

**BEFORE THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103**

In the Matter of:

Washington Metropolitan Area
Transit Authority
600 Fifth Street, N.W.
Washington, D.C. 20001

Docket No. RCRA-03-2011-0042

RESPONDENT

Landover Bus Division
3433 Pennsy Drive
Landover, MD 20785

Montgomery Bus Division
5400 Marinelli Road
Rockville, MD 20852

Western Garage
5230 Wisconsin Avenue NW
Washington, D.C. 20017,

CONSENT AGREEMENT

FACILITIES.

I. PRELIMINARY STATEMENT

1. This Consent Agreement is entered into by the Director, Land and Chemicals Division, U.S. Environmental Protection Agency, Region III ("EPA," "Agency" or "Complainant"), and the Washington Metropolitan Area Transit Authority ("WMATA" or "Respondent") pursuant to Section 9006 of the Solid Waste Disposal Act, commonly known as the Resource Conservation and Recovery Act ("RCRA") of 1976, as amended (hereinafter "RCRA"), 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, including,

specifically, 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3).

2. This Consent Agreement and the accompanying Final Order address violations by Respondent of RCRA and the District of Columbia Municipal Regulations for Underground Storage Tanks, DCMR Title 20, Chapters 55-68, and the Maryland Regulations for Underground Storage Tanks, COMAR 26.10.02 - .11, as authorized by EPA pursuant to Section 9004 of RCRA, 42 U.S.C. § 6991c.
3. Pursuant to Section 22.13(b) of the Consolidated Rules of Practice, this Consent Agreement and the attached Final Order (hereinafter jointly referred to as this "CAFO") simultaneously commence and conclude an administrative proceeding against Respondent, brought under Section 9006 of RCRA, 42 U.S.C. § 6991e, to resolve alleged violations of RCRA at Respondent's facilities at the following locations:

Landover Bus Division
3433 Pennsy Drive
Landover, MD 20785

Montgomery Bus Division
5400 Marinelli Road
Rockville, MD 20852

Western Garage
5230 Wisconsin Avenue NW
Washington, D.C. 20017

4. Respondent neither admits nor denies the specific factual allegations and conclusions of law set forth in this Consent Agreement, except as provided in Paragraph 5, below.
5. For purposes of this proceeding only, Respondent admits the jurisdictional allegations set forth in this CAFO.
6. Respondent agrees not to contest EPA's jurisdiction with respect to the execution and issuance of this CAFO, or the enforcement of the CAFO.
7. For purposes of this proceeding only, Respondent hereby expressly waives its right to contest the allegations set forth in this Consent Agreement and any right to appeal the accompanying Final Order.
8. Respondent consents to the issuance of this CAFO and agrees to comply with its terms.
9. Respondent shall bear its own costs and attorney's fees in connection with this proceeding.

10. Respondent stipulates that the Underground Storage Tanks (“USTs”) described in Paragraphs 19 - 24 below were emptied and cleaned on or about June 30, 2010 and have remained empty since that time.
11. Respondent stipulates that the USTs described in Paragraphs 19 - 24 will never again be used to store regulated or hazardous substances as those terms are defined by Section 9001(7) of RCRA, 42 U.S.C. § 6991(7), and COMAR 26.10.02.03 (24) and (48) and 20 DCMR § 6889.1.

Notice of Action to the District of Columbia

12. EPA has given the District of Columbia prior notice of the initiation of this action in accordance with Section 9006(a)(2) of RCRA, 42 U.S.C. § 6991e(a)(2).

Notice of Action to the State of Maryland

13. EPA has given the State of Maryland prior notice of the initiation of this action in accordance with Section 9006(a)(2) of RCRA, 42 U.S.C. § 6991e(a)(2).

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3), Complainant alleges the following findings of fact and conclusions of law:

14. Respondent, is, and has been at all times relevant to this Consent Agreement, the “owner” and “operator,” as those terms are defined by Sections 9001(4) and (3) of RCRA, 42 U.S.C. §§ 6991(4) and (3), 20 DCMR § 6889.1 and COMAR 26.10.02.04(39) and (37) of the “underground storage tanks” (“USTs”) and “UST systems” as those terms are defined in Section 9001(10) of RCRA, 42 U.S.C. § 6991(10), 20 DCMR § 6889.1, and COMAR 26.10.02.04(64) and (66) located at:

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3433 Pennsy Drive
Landover, MD 20785

Montgomery Bus Division
5400 Marinelli Road
Rockville, MD 20852

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5230 Wisconsin Avenue NW
Washington, D.C. 20017

15. The Facilities referred to in Paragraph 14, above, are bus maintenance and fueling stations, including the underground storage tanks and all of its associated equipment and structures (hereinafter "Facilities").
16. Pursuant to 20 DCMR § 6889.1 and COMAR 26.10.02.04(64), the term "underground storage tank" or "UST" means, in pertinent part: any one or combination of tanks (including underground pipes) that is used to contain an accumulation of regulated substances and the volume of which (including the underground pipes connected thereto) is ten percent (10%) or more beneath the surface of the ground.
17. On May 3, 2010, EPA conducted a Compliance Evaluation Inspection ("CEI") at the Landover Bus Division Facility.
18. In letters dated June 30, 2010, WMATA self-disclosed violations of RCRA Subtitle I at the Montgomery Bus Division and the Western Bus Division in accordance with Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations, 65 *Federal Register* 19618 – 19627 (April 11, 2000).
19. At the time of the May 3, 2010 CEI, and at all times relevant hereto, one (1) 10,000 gallon UST, known as "Tank 8" which was installed in or about January 1, 1989 at the Landover Bus Division Facility and, at all times relevant hereto, routinely contained antifreeze, a "regulated substance" as that term is defined in Section 9001(7) of RCRA, 42 U.S.C. § 6991(7), and COMAR 26.10.02.04(48). The antifreeze was removed from this UST on or about June 30, 2010.
20. At the time of the June 30, 2010 WMATA self-disclosure, and at all times relevant hereto, and at all times relevant hereto, one (1) 10,000 gallon UST, known as "Tank 2" which was installed in or about February 1, 1999 at the Montgomery Bus Division Facility and, at all times relevant hereto, routinely contained antifreeze, a "regulated substance" as that term is defined in Section 9001(7) of RCRA, 42 U.S.C. § 6991(7), and COMAR 26.10.02.04(48). The antifreeze was removed from this UST on or about June 30, 2010.
21. At the time of the June 30, 2010 WMATA self-disclosure, and at all times relevant hereto, one (1) 20,000 gallon UST, known as "Tank 4" which was installed in or about April 1, 1983 at the Western Bus Division Facility and, at all times relevant hereto, routinely contained antifreeze, a "regulated substance" as that term is defined in Section 9001(7) of RCRA, 42 U.S.C. § 6991(7), and 20 DCMR § 6889.1. The antifreeze was removed from this UST on or about June 30, 2010.
22. From January 1, 2006 until on or around June 30, 2010 the 10,000 gallon UST known as "Tank 8" at the Landover Bus Division Facility has been a "hazardous substance UST system" and a "new tank system" as these terms are defined in COMAR 26.10.02.04(24)

and (31).

23. From January 1, 2006 until on or around June 30, 2010 the 10,000 gallon UST known as "Tank 2" at the Montgomery Bus Division Facility has been a "hazardous substance UST system" and a "new tank system" as these terms are defined in COMAR 26.10.02.04(24) and (31).
24. From March 1, 2007 until on or around June 30, 2010 the 20,000 gallon UST known as "Tank 4" at the Western Bus Division Facility has been a "hazardous substance UST system" and an "existing tank system" as these terms are defined in 20 DCMR § 6889.1.

COUNT I
(Landover Bus Division)

25. The preceding paragraphs are incorporated by reference.
26. COMAR 26.10.05.03A requires owners and operators of USTs used to store hazardous substances to have release detection.
27. Release detection for new single wall USTs used to storage hazardous substances includes the requirement for secondary containment as described COMAR 26.10.05.03C (1)(a) – (c).
28. The 10,000 gallon UST, known as "Tank 8" at the Landover Bus Division Facility is a single wall UST without any form of secondary containment.
29. From January 1, 2006 until June 30, 2010, the 10,000 gallon UST, known as "Tank 8" at the Landover Bus Division Facility was used to store antifreeze containing 95 - 96 % by weight of ethylene glycol, a hazardous substance within the meaning of Section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act, ("CERCLA") § 9601(14) in a single wall UST without secondary containment.
30. Respondent's failure to provide secondary containment for the 10,000 gallon single wall UST, known as "Tank 8" at the Landover Bus Division Facility used to store a hazardous substance within the meaning of Section 101(14) of CERCLA, § 9601(14) is a violation of COMAR 26.10.05.03A.

COUNT II
(Montgomery Bus Division)

31. The preceding paragraphs are incorporated by reference.
32. The 10,000 gallon UST, known as "Tank 2" at the Montgomery Bus Division Facility is a

single wall UST without any form of secondary containment.

33. From January 1, 2006 until June 30, 2010, the 10,000 gallon UST, known as “Tank 2” at the Montgomery Bus Division Facility was used to store antifreeze containing 95 - 96 % by weight of ethylene glycol, a hazardous substance within the meaning of Section 101(14) of CERCLA, § 9601(14) in a single wall UST without secondary containment.
34. Respondent’s failure to provide secondary containment for the 10,000 gallon single wall UST, known as “Tank 2” at the Montgomery Bus Division Facility used to store a hazardous substance within the meaning of Section 101(14) of CERCLA, § 9601(14) is a violation of COMAR 26.10.05.03A.

COUNT III
(Western Bus Division)

35. The preceding paragraphs are incorporated by reference.
36. 20 DCMR § 5800.2 requires the owner and operator of each existing hazardous substance UST system to ensure, no later than December 22, 1994, that each existing hazardous substance UST system complies with a) the new UST system performance standards set forth in 20 DCMR § 5702 *et seq.* for hazardous substance UST systems; or b) the permanent closure requirements set forth in 20 DCMR 6100 and c) applicable requirements for corrective action set forth in 20 DCMR 6200.
37. The new hazardous substance UST system performance standard set forth in 20 DCMR § 5702.1(c) requires hazardous substance UST systems be of three hundred sixty (360) degree double wall construction.
38. The 20,000 gallon UST, known as “Tank 4” at the Western Bus Division Facility is a single wall UST which does not have three hundred sixty (360) degree double wall construction as set forth in 20 DCMR § 5702.1(c).
39. From March 1, 2007 until June 30, 2010, the 20,000 gallon UST, known as “Tank 4” at the Western Bus Division Facility was used to store antifreeze containing 95 - 96 % by weight of ethylene glycol, a hazardous substance within the meaning of Section 101(14) of CERCLA, § 9601(14) in a single wall UST without three hundred sixty (360) degree double wall construction as set forth in 20 DCMR § 5702.1(c).
40. Respondent’s failure to provide three hundred sixty (360) degree double wall construction as set forth in 20 DCMR § 5702.1(c). for the 20,000 gallon single wall UST, known as “Tank 4” at the Western Bus Division Facility used to store a hazardous substance within the meaning of Section 101(14) of CERCLA, § 9601(14) is a violation of 20 DCMR § 5800.2.

III. CIVIL PENALTIES

41. Respondent shall pay a total civil penalty in the amount of **\$18,305**. 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 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 and with the Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations, 65 *Federal Register* 19618 – 19627 (April 11, 2000). Such civil penalty amount shall become due and payable immediately upon Respondent's receipt of a true and correct copy of this CAFO fully executed by all parties and filed with the Regional Hearing Clerk. In order to avoid the assessment of interest, administrative costs, and late payment penalties in connection with such civil penalty as described in this CAFO, the civil penalty must be paid no later than thirty (30) calendar days after the date on which a copy of this CAFO is mailed or hand-delivered to Respondent.
42. EPA hereby agrees and acknowledges that payment of the civil penalty shall be in full and final satisfaction of all civil claims for penalties for the violations alleged in this CAFO.
43. Respondent shall remit the payment for the civil penalty specified in Paragraph 41, above, payable to United States Treasury, using one of the payment methods set forth below:
- A. All payments by Respondents shall reference Respondents' names and addresses, and the Docket Number of this action, *i.e.*, RCRA-03-2011-0042.
 - 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 to:

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

Contact: Eric Volck 513-487-2105
 - D. All payments made by check and sent by overnight delivery service shall be addressed for delivery to:

U.S. Bank
Government Lockbox 979077
U.S. EPA Fines & Penalties
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, MO 63101

Contact: 314-418-1028

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

Federal Reserve Bank of New York
ABA = 021030004
Account No. = 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:

US Treasury REX / Cashlink ACH Receiver
ABA = 051036706
Account No.: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 - Checking

Physical location of U.S. Treasury facility:

5700 Rivertech Court
Riverdale, MD 20737
Contact: John Schmid 202-874-7026 OR REX, 1-866-234-5681

- G. Additional payment guidance is available at:

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

44. At the time of payment, Respondent shall send a notice of such payment, including a copy of any check or electronic transfer, as appropriate, to:

Lydia Guy
Regional Hearing Clerk
U.S. Environmental Protection Agency
Region III (Mail Code 3RC00)
1650 Arch Street
Philadelphia, PA 19103-2029

and

Joyce A. Howell
Senior Assistant Regional Counsel
U.S. Environmental Protection Agency
Region III (Mail Code 3RC30)
1650 Arch Street
Philadelphia, PA 19103-2029

45. Respondent agrees not to deduct for civil taxation purposes the civil penalty specified in this Consent Agreement and the attached Final Order.
46. 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 as specified in this CAFO shall result in the assessment of late payment charges including interest, penalties, and/or administrative costs of handling delinquent debts.
47. Interest on the civil penalty assessed in this CAFO will begin to accrue on the date that a copy of this CAFO is mailed or hand-delivered to Respondent. However, EPA will not seek to recover interest on any amount of the 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).
48. The costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the 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.
49. A penalty charge of six percent per year will be assessed monthly on any portion of the 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 the debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).

IV. RESERVATION OF RIGHTS

50. 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 public health, 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 the Consolidated Rules of Practice at 40 C.F.R. § 22.18(c). Further, EPA reserves any rights or remedies available under RCRA, the regulations promulgated thereunder, and any other federal laws and regulations for which EPA has jurisdiction, to enforce the provisions of this CAFO, following its filing with the Regional Hearing Clerk.

V. OTHER APPLICABLE LAWS

51. Nothing in this CAFO shall relieve Respondent of any duties otherwise imposed upon it by applicable federal, state, or local law and/or regulation.

VI. PARTIES BOUND

52. This Consent Agreement and the accompanying Final Order shall apply to and be binding upon the EPA, the Respondent, Respondent' officers and/or directors (in their official capacity) and Respondent's successors and assigns. By his or her signature below, the person signing this Consent Agreement on behalf of each Respondent acknowledges that he or she is fully authorized to enter into this Consent Agreement and to bind such Respondent to the terms and conditions of this Consent Agreement and the accompanying Final Order.

VII. FULL AND FINAL SATISFACTION

53. Full payment of the civil penalty set forth in Paragraph 41 of this Consent Agreement, above, shall resolve only Respondent's liability for federal civil penalties for the specific violations of RCRA Subtitle I, the District of Columbia Authorized UST Management Program and the State of Maryland Authorized UST Management Program alleged herein.

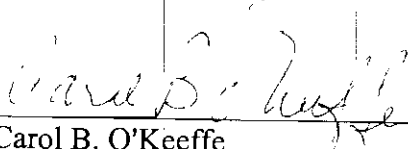
VII. EFFECTIVE DATE

54. The effective date of this CAFO is the date on which it is filed with the Regional Hearing Clerk after signature by the Regional Judicial Officer or Regional Administrator.

For Respondent, Washington Metropolitan Area Transit Authority:

Date: 12/14/11

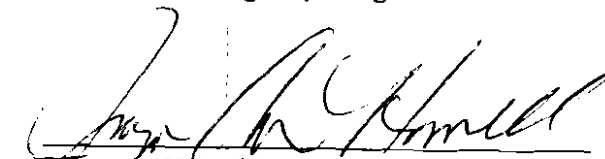
By:



Carol B. O'Keeffe
General Counsel

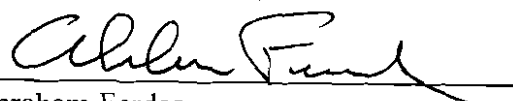
For Complainant, United States Environmental Protection Agency, Region III:

Date: 12/22/2010

By: 
Joyce A. Howell
Senior Assistant Regional Counsel

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

12/21/10
Date

By: 
Abraham Ferdas
Director
Land and Chemicals Division

**BEFORE THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103**

In the Matter of:

Washington Metropolitan Area
Transit Authority
600 Fifth Street, N.W.
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RESPONDENT

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Docket No. RCRA-03-2011-0042

FINAL ORDER

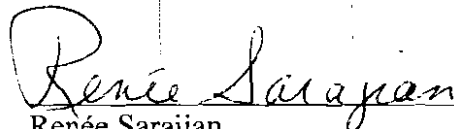
Complainant, the Director, Land and Chemicals Division, U.S. Environmental Protection Agency, Region III, and Respondent, the Washington Metropolitan Area Transit Authority, have executed a document entitled "Consent Agreement" which I hereby ratify in accordance with the *Consolidated Rules of Practice 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 fully set forth at length herein.

NOW, THEREFORE, PURSUANT TO the Consolidated Rules of Practice, and based on the representations in the Consent Agreement, having determined that the penalty agreed to in the Consent Agreement is based on 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 \$18,305.00 in accordance with the Consent Agreement and comply with the terms and conditions of this Consent Agreement.

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

12/28/10
Date


Renée Sarajian
Regional Judicial Officer

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

In the Matter of:

Washington Metropolitan Area
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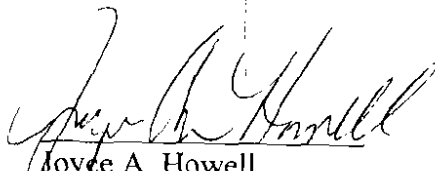
Docket No. RCRA-03-2011-0042

CERTIFICATE OF SERVICE

I certify that on the date noted below, I sent by UPS, next day delivery, a copy of the CONSENT AGREEMENT AND FINAL ORDER to the addressee listed below. The original and two copies of the same were hand-delivered to the Regional Hearing Clerk, U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103-2029.

Marc Biondi
Assistant General Counsel
Washington Metropolitan Area Transit Authority
600 Fifth Street, NW
Washington, DC 20001

Date: Dec 25, 2010


Joyce A. Howell
Senior Assistant Regional Counsel
United States Environmental Protection Agency