

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
4 Penn Center
Philadelphia, Pennsylvania 19103**

In the Matter of:

**Yogkala Management Inc.
95 S. Mountain Blvd
Mountain Top, PA 18707**

Respondent.

**Valley Mart Dallas
3230 Route 309
Dallas, PA 18612**

And

**Valley Mart Mountain Top
Route 309 & South Main Street
Mountain Top, PA 18707**

Facilities.

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: **U.S. EPA Docket No. RCRA-03-2022-0113**
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: **CONSENT AGREEMENT**
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: **Proceeding under Section 9006 of the Resource**
: **Conservation and Recovery Act, as amended,**
: **42 U.S.C. Section 6991e**
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CONSENT AGREEMENT

PRELIMINARY STATEMENT

1. This Consent Agreement is entered into by the Director of the Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency Region III (“Complainant”) and Yogkala Management Inc. (“Respondent”) (collectively the “Parties”), 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(d) of RCRA, 42 U.S.C. § 6991e(d), authorizes the Administrator of the U.S. Environmental Protection Agency (“EPA”) to assess a civil penalty against any owner or operator of an underground storage tank who fails to comply with, *inter alia*, any requirement or standard of a State underground storage tank program that has been approved by EPA pursuant to Section 9004 of RCRA, 42 U.S.C. § 6991c. The Administrator has delegated this authority to the Regional Administrator who, in turn, has delegated the authority to enter into agreements concerning administrative penalties to the Complainant. This Consent Agreement and the attached Final Order (hereinafter jointly referred to as the “Consent Agreement and Final Order”) resolve Complainant’s

civil penalty claims against Respondent under RCRA Subtitle I, 42 U.S.C. §§ 6991-6991m, and the Commonwealth of Pennsylvania's federally authorized underground storage tank program for the violations alleged herein.

2. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice, Complainant hereby simultaneously commences and resolves this administrative proceeding.

JURISDICTION

3. The U.S. Environmental Protection Agency ("EPA") has jurisdiction over the above-captioned matter, as described in Paragraphs 1 - 2.
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 Pennsylvania prior notice of the issuance of this Consent Agreement 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 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 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 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. Effective September 11, 2003, pursuant to Section 9004 of RCRA, 42 U.S.C. § 6991c, and 40 C.F.R. Part 281, EPA granted the Commonwealth of Pennsylvania final approval to administer a state underground storage tank (“UST”) management program (“Pennsylvania UST management program”) *in lieu* of the Federal UST management program established under Subtitle I of RCRA, 42 U.S.C. §§ 6991-6991m. The approved provisions of the Pennsylvania UST management program are enforceable by EPA pursuant to Section 9006 of RCRA, 42 U.S.C. § 6991e. The Pennsylvania UST management program regulations are set forth in the Pennsylvania Code, Title 25, Chapter 245, Sections 245.1 *et seq.*, and will be cited hereinafter as 25 Pa. Code 245.1 *et seq.*
14. At all times relevant to this Consent Agreement Final Order, Respondent has been a Pennsylvania corporation doing business in the Commonwealth of Pennsylvania.
15. Respondent is a “person” as defined in Section 9001(5) of RCRA, 42 U.S.C. § 6991(5), and 25 Pa. Code § 245.1.
16. At all times relevant to violations alleged in this Consent Agreement Final Order, Respondent has been the “owner” and “operator”, as these terms are defined in Section 9001(4) of RCRA, 42 U.S.C. § 6991(4), and 25 Pa. Code § 245.1, of “underground storage tank(s)” and “underground storage tank system(s)” as those terms are defined in Section 9001(10) of RCRA, 42 U.S.C. § 6991(10), and 25 Pa. Code § 245.1, at the Valley Mart Dallas facility (“VMD”) located at 3230 Route 309 Dallas, Pennsylvania and the Valley Mart Mountain Top facility (“VMMT”) located at Route 309 & South Main Street Mountain Top, Pennsylvania (collectively, “the Facilities”).
17. The Complainant sent the Respondent an information request letter regarding the Facilities identified in Paragraph 16 on August 6, 2020 (the “IRL”) pursuant to Section 9005 of RCRA, 42 U.S.C. § 6991d. and the Commonwealth of Pennsylvania UST program.
18. At the time of the IRL, and at all times relevant to the applicable violations alleged herein, underground storage tanks (“USTs”) and UST systems (which includes the attached piping and associated equipment pertaining to the UST) used to contain “regulated substance[s]” as this term is defined in Section 9001(7) of RCRA, 42 U.S.C. § 6991(7), and 25 Pa. Code § 245.1, were present at the Facilities. More specifically, the VMD Facility has six (6) USTs. USTs 1-5 were installed on November 1, 1989. UST 6 was installed on September 9, 2010. USTs 1-5 are constructed of cathodically protected galvanic steel. UST 6 is a double wall tank constructed of steel with a plastic or fiberglass jacket. All of the UST systems at VMD use pressurized piping. The VMMT Facility has seven (7) USTs. USTs 1-5 were installed on October 1, 1989, and USTs 6-7 were installed on July 25, 1996. All of the UST systems at VMMT are constructed of cathodically protected galvanic steel and use pressurized piping.

Count I - Failure to Conduct Annual Testing of the operation of four (4) Automatic Line Lead Detectors at VMD

19. The allegations of Paragraphs 1 through 18 of his Consent Agreement are incorporated

herein by reference.

20. Pursuant to 25 Pa. Code §§ 245.442(2)(i)(A), 245.445(1), owners and operators of petroleum underground storage tank systems with pressurized piping equipped with automatic line leak detectors are required to conduct an annual test of the operation of the leak detectors in accordance with manufacturer's requirements.
21. At all times relevant to the applicable violations alleged herein, the piping associated with UST systems 1 through 6 at VMD conveyed regulated substances under pressure and were equipped with automatic line leak detectors.
22. From at least November 7, 2019 through December 20, 2020 Respondent did not conduct any testing of the line leak detectors on UST systems 1 through 4 at VMD, which it should have performed on or about November 7, 2019, and November 7, 2020. Therefore, Respondent failed to annually test the operation of four (4) automatic line leak detectors at VMD in violation of 25 Pa. Code § 245.445(1).
23. Respondent's acts or omissions as the owner and operator, alleged in Paragraphs 21 and 22 constitute violations by Respondent of 25 Pa. Code § 245.445(1).
24. In failing to comply with 25 Pa. Code § 245.445(1), Respondent 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 Conduct Annual Testing of the operation of seven (7)
Automatic Line Leak Detectors at VMMT**

25. The allegations of Paragraphs 1 through 24 of this Consent Agreement are incorporated herein by reference.
26. Pursuant to 25 Pa. Code §§ 245.442(2)(i)(A), 245.445(1), owners and operators of petroleum underground storage tank systems with pressurized piping equipped with automatic line leak detectors are required to conduct an annual test of the operation of the leak detectors in accordance with manufacturer's requirements.
27. At all times relevant to the applicable violations alleged herein, the piping associated with UST systems 1 through 7 conveyed regulated substances under pressure and were equipped with automatic line leak detectors.
28. From at least November 1, 2019 through December 31, 2020 Respondent did not conduct any testing of the line leak detectors on UST systems 1 through 7 at VMMT, which it should have performed on or about November 1, 2019, and November 1, 2020. Therefore, Respondent failed to annually test the operation of seven (7) automatic line leak detectors at VMMT in violation of 25 Pa. Code § 245.445(1).
29. Respondent's acts or omissions as the owner and operator, alleged in Paragraphs 27 and 28 constitute violations by Respondent of 25 Pa. Code § 245.445(1).

30. In failing to comply with 25 Pa. Code § 245.445(1), Respondent 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 Provide Overfill Protection Equipment on four (4) USTs at VMMT

31. The allegations of Paragraphs 1 through 30 of his Consent Agreement are incorporated herein by reference.
32. Pursuant to 25 Pa. Code § 245.442(d) owners and operators of existing USTs in order to prevent spilling and overfilling associated with product transfer to the underground storage tank system, must comply with underground storage tank system spill and overfill prevention equipment requirements in 25 Pa. Code §§ 245.421(3).
33. At all times relevant to the violations alleged herein, USTs 1-3, and 6-7 at VMMT were “existing underground storage tank systems” as that term is defined at 25 Pa. Code § 245.1.
34. Pursuant to §§ 245.421(3), in order to prevent spilling and overfilling associated with product transfer to the underground storage tank system, owners and operators shall ensure that their systems have spill and overfill prevention equipment permanently installed.
35. From November 2, 2020 to at least April 13, 2021, Respondent at the owner and operator failed to provide any overfill prevention equipment on USTs 1-3, and 6-7 at VMMT.
36. Respondent’s role as owner and operator in the acts or omission as alleged in Paragraph 35 constitute violations by Respondent of 25 Pa. Code § 245.442(d).
37. In failing to comply with 25 Pa. Code § 245.442(d), Respondent is subject to the assessment of penalties under Section 9006(d)(2) of RCRA, 42 U.S.C. § 6991e(d)(2).

CIVIL PENALTY

38. In settlement of EPA’s claim for civil penalties for the violation alleged in this Consent Agreement, Respondent consents to the assessment of a civil penalty in the amount of FORTY-FIVE THOUSAND dollars (\$45,000.00), which Respondent shall be liable to pay in accordance with the terms set forth below.
39. 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, including, the following: the seriousness of the violation and any good faith efforts to comply with the applicable requirement. These factors were applied to the particular facts and circumstances of this case with specific reference to EPA’s October 5, 2018 *Interim Consolidated Enforcement Penalty Policy for Underground Storage Tank (UST) Regulations and Revised Field Citation Program and ESA Pilot* and November 1990 *U.S. EPA Penalty Guidance for*

Violations of UST Regulations which reflects the statutory penalty criteria and factors set forth at Section 9006(c) of RCRA, 42 U.S.C. § 6991e(c), 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.

40. 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.*, Docket No.: RCRA-03-2022-0113;
- 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 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 email to:

Jeffrey S. Nast
Senior Assistant Regional Counsel
U.S. EPA, Region III (3RC40)
Nast.Jeffrey@epa.gov

41. 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.

42. 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 Final Order. Receipt by Respondent or Respondent's legal counsel of such copy of the fully executed

Consent Agreement Final Order, with a date stamp indicating the date on which the Consent Agreement 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).

43. INTEREST: In accordance with 40 C.F.R § 13.11(a)(1), interest on the civil penalty assessed in this Consent Agreement Final Order will begin to accrue from the date of initial notice of the fully executed and filed Consent Agreement Final Order 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).
44. 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.
45. 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).
46. Respondent agrees not to deduct for federal tax purposes the civil penalty assessed in this Consent Agreement Final Order.
47. **The parties consent to service of the Final Order by e-mail at the following valid e-mail addresses: nast.jeffrey@epa.gov (for Complainant), and jgd@elliottgreenleaf.com (for Respondent).**

GENERAL SETTLEMENT CONDITIONS

48. By signing this Consent Agreement, Respondent acknowledges that this Consent Agreement Final Order will be available to the public and represents that, to the best of Respondent's knowledge and belief, this Consent Agreement Final Order does not contain any confidential business information or personally identifiable information from Respondent.
49. 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 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

50. Respondent represents 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

51. Nothing in this Consent Agreement 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 Final Order does not constitute a waiver, suspension or modification of the requirements of RCRA, or any regulations promulgated thereunder.

RESERVATION OF RIGHTS

52. This Consent Agreement Final Order resolves only EPA's claims for civil penalties for the specific violations alleged against Respondent in this Consent Agreement 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, the regulations promulgated thereunder and any other federal law or regulation to enforce the terms of this Consent Agreement Final Order after its effective date.

EXECUTION /PARTIES BOUND

53. This Consent Agreement 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 Final Order.

EFFECTIVE DATE

54. The effective date of this Consent Agreement Final Order 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

55. This Consent Agreement 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 Final Order.

For Respondent:

Yogkala Management Inc.
(Valley Mart Dallas & Valley Mart Mountain Top)

Date: 9/8/2022

By: 

Nimesh Patel
President/Owner

For the Complainant:

After reviewing the Consent Agreement and other pertinent matters, I, the undersigned Director of the Enforcement & 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: _____

[Digital Signature and Date]

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

Attorney for Complainant:

Date: _____

By: _____

[Digital Signature and Date]

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

U.S. EPA Penalty Guidance for Violations of UST Regulations; the statutory factors set forth in Section 9006(c) of RCRA, 42 U.S.C. 6991 e(c); 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.

NOW, THEREFORE, PURSUANT TO Section 9006 of the Resource Conservation and Recovery Act ("RCRA"), as amended, 42 U.S.C. 6991e, 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 FORTY-FIVE THOUSAND dollars (\$45,000.00), in accordance with the payment provisions set forth in the Consent Agreement, 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: _____

[Digital Signature and Date]

Joseph J. Lisa
Regional Judicial and Presiding Officer
U.S. EPA – Region III

Jeffrey S. Nast
Senior Assistant Regional Counsel
U.S. EPA, Region III
nast.jeffrey @epa.gov

Jeremy Dearden
Environmental Specialist
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dearden.jeremy@epa.gov

[Digital Signature and Date]
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region III