

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

In the Matter of:)
)
 Nestle Transportation Company)
 5448 Oakview Drive)
 Allentown, PA 18104)
)
 RESPONDENT,)
)
 Swallow Associates)
 5448 Oakview Drive)
 Allentown, PA 18104)
)
 FACILITY.)
)

Docket Number: RCRA-3-2013-009
 Proceeding Under Section 9006 of the
 Resource Conservation and Recovery Act,
 as amended, 42 U.S.C. § 6991e.

RECEIVED
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 REGIONAL HEARING CLERK
 EPA REGION III, PHILA. PA

CONSENT AGREEMENT

This Consent Agreement (“CA”) is entered into by the Director, Land and Chemicals Division, U.S. Environmental Protection Agency, Region III (“EPA” or “Complainant”) and Nestle Transportation Company (“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”), 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 Commonwealth of Pennsylvania’s federally authorized underground storage tank program by Respondent in connection with its underground storage tank located at 5448 Oakview Drive, Allentown, PA 18104 (the “Facility”).

Effective September 11, 2003, pursuant to Section 9004 of RCRA, 42 U.S.C. § 6991c, and 40 C.F.R. Part 281, Subpart A, the Commonwealth of Pennsylvania 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 Commonwealth of Pennsylvania’s UST management program, through this

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 Respondent to EPA regarding matters at issue in this CAFO are false or, in any material respect, inaccurate. Respondent is aware that the submission of false or misleading information to the United States government may subject Respondent to separate civil and/or criminal liability.
11. EPA has given the Commonwealth of Pennsylvania 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

12. 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).
13. Respondent is a “person” as defined in Section 9001(5) of RCRA, 42 U.S.C. § 6991(5), and 25 PA Code § 245.1.
14. At all times relevant to this CAFO, Respondent has been the “owner” and/or “operator,” as those terms are defined in Section 9001(3) and (4) of RCRA, 42 U.S.C. § 6991(3) and (4), and 25 PA Code § 245.1, of the “underground storage tank” (“UST”) and “UST system” as those terms are defined in Section 9001(10) of RCRA, 42 U.S.C. § 6991(10), and 25 PA Code § 245.1, located at the Facility.
15. On September 27, 2011, an EPA representative conducted a Compliance Evaluation Inspection (“CEI”) at the Facility pursuant to Section 9005 of RCRA, 42 U.S.C. § 6991d.
16. At the time of the September 27, 2011 CEI, and at all times relevant to the applicable violations alleged herein, the following UST was located at the Facility:
 - (A) a ten thousand (10,000) gallon double walled fiberglass tank that was installed in or about October 31, 1997, 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 25 PA Code § 245.1 (hereinafter “UST No. 1”).

25. Respondent failed to perform an annual test of the automatic line leak detectors for the underground piping for UST No. 1 from June 11, 2011 until April 5, 2012.
26. Respondent's act and/or omission as alleged in Paragraph 25, above, constitutes a violation by Respondent of 25 PA Code §§ 245.442(2)(i) and 245.445(1).

COUNT 2

(Failure to conduct annual line tightness testing of the piping)

27. The allegations of Paragraphs 1 through 26 of the CA are incorporated herein by reference.
28. 25 PA Code § 245.442(2)(i) provides, in pertinent part, that underground piping that conveys regulated substances under pressure shall:
 - (A). Be equipped with an automatic line leak detector conducted in accordance with § 245.445(1); and
 - (B). Have an annual line tightness test conducted in accordance with § 245.445(2) or have monthly monitoring conducted in accordance with § 245.445(3).
29. Respondent conducted a testing of the piping associated with UST No. 1 only on June 11, 2010 and April 6, 2012.
30. From June 11, 2011 until April 5, 2012, the piping for UST No. 1 was underground and routinely conveyed regulated substances under pressure.
31. Respondent failed to perform an annual line tightness testing in accordance with 25 PA Code § 245.445(2) or have monthly monitoring conducted in accordance with 25 PA Code § 245.445(3) for the underground piping associated with UST No. 1 from June 11, 2011 until April 5, 2012.
32. Respondent's act and/or omission as alleged in Paragraph 31, above, constitutes a violation by Respondent of 25 PA Code § 245.442(2)(i)(B).

40. 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 Respondent. 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).
41. 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.
42. 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).
43. 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 Respondent's violations and any good faith efforts by Respondent to comply with all applicable requirements as provided in RCRA Section 9006(c), 42 U.S.C. § 6991e(c), and with EPA's Penalty Guidance for Violations of UST Regulations ("UST Guidance") dated November 4, 1990.
44. Respondent shall pay the amount described in Paragraph 38 above, by sending a certified or cashier's check payable as follows:
 - a. All payments by Respondent shall reference Respondent's name and address, and the Docket Number of this action, *i.e.*, **RCRA-03-2013-0093**;
 - 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. EPA - Fines and Penalties
Cincinnati Finance Center

- b. 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
Environmental Protection Agency, Account No. 310006
CTX Format Transaction Code 22 - checking

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

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

- c. On-Line Payment Option:

WWW.PAY.GOV/PAYGOV

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

- d. Additional payment guidance is available at:

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

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


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

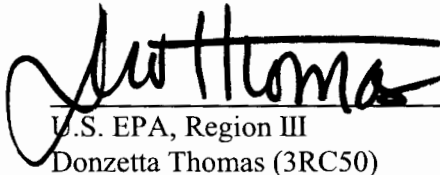
Donzetta Thomas (3RC50)
Senior Assistant Regional Counsel
U.S. Environmental Protection Agency - Region III
1650 Arch Street
Philadelphia, PA 19103-2029.

For Respondent:

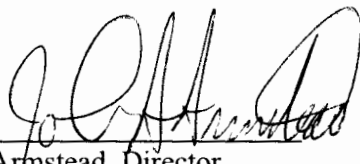
For Complainant:

JL
1-11-13


Nestle Transportation Company
Name: Yun Au
Title: Chief Legal Officer

 1/23/13
U.S. EPA, Region III
Donzetta Thomas (3RC50)
Senior Assistant Regional Counsel

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.

By:  2.6.13
John Armstead, Director
Land and Chemicals Division,
U.S. EPA, Region III

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
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RESPONDENT,)	as amended, 42 U.S.C. § 6991e.
)	
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Swallow Associates)	
5448 Oakview Drive)	
Allentown, PA 18104)	
)	
FACILITY.)	

FINAL ORDER


Complainant, the Director of the Land and Chemicals Division, U.S. Environmental Protection Agency - Region III, and Respondent, Nestle Transportation, 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 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) 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 of Eleven Thousand Eight Hundred Sixty-

Five Dollars (\$11,865.00) agreed to therein was based upon a consideration of the factors set forth in Section 9006(c) of RCRA, 42 U.S.C. § 6991e(c), **IT IS HEREBY ORDERED** that Respondent pay a civil penalty of **Eleven Thousand Eight Hundred Sixty-Five Dollars (\$11,865.00)** 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 CAFO is filed with the Regional Hearing Clerk of U.S. EPA - Region III.

Date: 2/13/13


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

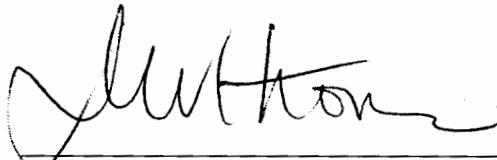
CERTIFICATE OF SERVICE

I hereby certify that, on the date listed below, the original and one copy of the foregoing Consent Agreement and Final Order, Docket No. RCRA-03-2013-0093 was filed with the EPA Region III Regional Hearing Clerk, and that a correct copy of the same was sent in the following manner to the person listed below:

Via United Parcel Service to:

Jennifer Costanza, Managing Counsel
Safety, Health & the Environment
Nestle' USA, Legal Department
800 North Brand Blvd
Glendale, CA 91203
818-5549-6220

2/13/13
Date



Donzetta W. Thomas (3RC50)
Counsel for Complainant
U.S. Environmental Protection Agency, Region III
(215) 814-2474