer a state underground storage tank management program ("Delaware Authorized UST Management Program") in lieu of the Federal underground storage tank management program established under Subtitle I. See 61 FR 50720 (September 27, 1996). Through this final authorization, the provisions of the Delaware 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.

18. The factual allegations and legal conclusions in this CAFO are based upon the provisions of the Delaware Authorized UST Management Program, as set forth in Delaware Administrative Code, Title 7, DNREC, Division of Waste and Hazardous Substances, Tank Management Section ("DE UST Regulations").

19. On April 1, 2013, EPA gave the State of Delaware notice of the issuance of this CAFO in accordance with Section 9006(a)(2) of RCRA, 42 U.S.C. § 6991e(a)(2).

20. Respondent is a "person" as defined in Section 9001 of RCRA, 42 U.S.C. § 6991, and in the DE UST Regulations, Part A, § 2.

21. At all times relevant to this CAFO, Respondent was the "owner" of "underground storage tanks" ("USTs") and "UST systems," as those terms are defined in Section 9001 of RCRA, 42 U.S.C. § 6991, and the DE UST Regulations, Part A, § 2, located at the Facility.

22. On June 13, 2012, an EPA representative conducted a Compliance Evaluation Inspection ("CEI") of the Facility pursuant to Section 9005 of RCRA, 42 U.S.C. § 6991d.

23. At the time of the June 13, 2012 CEI, and at all times relevant to the applicable violations alleged herein, five USTs, as described in the following subparagraphs, were located at the Facility:

A. One ten thousand (10,000) gallon fiberglass reinforced plastic tank ("Tank One") that was installed on or about January 1983, and that, at all times relevant hereto, routinely contained diesel fuel;

B. One five hundred and fifty (550) gallon fiberglass reinforced plastic tank ("Tank Two") that was installed on or about January 1983, and that, at all times relevant hereto, routinely contained used oil; and

C. Three ten thousand (10,000) gallon fiberglass reinforced plastic tanks ("Tanks Three, Four and Five") that were installed on or about January 1983, and that, at all times relevant hereto, routinely contained gasoline.

24. At all times relevant to the applicable violations alleged in this CA, the tanks at the Facility have been used to store gasoline, diesel fuel, and used oil which are petroleum products. These liquids are "regulated substances" as that term is defined in Section 9001 of RCRA, 42 U.S.C. § 6991, and DE UST Regulations, Part A, § 2. The tanks at the Facility and their associated piping therefore constitute "petroleum UST systems" as that term is defined in DE UST Regulations, Part A, § 2.

25. During the CEI of the Facility, the inspector found that there was approximately nine and one-half (9.5) inches of used oil in Tank Two.

26. Pursuant to RCRA Section 9005, 42 U.S.C. § 6991d, on November 5, 2012, EPA issued an Information Request Letter ("IRL") to the Respondent concerning the UST systems at the Facility.

27. In a response to the November IRL, the Respondent stated that it had not performed tank release detection for Tank Two at the Facility from February 1, 2010 to June 14, 2012.

Count 1

28. Paragraphs 1 through 27 of this Consent Agreement are incorporated by reference as if fully set forth herein.

29. Pursuant to DE UST Regulations, Part B, § 1.07, all owners and operators of UST systems equipped to store regulated substances must provide a method, or combination of methods, of leak detection of product from their tanks that routinely contain product.

30. Tank Two at the Facility is and was, at the time of the violations alleged herein, an UST system used to store regulated substances and, as a result, subject to the requirements of DE UST Regulations, Part B, § 1.07.

31. At the Facility, from on or about February 1, 2010 to June 14, 2012, Respondent did not perform tank release detection for Tank Two.

32. The Respondent's failure to perform tank release detection for Tank Two constitutes a violation of DE UST Regulations, Part B, § 1.07 from February 1, 2010 through June 14, 2012.

IV. CIVIL PENALTY

33. Section 9006(d)(2) of RCRA, 42 U.S.C. § 6991e(d)(2), authorizes the Administrator of EPA to assess a penalty not to exceed \$ 10,000 for each tank for each day of violation of any requirement or standard promulgated by EPA under Section 9003 of RCRA, 42 U.S.C. § 6991b, or that is part of an authorized state underground storage tank program that EPA has approved by pursuant to Section 9004 of RCRA, 42 U.S.C. § 6991c. Pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, Pub. L. 101-410, as amended, and its implementing regulation, the *Adjustment of Civil Monetary Penalties for Inflation Rule*, codified at 40 C.F.R. Part 19, EPA has subsequently raised the maximum civil penalty not to exceed \$11,000 for each tank for each day of violation for all violations occurring from March 15, 2004 through January 12, 2009, and to \$ 16,000 for each tank for each day of violation for all violations occurring after January 12, 2009 and to the present.

34. In this matter, in settlement of EPA's claims for civil penalties assessable for the violations alleged in this Consent Agreement, Respondent consents to the assessment of a civil penalty in the amount of seven thousand and twenty-six dollars (\$7,026.00) which Respondent shall be liable to pay in accordance with the terms set forth below.

35. The penalty becomes due and payable within thirty (30) days after Respondent's receipt of a true and correct copy of this CAFO.

36. The Parties represent that the settlement terms are reasonable and are based upon EPA's consideration of a number of factors, including the penalty criteria set forth in Section 9006(c) of RCRA, 42 U.S.C. § 6991e(c), i.e., the seriousness of the violation and any good faith efforts to comply with the applicable requirements. Section 9006(e) of RCRA, 42 U.S.C. § 6991e(e) authorizes EPA to also take into consideration the compliance history of the owner or operator and any other factors that EPA considers appropriate. EPA applied these factors to the particular facts and circumstances of this case with specific reference to EPA's *Penalty Guidance for Violations of UST Regulations ("UST Penalty Guidance")*. In applying these factors, EPA took into account that the last amendment to 40 C.F.R. Part 19 (See 73 Fed. Reg. 75340 (2008)) and the December 29, 2008, memorandum by EPA Assistant Administrator Granta Y. Nakayama entitled, *Amendments to EPA's Civil Penalty Policies to Implement the 2008 Civil Monetary Penalty Inflation Adjustment Rule*, which modified the *UST Penalty Guidance* and authorized EPA to assess penalties using penalty matrix values larger than those stated in the *UST Penalty Guidance*.

37. Payment of the civil penalty amount assessed in Paragraph 34, above, 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 Respondent's name and address, and the Docket Number of this action, i.e., RCRA-03-2014-0028;

- 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 for delivery to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

Contact: Heather Russell 513-487-2044

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

U.S. Bank
Government Lockbox 979077
U.S. EPA, Fines & Penalties
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, MO 63101

Contact: 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 No. = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045

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

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

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

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

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

H. On-Line Payment Option:

WWW.PAY.GOV/PAYGOV

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

I. Additional payment guidance is available at the following internet address:
http://www.epa.gov/ocfo/finservices/make_a_payment.htm

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

Philip Yeany
Senior Assistant Regional Counsel
U.S. Environmental Protection Agency
Region III (Mail Code 3RC50)
1650 Arch Street
Philadelphia, PA 19103-2029;

and

Ms. Lydia Guy
Regional Hearing Clerk
U.S. Environmental Protection Agency
Region III (Mail Code 3RC00)
1650 Arch Street
Philadelphia, PA 19103-2029

V. EFFECT OF SETTLEMENT

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

VI. RESERVATION OF RIGHTS

This Consent Agreement and the accompanying Final Order resolve only EPA's claims for civil monetary penalties for the specific violations alleged in Section III ("Findings of Fact and Conclusions of Law") herein. EPA reserves the right to commence action against any person, including Respondent, in response to any condition that 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 40 C.F.R. § 22.18(c). 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.

VII. AUTHORITY TO BIND THE PARTIES

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

VIII. EFFECTIVE DATE

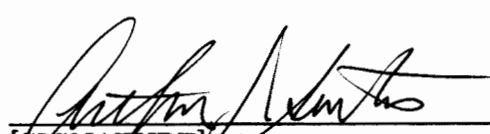
40. The effective date of this Consent Agreement and the accompanying Final Order is the date on which the Final Order, signed by the Regional Administrator of EPA Region III, or his designee, the Regional Judicial Officer, and this Consent Agreement are filed with the EPA Regional Hearing Clerk pursuant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

IX. ENTIRE AGREEMENT

41. This Consent Agreement and the accompanying Final Order constitute the entire agreement and understanding of the parties regarding settlement of all claims 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 CAFO.

For Respondent:

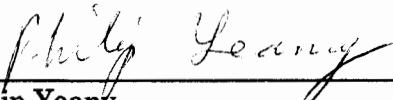
Date: 12/10/13


[SIGNATURE]

Arthur Santos
Lead Petroleum Maintenance Coordinator
By 2/7/14

For Complainant:

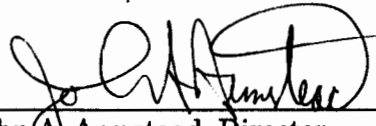
Date: 12/20/13



Philip Yeany
Senior Assistant
Regional Counsel

After reviewing the foregoing Consent Agreement and other pertinent information, I hereby recommend that the Regional Administrator, or his designee, the Regional Judicial Officer, issue the attached Final Order.

Date: 1.7.13



John A. Armstead, Director
Land and Chemicals Division
U.S. EPA Region III

**BEFORE THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION III**

<hr/> In the Matter of:	:	Consent Agreement and
	:	Final Order
Samana Gulf 1401	:	
Northeast Boulevard	:	U.S. EPA Docket Number
Wilmington, DE 19802,	:	RCRA-03-2014-0028
	:	
Facility,	:	Proceeding Under Section 9006 of the
	:	Resource Conservation and Recovery
Cumberland Farms, Inc. and Gulf Oil	:	Act, as amended, 42 U.S.C. § 6991e
Limited Partnership	:	
100 Crossing Boulevard	:	
Framingham, MA 01702,	:	
	:	
Respondent.	:	

FINAL ORDER

Complainant, the Director of the Land and Chemicals Division, U.S. Environmental Protection Agency - Region III, and the above-captioned Respondent 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*, 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 40 C.F.R. § 22.18(b)(3) and Section 9006(c) of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6991e(c), 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 Sections 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 seven thousand and twenty-six dollars (\$7,026.00) 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 the foregoing Consent