



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

REGULAR MAIL

March 11, 2009

Lori Weidner
U.S. Environmental Protection Agency
Cincinnati Finance Center
26 W. MLK Drive
Cincinnati, OH 45268

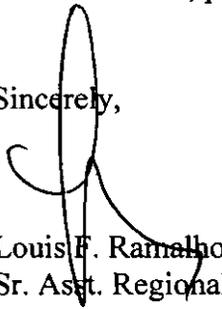
Re: Accounts Receivable
In the Matter of O'Donnell Construction *et. al.*
Consent Agreement and Final Order
Docket No. RCRA-03-2009-0058

Dear Ms. Weidner:

Enclosed please find a true and correct copy of the Consent Agreement and Final Order, and the Enforcement Accounts Receivable Control Number Forms (EARCNF) filed with the Regional Hearing Clerk today in settlement of the above referenced subject matters.

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

Sincerely,


Louis F. Ramalho
Sr. Asst. Regional Counsel

Enclosures

cc: Lydia Guy
Regional Hearing Clerk
U.S. EPA, Region III



EPA ENFORCEMENT ACCOUNTS RECEIVABLE CONTROL NUMBER FORM

TO BE FILLED OUT BY ORIGINATING OFFICE:

(Attach a copy of the final order and transmittal letter to Defendant/Respondent)

This form was originated by: L. Ramalho 2/19/09
Name of Contact person Date

in the ORC at X 2681
Office Phone number

Non-SF Jud. Order/Consent Decree. DOJ COLLECTS
 Administrative Order/ Consent Agreement FMD COLLECTS PAYMENT

SF Jud. Order/Consent Decree. FMD COLLECTS

This is an original debt This is a modification

Name of Person and/or Company/Municipality making the payment
10 Daniel Construction Company et al.

The Total Dollar Amount of Receivable \$ 19,000.00
(If in installments, attach schedule of amounts and respective due dates)

The Case Docket Number RCRA-03-2009-0258
The Site-Specific Superfund Acct. Number _____
The Designated Regional/HQ Program Office _____

TO BE FILLED OUT BY LOCAL FINANCIAL MANAGEMENT OFFICE:

The IFMS Accounts Receivable Control Number _____
If you have any questions call: _____
Name of Contact Date
in the Financial Management Office, phone number: _____

JUDICIAL ORDERS: Copies of this form with an attached copy of the front page of the final judicial order should be mailed to:

- 1. U.S. Environmental Protection Agency
Cincinnati Finance Center
26 W. Martin Luther King Drive (MS-002)
Cincinnati, OH 45268
Attn: Lori Weidner
- 2. Originating Office (ORC)
- 3. Designated Program Office

ADMINISTRATIVE ORDERS: Copies of this form with an attached copy of the front page of the administrative order should be sent to:

- 1. Originating Office
- 2. Designated Program Office
- 3. Regional Hearing Clerk
- 3. Regional Counsel



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

FEDEX
DIRECT SIGNATURE
CONFIRMATION REQUESTED

March 11, 2009

Channing Martin, Esq.
Williams Mullen
8270 Greensboro Drive
Suite 700
McLean, VA 22102

Re: In the Matter of O'Donnell Construction Company et. al.
EPA Docket No. RCRA-03-2009-0058

Dear Mr. Martin:

Enclosed please find a true and correct copy of the Consent Agreement and Final Order filed today with the Regional Hearing Clerk in settlement of the above referenced subject matter. Thank you for your assistance with this matter.

Should you have any questions or require further information, please feel free to contact me at (215) 814-2681 or by e-mail: ramalho.louis@epa.gov.

Sincerely,


Louis F. Ramalho
Sr. Asst. Regional Counsel

Enclosures

cc: Melissa Toffel (3LC61)



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

In the Matter of:)	
)	
O'Donnell Construction Company)	
2800 8 th Street, N.E.)	U.S. EPA Docket Number
Washington, DC 20017)	RCRA-03-2009-0058
)	
2800 8 th Street, L.L.C.)	
3355 Rittenhouse Street, N.W.)	
Washington, DC 20015)	
)	Proceeding Under Section 9006 of the
RESPONDENTS,)	Resource Conservation and Recovery Act,
)	as amended, 42 U.S.C. Section 6991e
)	
O'Donnell Construction Company)	
Equipment Yard)	
2800 8 th Street, N.E.)	
Washington, D.C. 20017)	CONSENT AGREEMENT
)	
FACILITY.)	

CONSENT AGREEMENT

This Consent Agreement ("CA") is entered into by the Director, Land and Chemicals Division, U.S. Environmental Protection Agency, Region III ("Complainant") and O'Donnell Construction Company and 2800 8th Street, L.L.C. ("Respondents"), pursuant to Section 9006 of the Resource Conservation and Recovery Act ("RCRA"), as amended, 42 U.S.C. § 6991e, and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/ Termination or Suspension of Permits ("Consolidated Rules"), 40 C.F.R. Part 22, including, specifically 40 C.F.R. §§ 22.13(b) and .18(b)(2) and (3).

This CA and the Final Order (collectively "CAFO"), resolve violations of RCRA Subtitle I, 42 U.S.C. §§ 6991-6991m, and the District of Columbia's federally authorized underground storage tank ("UST") program by Respondents in connection with its underground storage tanks at Respondents' facility located at 2800 8th Street, N.E., Washington, D.C. 20017.

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

of Columbia UST management program, through this final authorization, are enforceable by EPA pursuant to Section 9006 of RCRA, 42 U.S.C. § 6991e. The District of Columbia's authorized UST program regulations are set forth in the District of Columbia Municipal Regulations, Title 20, Chapters 55 *et seq.*, and will be cited hereinafter as 20 DCMR §§ 5500 *et seq.*

GENERAL PROVISIONS

1. For purposes of this proceeding only, Respondents admit the jurisdictional allegations set forth in this CAFO.
2. Respondents neither admit nor deny the specific factual allegations and conclusions of law set forth in this CAFO, except as provided in Paragraph 1, above.
3. Respondents agree not to contest EPA's jurisdiction with respect to the execution of this CA, the issuance of the attached Final Order ("FO"), or the enforcement of the CAFO.
4. For the purposes of this proceeding only, Respondents hereby expressly waive their right to a hearing on any issue of law or fact set forth in this CA and any right to appeal the accompanying FO.
5. Respondents consent to the issuance of this CAFO, and agree to comply with its terms and conditions.
6. Respondents shall bear their own costs and attorney's fees.
7. The persons signing this CA on behalf of each Respondent certify to EPA by his/her signature herein that each Respondent, as of the date of this CA, is in compliance with the provisions of RCRA, Subtitle I, 42 U.S.C. §§ 6991-6991m, and the District of Columbia's federally authorized underground storage tank program set forth at 20 DCMR §§ 5500 *et seq.* at the Facility referenced herein.
8. The provisions of this CAFO shall be binding upon each Respondent, and its officers, directors, employees, successors and assigns.
9. This CAFO shall not relieve Respondents of their obligation to comply with all applicable provisions of federal, state or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit, nor does this CAFO constitute a waiver, suspension or modification of the requirements of RCRA Subtitle I, 42 U.S.C. §§ 6991-6991m, or any regulations promulgated thereunder.

10. Complainant shall have the right to institute further actions to recover appropriate relief if Complainant obtains evidence that the information provided and/or representations made by Respondents to EPA regarding matters at issue in the CAFO are false or, in any material respect, inaccurate. Respondents are aware that the submission of false or misleading information to the United States government may subject Respondents to separate civil and/or criminal liability.
11. Respondents agree not to deduct for civil taxation purposes the civil penalty specified in this Consent Agreement and the attached Final Order.
12. EPA has given the District of Columbia prior notice of the issuance of this CAFO in accordance with Section 9006(a)(2) of RCRA, 42 U.S.C. § 6991e(a)(2).

FACTUAL ALLEGATIONS AND CONCLUSIONS OF LAW

13. The United States Environmental Protection Agency - Region III ("EPA" or the "Region") and EPA's Office of Administrative Law Judges have jurisdiction over this matter pursuant to Section 9006 of RCRA, 42 U.S.C. § 6991e, 40 C.F.R. Part 280, and 40 C.F.R. § 22.1(a)(4) and .4(c).
14. At all times relevant to this CAFO, O'Donnell Construction Company has been a Commonwealth of Virginia corporation doing business in the District of Columbia, and 2800 8th Street, L.L.C., has been a limited liability company registered in the District of Columbia (collectively "Respondents").
15. Respondents are a "persons" as defined in Section 9001(5) of RCRA, 42 U.S.C. § 6991(5), and 20 DCMR § 6899.1.
16. At all times relevant to this CAFO, Respondents have been the "owners" and/or "operators," as those terms are defined in Section 9001(3) and (4) of RCRA, 42 U.S.C. § 6991(3) and (4), and 20 DCMR § 6899.1, of the "underground storage tanks" ("UST") and "UST systems" as those terms are defined in Section 9001(10) of RCRA, 42 U.S.C. § 6991(10), and 20 DCMR § 6899.1, located at 2800 8th Street, N.E., Washington, D.C. 20017 (the "Facility").
17. On May 2, 2008, an EPA representative conducted a Compliance Evaluation Inspection ("CEI") of the Facility pursuant to Section 9005 of RCRA, 42 U.S.C. § 6991d.
18. At the time of the May 2, 2008 CEI, and at all times relevant to the applicable violations alleged herein, two (2) USTs, as described in the following subparagraph, were located at the Facility:

- A. A six thousand (6,000) gallon single-walled epoxy-coated steel tank that was installed in or about 1986 and that, at all times relevant hereto, routinely contained and was used to store diesel fuel, a “regulated substance” as that term is defined in Section 9001(7) of RCRA, 42 U.S.C. § 6991(7), and 20 DCMR § 6899.1 (hereinafter “UST Nos. 1”), and
 - B. A four thousand (4,000) gallon single-walled epoxy-coated steel tank that was installed in or about 1986 and that, at all times relevant hereto, routinely contained and was used to store gasoline, a “regulated substance” as that term is defined in Section 9001(7) of RCRA, 42 U.S.C. § 6991(7), and 20 DCMR § 6899.1 (hereinafter “UST Nos. 2”).
19. At all times relevant to the applicable violations alleged herein, the USTs have been “petroleum UST systems” and “existing tank systems” as these terms are defined in 20 DCMR § 6899.1.
20. The USTs were, at all times relevant to the violations alleged in this CAFO, used to store “regulated substance(s)” at Respondents’ Facility, as defined in Section 9001(7) of RCRA, 42 U.S.C. § 6991(7), and 20 DCMR § 6899.1, and have not been “empty” as that term is defined at 20 DCMR § 6100.7.

COUNT 1 - 2

(Failure to perform release detection on USTs)

21. The allegations of Paragraphs 1 through 20 are incorporated herein by reference.
22. 20 DCMR § 6000.1 provides that each owner and operator of a new or existing UST system shall provide a method, or combination of methods, of release detection that meets the requirements described therein.
23. Pursuant to 20 DCMR §§ 6003.1 through 6003.5, tanks which are part of a petroleum UST system must be monitored at least every 30 days for releases using one of the methods listed in 20 DCMR §§ 6008 through 6012, except that: (1) prior to December 22, 1995, certain UST systems could have been monitored using a combination of inventory control and tank tightness testing in compliance with the requirements of 20 DCMR §§ 6005 through 6007; and (2) tanks with a capacity of 550 gallons or less may use weekly tank gauging conducted in accordance with 20 DCMR § 6006.

24. From March 1, 2004 until August 22, 2008, Respondents' UST No. 1 was not monitored in compliance with any of the applicable methods set forth in 20 DCMR § 6003.1 through 6003.5 and/or 20 DCMR §§ 6005 through 6012.
25. From March 1, 2004 until July 9, 2008, Respondents' UST No. 2 was not monitored in compliance with any of the applicable methods set forth in 20 DCMR § 6003.1 through 6003.5 and/or 20 DCMR §§ 6005 through 6012.
26. Respondent's acts and/or omissions as alleged in Paragraphs 24 and 25, above, constitute violations by Respondents of 20 DCMR §§ 6000.1 and 6003.

COUNT 3

(Failure to Comply with Financial Responsibility Requirements)

27. The allegations of Paragraphs 1 through 26 are incorporated herein by reference.
28. 20 DCMR §§ 6700.1 and 6700.10 through 6700.17 provide that owners and operators of petroleum UST systems are required, with exceptions not here relevant, to demonstrate financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of diesel USTs. Subject to the limitations set forth in 20 DCMR §§ 6701.1 through 6701.7, an owner or operator may demonstrate financial responsibility using any of the mechanisms set forth in 20 DCMR §§ 6703 through 6711.
29. From March 1, 2004 until May 7, 2008, Respondents did not maintain financial responsibility for the USTs described in Paragraph 18, above, by any of the methods set forth in 20 DCMR §§ 6703 through 6711.
30. Respondents' act and/or omission as alleged in Paragraph 29, above, if true, constitutes a violation by Respondents of 20 DCMR § 6700.1 and §§ 6700.10 through 6700.17.

CIVIL PENALTY

31. In settlement of Complainant's claims for civil penalties for the violations alleged in this CAFO, Respondents agree to pay a civil penalty in the amount of Nineteen Thousand Dollars (\$19,000.00). The civil penalty amount is due and payable immediately upon Respondents' receipt of a true and correct copy of this CAFO. If Respondents pay the entire civil penalty of Nineteen Thousand Dollars (\$19,000.00) within thirty (30) calendar days of the date on which this CAFO is mailed or hand-delivered to Respondents, no interest will be assessed against Respondents pursuant to 40 C.F.R. § 13.11(a)(1).

32. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest, administrative costs and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below.
33. In accordance with 40 C.F.R. § 13.11(a), interest on any civil penalty assessed in a CAFO begins to accrue on the date that a copy of the CAFO is mailed or hand-delivered to the Respondents. However, EPA will not seek to recover interest on any amount of such civil penalty that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a).
34. The costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period a debt is overdue. 40 C.F.R. § 13.11(b). Pursuant to Appendix 2 of EPA's *Resources Management Directives - Cash Management*, Chapter 9, EPA will assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) days the penalty remains unpaid.
35. A late payment penalty of six percent per year will be assessed monthly on any portion of a civil penalty which remains delinquent more than ninety (90) calendar days. 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on a debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).
36. The aforesaid settlement amount was based upon Complainant's consideration of a number of factors, including, but not limited to, the statutory factors of the seriousness of Respondents' violations and any good faith efforts by Respondents to comply with all applicable requirements as provided in RCRA Section 9006(c) and (e), 42 U.S.C. § 6991e(c) and (e), and with EPA's Penalty Guidance for Violations of UST Regulations ("UST Guidance") dated November 4, 1990.
37. Respondents shall pay the amount described in Paragraph 31, above, by sending a certified or cashier's check payable to the "United States Treasury," as follows:
 - a. All payments by Respondents shall reference each Respondent's name and address, and the Docket Number of this action, *i.e.*, RCRA-03-2009-0058;
 - b. All checks shall be made payable to "**United States Treasury**";
 - c. All payments made by check and sent by regular mail shall be addressed and mailed to:

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

Contact: Natalie Pearson, 314-418-4087

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

U.S. Environmental Protection Agency—Fines and Penalties
U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101

Contact: Natalie Pearson, 314-418-4087

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

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045

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

- f. All electronic payments made through the automated clearinghouse (ACH), also known as Remittance Express (REX), shall be directed to:

Automated Clearinghouse (ACH) for receiving US currency
PNC Bank
808 17th Street, NW
Washington, DC 20074
Contact: Jesse White 301-887-6548
ABA = 051036706
Transaction Code 22 - Checking
Environmental Protection Agency
Account 310006
CTX Format

g. On-Line Payment Option:

WWW.PAY.GOV

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

h. The customer service phone numbers for the above payment centers are:

212-720-5000 (wire transfers, Federal Reserve Bank of New York)
800-762-4224 (ACH/Wire Info, PNC Bank)

Additional payment guidance is available at:

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

A copy of Respondents' check or a copy of Respondents' electronic transfer shall be sent simultaneously to:

Regional Hearing Clerk (3RC00)
EPA Region III
1650 Arch Street
Philadelphia, Pennsylvania 19103 - 2029, and

Louis F. Ramalho
Senior Assistant Regional Counsel
U.S. Environmental Protection Agency - Region III
1650 Arch Street
Philadelphia, PA 19103-2029.

FULL AND FINAL SATISFACTION

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

RESERVATION OF RIGHTS

39. EPA reserves the right to commence action against any person, including Respondents, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. In addition, this settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18(c) of the Consolidated Rules of Practice. Further, EPA reserves any rights and remedies available to it under RCRA, the

regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this CAFO, following its filing with the Regional Hearing Clerk.

OTHER APPLICABLE LAWS

- 40. Nothing in this CAFO shall relieve Respondents of any duties otherwise imposed on them by applicable federal, state or local law and/or regulations.

AUTHORITY TO BIND THE PARTIES

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

ENTIRE AGREEMENT

- 42. This Consent Agreement and the attached Final Order constitute the entire agreement and understanding of the parties concerning settlement of the above-captioned action and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Consent Agreement and the attached Final Order.

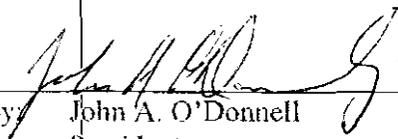
EFFECTIVE DATE

- 43. This CAFO shall become effective upon filing with the Regional Hearing Clerk.

For Respondents:

O'Donnell Construction Company

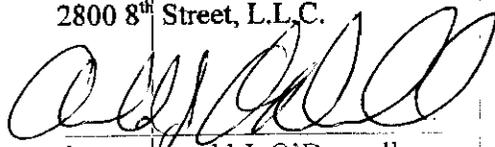
2-13-2004
Date


by: John A. O'Donnell
President

2-13-2004
Date


by: Arnold J. O'Donnell
Secretary

2800 8th Street, L.L.C.



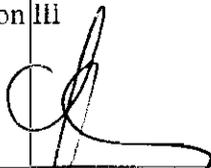
by: Arnold J. O'Donnell

2-13-2009

Date

For Complainant:

U.S. Environmental Protection Agency,
Region III



Louis F. Ramalho
Senior Assistant Regional Counsel

2/23/2009

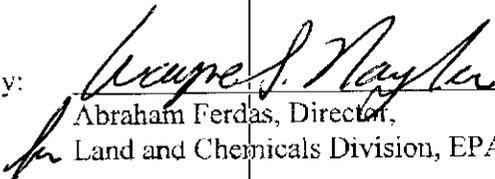
Date

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

3/6/09

Date

By:



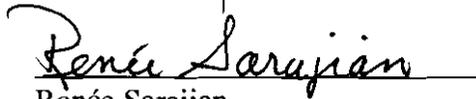
Abraham Ferdas, Director,
Land and Chemicals Division, EPA Region III

Consent Agreement are accepted by the undersigned and incorporated herein as if set forth at length.

NOW, THEREFORE, PURSUANT TO Section 22.18(b)(3) of the *Consolidated Rules of Practice* and Section 9006(c) and (d) of the Resource Conservation and Recovery Act, 42 U.S.C. § 6991e(c) ("RCRA"), and having determined, based on the representations of the parties in the attached Consent Agreement, that the civil penalty agreed to therein was based upon a consideration of the factors set forth in Section 9006(c) and (e) of RCRA, 42 U.S.C. § 6991e(c) and (e), **IT IS HEREBY ORDERED** that Respondent pay a civil penalty of Nineteen Thousand Dollars (\$19,000.00) in accordance with the payment provisions set forth in the attached Consent Agreement and comply with each of the additional terms and conditions as specified in the attached Consent Agreement.

The effective date of this Final Order and the accompanying Consent Agreement is the date on which the Final Order, signed by the Regional Administrator of U.S. EPA Region III or the Regional Judicial Officer, is filed with the Regional Hearing Clerk of U.S. EPA - Region III.

Date: 3/11/09

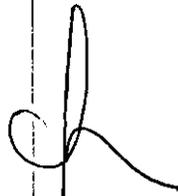

Renée Sarajian
Regional Judicial Officer
U.S. EPA, Region III

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on the date listed below, the original of the foregoing Consent Agreement and Final Order, EPA Docket No. RCRA-03-2009-0058, was filed with the Regional Hearing Clerk, U.S. EPA - Region III, 1650 Arch Street, Philadelphia, Pennsylvania, 19103-2029, and that a true and correct copy was sent via first class mail to the following:

Channing Martin, Esq.
Williams Mullen
8270 Greensboro Drive
Suite 700
McLean, VA 22102

3/11/09
Date



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

19103-2029