

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

In the Matter of:)	
)	
1535 Kenilworth Ave LLC)	U.S. EPA Docket Number
1535 Kenilworth Ave NE)	RCRA-03-2019-0134
Washington, DC 20019)	
OPERATOR)	Proceeding Under Section 9006 of the
)	Resource Conservation and Recovery
RESPONDENT,)	Act, as amended, 42 U.S.C. Section
)	6991e
Kenilworth BP)	
1535 Kenilworth Ave NE)	
Washington, DC 20019)	
)	
FACILITY.)	
)	
)	

CONSENT AGREEMENT

PRELIMINARY STATEMENT

1. This Consent Agreement is entered into by the Director for the Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency, Region III (“Complainant”) and 1535 Kenilworth Ave LLC (“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. Section 9006 of RCRA authorizes the Administrator of the U.S. Environmental Protection Agency to assess penalties and undertake other actions required by this Consent Agreement. The Administrator has delegated this authority to the Regional Administrator who, in turn, has delegated it to the Complainant. This Consent Agreement and the attached Final Order resolve Complainant’s civil penalty claims against Respondent under Section 9006 of RCRA (or the “Act”), and the District of Columbia’s federally authorized underground storage tank program for the violations alleged in the Amended Administrative Complaint, Compliance Order and Notice of Opportunity for a Hearing (“Amended Complaint”) filed on December 13, 2019.

2. In accordance with 40 C.F.R. §§ 22.18(b)(2) and (3) of the Consolidated Rules of Practice, Complainant hereby resolves this administrative proceeding against Respondent 1535 Kenilworth Ave LLC

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), 22.18(b)(2) and (3).

GENERAL PROVISIONS

5. For purposes of this proceeding, Respondent admits the jurisdictional allegations and neither admits nor denies the factual allegations as set forth in the Amended Complaint filed on December 13, 2019. The original Complaint was filed on September 24, 2019.
6. 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.
7. For purposes of this proceeding only, Respondent hereby expressly waives its right to contest the allegations set forth in the Amended Complaint and waives its right to appeal the accompanying Final Order.
8. 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.
9. Respondent shall bear its own costs and attorney’s fees in connection with this proceeding.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

10. In accordance with 40 C.F.R. § 22.18(b)(2) and (3) of the Consolidated Rules of Practice, the Complainant alleges and adopts the Findings of Fact and Conclusions of Law set forth in the Amended Complaint as if fully set forth herein.

CIVIL PENALTY

11. In settlement of EPA’s claims for civil penalties assessable for the violations alleged in the Amended Complaint, Respondent consents to the assessment of a civil penalty in the amount of **One Thousand Dollars (\$1,000.00)** which Respondent shall be liable to pay in accordance with the terms set forth below.

12. The civil penalty is based upon EPA’s consideration of a number of factors, including the penalty criteria (“statutory factors”) set forth in Section 9006(c) of RCRA, 42 U.S.C. § 6991e(c), which requires EPA to take into account the seriousness of the violation and any good faith efforts to comply with the applicable requirements. These factors were applied to the particular facts and circumstances of this case with specific reference to EPA’s Interim Consolidated Enforcement Penalty Policy for Underground Storage Tank Regulations (“UST Penalty Guidance”) which reflects the statutory penalty criteria and factors set forth Section 9006(c) of 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. The civil penalty is also based upon an analysis of Respondent’s ability to pay a civil penalty. This analysis was based upon information voluntarily submitted to EPA by Respondent. Based upon this analysis EPA has determined that the Respondent is unable to pay a civil penalty in excess of the dollar amount set forth in Paragraph 11, above, in settlement of the above-captioned action. Complainant has relied upon the financial information provided by Respondent and, based upon that information, it is Complainant’s conclusion that the Respondent has established that it is unable to pay the full amount of the civil penalty identified and set forth in Paragraph 11, above, within thirty (30) days of the effective date of this Consent Agreement and that a payment plan of the nature and duration set forth below is necessary and appropriate.

13. Pursuant to the provisions of this Consent Agreement and based on Respondent’s certified statement that it was impacted by the COVID-19 Pandemic, Respondent will remit a total civil penalty (principal) of \$ 1000.00 Dollars and interest (calculated at the rate of 2% per annum on the outstanding principal balance) in the amount of \$ 9.17 Dollars, in accordance with the installment payment schedule set forth in the chart, immediately below:

Payment No.	Principal Amount	Interest	Date Payment Due (From Effective Date of Agreement)	Payment Amount Due
1	\$ 83.33	\$ -	Within 60 Days	\$ 83.33
2	\$ 83.33	\$ 1.53	Within 90 Days	\$ 84.86

3	\$ 83.33	\$ 1.39	Within 120 Days	\$ 84.72
4	\$ 83.33	\$ 1.25	Within 150 Days	\$ 84.48
5	\$ 83.33	\$ 1.11	Within 180 Days	\$ 84.44
6	\$ 83.33	\$.97	Within 210 Days	\$ 84.31
7	\$ 83.33	\$.83	Within 240 Days	\$ 84.17
8	\$ 83.33	\$.69	Within 270 Days	\$ 84.03
9	\$ 83.33	\$.56	Within 300 Days	\$ 83.89
10	\$ 83.33	\$.42	Within 330 Days	\$ 83.75
11	\$ 83.33	\$.28	Within 360 Days	\$ 83.61
12	\$ 83.33	\$.14	Within 390 Days	\$ 83.47
Total:	\$ 1,000 .00	\$ 9.17		\$ 1,009.17

- If Respondent fails to make timely payment of any one of the required installment payments in accordance with the installment payment schedule set forth, immediately above, the entire unpaid balance of the penalty and all accrued interest shall become due immediately upon such failure, and Respondent shall immediately pay the entire remaining principal balance of the civil penalty along with any interest that has accrued up to the time of such payment. In addition, Respondent shall be liable for, and shall pay, applicable interest, administrative handling charges and late payment penalty charges as described in Paragraphs 15 through 19, below, in the event of any such failure or default.
- Respondent may, at any time after commencement of payments under the installment payment schedule, elect to pay the entire principal balance, together with accrued interest to the date of such full payment.

14. 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 Respondent's name and address, and the Docket Number of this action, *i.e.*, **RCRA-03-2019-0134**;
- 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
Cincinnati Finance Center
P.O. Box 979077
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 via postal mail, other commercial delivery service or email to:

Jeffrey S. Nast (3RC40)
Senior Assistant Regional Counsel
U.S. Environmental Protection Agency - Region III
1650 Arch Street
Philadelphia, PA 19103-2029
Nast.Jeffrey@epa.gov

15. 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 or to comply with the conditions in this Consent Agreement and the attached Final Order shall result in the assessment of late payment charges including interest, penalties, and/or administrative costs of handling delinquent debts.
16. Payment of the civil penalty, in accordance with the above terms and provisions, 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).

17. 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 that a copy of the fully executed and filed Consent Agreement and Final Order is mailed or hand-delivered to Respondent. 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).
18. 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). Pursuant to Appendix 2 of EPA’s *Resources Management Directives – Case 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.
19. 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).
20. Respondent agrees not to deduct for federal tax purposes the civil penalty assessed in this Consent Agreement and Final Order.

GENERAL SETTLEMENT CONDITIONS

21. 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.
22. 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, managers, agents or representatives 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. Respondent and its officers are further aware that any false statement(s) regarding the impact of the COVID-19 Pandemic on Respondent's financial ability to pay will cause this agreement to be void.

CERTIFICATION OF COMPLIANCE

23. Respondent certifies to EPA, upon investigation and to the best of its knowledge and belief that Respondent is currently compliant with applicable provisions of RCRA Subtitle I, 40 C.F.R. Part 280, and the District of Columbia's federally authorized underground storage tank program.

OTHER APPLICABLE LAWS

24. 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 Subtitle I of RCRA or any regulations promulgated thereunder.

RESERVATION OF RIGHTS

25. This Consent Agreement and Final Order resolves only EPA's claims for civil penalties for the specific violation[s] alleged against Respondent in the Amended Complaint. 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, 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

26. This Consent Agreement and Final Order shall apply to and be binding upon the EPA, the Respondent and its officers, employees, contractors, successors, agents and assigns of Respondent. By signing below, Respondent representative is acknowledging that he is legally bound to the terms and conditions of this Consent Agreement and Final Order.

EFFECTIVE DATE

27. The effective date of this CAFO is the date on which the Final Order, signed by the Regional Administrator of EPA, Region III, or his/her 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

28. 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.

For Respondent: 1535 Kenilworth Ave LLC

Date: 7/23/2020



Zubair Wahla, Manager

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/her designee, the Regional Judicial Officer, issue the attached Final Order.

Date: _____

By: _____

Karen Melvin
Director, Enforcement and Compliance
Assurance Division
U.S. EPA – Region III
Complainant

Attorney for Complainant:

Date: _____

By: _____

Jeffrey S. Nast
Sr. Assistant Regional Counsel
U.S. EPA – Region III

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RCRA-03-2019-0134

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In the Matter of:)	
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1535 Kenilworth Ave LLC)	U.S. EPA Docket Number
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OWNER)	Proceeding Under Section 9006 of the
)	Resource Conservation and Recovery
RESPONDENT,)	Act, as amended, 42 U.S.C. Section
)	6991e
Kenilworth BP)	
1535 Kenilworth Ave NE)	
Washington, DC 20019)	
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FACILITY.)	
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)	

FINAL ORDER

The Complainant, the Director for the Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency, Region III and Respondent 1535 Kenilworth Ave 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. The terms of the foregoing Consent Agreement are accepted by the undersigned and incorporated into this Final Order as if set forth fully 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 Interim Consolidated Enforcement Penalty Policy for Underground Storage Tank Regulations (“UST Penalty Guidance”) which reflects the statutory penalty criteria and factors set forth in Section 9006(c) of 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 policies to account for inflation. The civil penalty is also based upon an analysis of Respondent’s ability to

pay a civil penalty. This analysis was based upon information voluntarily submitted to EPA by Respondent.

NOW WHEREFORE, pursuant to the authority of Section 9006 of the Resource Conservation and Recovery Act (“RCRA”), as amended, 42 U.S.C. § 6991e, **IT IS HEREBY ORDERED** that Respondent pay a civil penalty in the amount of **One Thousand Dollars (\$1,000.00)** in accordance with the payment provisions set forth in the attached Consent Agreement, including payment of any applicable interest, and complying with each of the additional terms and conditions as specified in the attached 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 Section 9006 of RCRA, as amended, 42 U.S.C. § 6991e, and the regulations promulgated thereunder.

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

Date: _____

Joseph J. Lisa
Regional Judicial Officer
U.S. EPA - Region III