



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

In Reply Refer To Mail Code: 3RC50

MAR 31 2014

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Robert A. Williams  
10106 White Oak Road  
Ford, Virginia 23850-2512

James B. VanCleaf  
10019 Cox Road  
Ford, Virginia 23850

Re: Consent Agreement and Final Order  
EPA Docket No.: RCRA-03-2014-0074

RECEIVED  
2014 MAR 31 AM 10:02  
REGIONAL HEARING CLERK  
EPA REGION III, PHILADELPHIA

Dear Messrs. Willams and VanCleaf:

Enclosed is a copy of the CONSENT AGREEMENT AND FINAL ORDER filed today with the Regional Hearing Clerk settling the matter referenced above. For your files, I am also enclosing a copy of the supporting memorandum from Environmental Protection Agency management to the Regional Judicial Officer. Should you have any questions or concerns, please feel free to contact me at (215) 814-2066.

Sincerely,

Jennifer M. Abramson  
Senior Assistant Regional Counsel

Enclosures

cc: Melissa Toffel, EPA



program regulations are set forth in the Virginia Administrative Code, Title 9, Agency 25, Chapter 580, Sections 10 *et seq.*, and will be cited hereinafter as 9 V.A.C. § 25-580-10 *et seq.*

Section 9006(d)(2)(B) of RCRA, 42 U.S.C. § 6991e(d)(2)(B), authorizes EPA to assess a civil penalty against any owner or operator of an underground storage tank who fails to comply with 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.

**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 expressly waive their rights 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 fees.
7. The persons signing this CA on behalf of the Respondents certify to EPA by their signatures herein that Respondents, as of the date of this CA, are in compliance with the provisions of RCRA, Subtitle I, 42 U.S.C. §§ 6991-6991m, and the Commonwealth of Virginia's federally authorized underground storage tank program set forth at as 9 V.A.C. § 25-580-10 *et seq.* at the Facility referenced herein.
8. The provisions of this CAFO shall be binding upon Respondents, and their officers, directors, employees, successors and assigns.
9. This CAFO shall not relieve Respondents of their obligations 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 of any regulations promulgated or authorized 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 Commonwealth of Virginia 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. EPA has jurisdiction over this matter pursuant to Section 9006 of RCRA, 42 U.S.C. § 6991e, and 40 C.F.R. § 22.1(a)(4).
14. Respondents are each a “person” as defined in Section 9001(5) of RCRA, 42 U.S.C. § 6991(5), and 9 V.A.C. § 25-580-10.
15. At all times relevant to this CAFO, James B. VanCleaf and Robert A. Williams have been the “operator” and “owner”, respectively, as those terms are defined in Section 9001(3) and (4) of RCRA, 42 U.S.C. § 6991(3) and (4), and 9 V.A.C. § 25-580-10, 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 9 V.A.C. § 25-580-10, at the Van Cleef Tire and Auto facility located at 10019 Cox Road in Ford, Virginia.
16. On December 19, 2012, an EPA representative conducted an inspection at the Facility pursuant to Section 9005 of RCRA, 42 U.S.C. § 6991d.
17. Pursuant to RCRA Section 9005, 42 U.S.C. § 6991d, EPA issued an Information Request Letter (“IRL”) to Respondents on February 21, 2013 concerning the UST systems at their Facility.

**COUNT I**

**FAILURE TO CONDUCT APPROVED TANK RELEASE MONITORING**

18. Paragraphs 1 through 17 are incorporated by reference as if fully set forth herein.
19. At the times relevant to this CAFO, the underground storage tank systems at the Facility included an eight thousand (8,000) gallon gasoline underground storage tank, a four thousand (4,000) gallon gasoline underground storage tank, and a one thousand (1,000) gallon diesel underground storage tank, all constructed with composite material and installed on or about December 1, 1998.
20. At all times relevant to this CAFO, the underground storage tank systems at the Facility were "petroleum UST system[s]" as such term is defined in Section 9001(6) of RCRA, 42 U.S.C. § 6991(6), and 9 V.A.C. § 25-580-10.
21. Pursuant to 9 V.A.C. § 25-580-140(1), owners and operators of petroleum UST systems are required to monitor tanks at least every 30 days for releases using one of the methods listed in subsections 4 through 8 of 9 V.A.C. 25-580-160.
22. Section 9 V.A.C. § 25-580-140(1)(a) provides an exception for UST systems installed meeting performance standards in subsections 1 through 5 of 9 V.A.C. 25-580-50 which are permitted to use specified alternative methods (i.e., monthly inventory controls and tank tightness testing every five years) for up to ten (10) years after the tank is installed.
23. The three USTs at the Facility described in Paragraph 19, above, qualified for the exception provided in Section 9 V.A.C. § 25-580-140(1)(a) until ten (10) years after December 1, 1998.
24. Based on EPA's December 19, 2012 inspection, Respondents' response to EPA's February 21, 2013 IRL, and other relevant information, EPA has determined that Respondents continued use the alternative method of release detection beyond the regulatory deadline, and failed to utilize an allowable method of release detection for the three USTs at the Facility from February 2009 through September 30, 2013.
25. Respondents' acts and/or omissions as alleged in Paragraph 24, above, constitute a violation by Respondents of the requirements of 9 V.A.C. § 25-580-140(1).

**COUNT II**

**FAILURE TO MEET OVERFILL PROTECTION REQUIREMENTS**

26. Paragraphs 1 through 25 are incorporated by reference as if fully set forth herein.

27. Pursuant to 9 V.A.C. § 25-580-50(3)(a)(2), owners and operators of UST systems must use overfill prevention equipment that will automatically shut off flow into the tank when the tank is no more than 95% full, or that will alert the transfer operator when the tank is no more than 90% full by restricting the flow into the tank or triggering a high-level alarm.
28. Based on EPA's December 19, 2012 inspection, Respondents' response to EPA's February 21, 2013 IRL, and other relevant information, EPA has determined that Respondents failed to meet the overfill protection requirements of 9 V.A.C. § 25-580-50(3)(a)(2) for the three USTs at the Facility from at least December 19, 2012 through March 19, 2013.
29. Respondents' acts and/or omissions as alleged in Paragraph 28, above, constitute a violation by Respondents of the requirements of 9 V.A.C. § 25-580-50(3)(a)(2).

**CIVIL PENALTY**

30. In settlement of Complainant's claims for civil penalties for the violations alleged in this CA, Respondents agree to pay a civil penalty in the amount of eight thousand one hundred dollars (\$8,100) . The civil penalty amount is due and payable immediately upon Respondents' receipt of true and correct copies of this CAFO. If Respondents pay the entire civil penalty of eight thousand one hundred dollars (\$8,100) 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).
31. 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.
32. In accordance with 40 C.F.R. § 13.11(a)(1), 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)(3).
33. Except those owed by State and local governments, 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.

34. Except those owed by State and local governments, 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).
35. 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 Section 9006(c) of RCRA, 42 U.S.C. § 6991e(c), and with EPA's Penalty Guidance for Violations of UST Regulations ("UST Guidance") dated November 4, 1990.
36. Respondents shall pay the amount described in Paragraph 30, above, by sending a certified or cashier's check payable to the "United States Treasury," as follows:

a. Mailing (*via first class U.S. Postal Service Mail*) a certified or cashier's check, made payable to the "United States Treasury" to the following address

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

Contact: Craig Steffen 513-487-2091  
Molly Williams 513-487-2076

b. Via Overnight Delivery of a certified or cashier's check, made payable to the "United States Treasury", sent to the following address:

U.S. Bank  
Government Lockbox 979077  
US EPA Fines & Penalties  
1005 Convention Plaza  
SL-MO-C2-GL  
St. Louis, MO 63101  
314-418-1028

c. All payment 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

d. By electronic funds transfer ("EFT") to the following account:

Federal Reserve Bank of New York  
ABA 021030004  
Account No. 68010727  
SWIFT Address FRNYUS33  
33 Liberty Street  
NY, NY 10045  
(Field tag 4200 of Fedwire message should read "D  
68010727 Environmental Protection Agency")

e. By automatic clearinghouse ("ACH") to the following account:

U.S. Treasury REX/Cashlink ACH Receiver  
ABA 051036706  
Account No. 310006  
Environmental Protection Agency  
CTX Format  
Transaction Code 22 - checking

Contact: John Schmid  
202-874-7026

f. Online payments can be made at WWW.PAY.GOV by entering "sfo 1.1" in the search field, and opening the form and completing the required fields.

g. Additional payment guidance is available at:

[http://www.epa.gov/ocfo/finservices/make\\_a\\_payment.htm](http://www.epa.gov/ocfo/finservices/make_a_payment.htm)

All payments shall also reference the above case caption and docket number, DOCKET NO.: RCRA-03-2014-0074. At the same time that any payment is made, Respondents shall mail copies of any corresponding check, or provide written notification confirming any electronic wire transfer, automated clearinghouse or online payment to Lydia A.

Guy, Regional Hearing Clerk (3RC00), U.S. EPA, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029 and to Melissa Toffel (3LC70), U.S. Environmental Protection Agency, Region III, Office of Land Enforcement, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029.

**FULL AND FINAL SATISFACTION**

37. 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 Consent Agreement.

**RESERVATION OF RIGHTS**

38. 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**

39. 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**

40. The undersigned representatives of Respondents certify that they are fully authorized to enter into the terms and conditions of this Consent Agreement and bind Respondents hereto.

**ENTIRE AGREEMENT**

41. 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**

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

For Respondents:

3/11/14  
Date

Robert A. Williams  
Robert A. Williams, Owner  
Van Cleef Tire and Auto

3/11/14  
Date

James B. VanClee  
James B. VanClee, Operator  
Van Cleef Tire and Auto

For Complainant:

3/21/14  
Date

Jennifer M. Abramson  
Jennifer M. Abramson  
U.S. EPA, Region III  
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.

3.24.14  
Date

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



attached Consent Agreement, that the civil penalty 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 Respondents pay a civil penalty of eight thousand one hundred dollars (\$8,100) 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: 3/25/14

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

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

In the Matter of: )  
)  
Robert A. Williams ) Docket No.: RCRA-03-2014-0074  
10106 White Oak Road )  
Ford, VA 23850 ) Proceeding Under Section 9006 of the  
) Resource Conservation and Recovery  
James B. VanCleaf ) Act, as amended, 42 U.S.C. Section  
8110 Baltimore Road ) 6991e  
Ford, VA 23850 )  
)  
RESPONDENTS, )  
)  
Van Cleef Tire and Auto )  
10019 Cox Road )  
Ford, Virginia 23850 )  
)  
FACILITY. )

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CERTIFICATE OF SERVICE

I certify that the foregoing CONSENT AGREEMENT AND FINAL ORDER in the above referenced matter was sent this day in the following manner to the below addressees.

**Original and one copy by hand-delivery:** Lydia Guy, Regional Hearing Clerk

**Copy by Certified Mail:**

Robert A. Williams  
10106 White Oak Road  
Ford, Virginia 23850-2512

James B. VanCleaf  
10019 Cox Road  
Ford, Virginia 23850

MAR 31 2014  
Date

  
Jennifer M. Abramson (3RC50)  
Senior Assistant Regional Counsel  
U.S. EPA, Region III

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