

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

In the Matter of:	:	
	:	U.S. EPA Docket No. RCRA-03-2023-0071
Harry Parsons d/b/a Canal Boatyard	:	
Tradestyle: Fisherman’s Wharf	:	
107 Anglers Road	:	
Lewes, DE 19958	:	
	:	Proceeding under Section 9006 of the Resource
	:	Conservation and Recovery Act, as amended,
	:	42 U.S.C. Section 6991e
Respondent.	:	
	:	
	:	
	:	

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 (“EPA” or “Complainant”) and Harry Parsons d/b/a Canal Boatyard (“Respondent” or “Fisherman’s Wharf”), 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 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 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 State of Delaware’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 Paragraph 1, above.
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 State of Delaware prior notice of the issuance of this Consent Agreement and 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 and 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 and 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 and 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 October 28, 1996, pursuant to Section 9004 of RCRA, 42 U.S.C. § 6991c, and 40 C.F.R. Part 281, Subpart A, the State of Delaware was granted final authorization to administer a state underground storage tank management program *in lieu* of the Federal underground storage tank management program established under Subtitle I of RCRA, 42 U.S.C. §§ 6991-6991i. The provisions of the Delaware Underground Storage Tank Systems (“DRGUST”) which were authorized became requirements of Subtitle I of

RCRA and are, accordingly, enforceable by EPA pursuant to Section 9006 of RCRA, 42 U.S.C. § 6991e. Delaware's authorized underground storage tank program regulations are administered by the Delaware Department of Natural Resources and Environmental Control ("DNREC")

14. At all times relevant to violations alleged in this Consent Agreement and Final Order, Subtitle I of RCRA, 42 U.S.C. §§ 6991-6991m, and regulations promulgated pursuant thereto at 40 C.F.R. Part 280, and Delaware's Underground Storage Tank ("UST") program, set forth at 7 Del. Admin. C. § 1300-Parts A - D (1995), regulate USTs used to contain regulated substances including, but not limited to, petroleum products (e.g., gasoline and crude oil).
15. At all times relevant to this Consent Agreement and Final Order, Respondent has been a sole proprietorship doing business in the State of Delaware as "Canal Boatyard." Canal Boatyard also goes by the name "Fisherman's Wharf."
16. At all times relevant to this Consent Agreement and Final Order, Respondent has owned and/or operated a facility known as the Canal Boatyard, (also known as Fisherman's Wharf) at 107 Anglers Road, Lewes, DE 19958 (the "Facility").
17. At all times relevant to this Consent Agreement and Final Order, two (2) 10,000-gallon gasoline USTs, both for storing diesel, were located at Respondent's Facility.
18. At all times relevant to violations alleged in this Consent Agreement and Final Order, Respondent has been a "person," and is the "operator" and/or "owner" of "USTs" and "UST systems," located at the "Facility", as those terms are defined in 7 Del. Admin. C. § 1300-Part A (1995).
19. On September 23, 2021, EPA conducted a Compliance Evaluation Inspection (the "Inspection") of the two (2) 10,000-gallon diesel gasoline USTs located at the Facility. Both tanks are double-walled composite steel with fiberglass-reinforced plastic ("FRP"). Both tanks utilize Mechanical Line Leak Detectors ("MLLDs"). The Facility has a Veeder-Root Automatic Tank Gauge monitoring system that is set up to perform Continuous Statistical Leak Detection ("CSLD") for both tanks.
20. At the time of the Inspection, and at all times relevant to the applicable violations alleged herein, USTs and UST systems used to contain "regulated substance[s]" as this term is defined in Section 9001(7) of RCRA, 42 U.S.C. § 6991(7), and 7 Del. Admin. C. § 1300-Part A (1995), were present at the Facility.

**Count I - Failure to conduct tank release detection in accordance with
7 Del. Admin. C. §§ 1300-Part B, 1.8-1.9 (1995) (40 C.F.R. § 280.41(a)).**

21. The allegations of Paragraphs 1 through 20 of this Consent Agreement are incorporated herein by reference.
22. Pursuant to 7 Del. Admin. C. §§ 1300-Part B, 1.8-1.9 (1995), "owners and operators of

new UST systems [installed after 1985] must provide a method, or combination of methods of release detection....”

23. Based on information obtained during the September 23, 2021 Inspection and subsequent communications with Respondent, the Facility failed to conduct tank release detection on two USTs as required by 7 Del. Admin. C. §§ 1300-Part B, 1.8 (1995). Both USTs were installed in May 1995 and are subject to tank release detection requirements. Respondent failed to conduct tank release detection on Tank 1 from January 1, 2020 to August 26, 2021. The Facility also failed to perform release detection tests on Tank 2 from February 18, 2020 to November 1, 2020.
24. Respondent failed to provide a method, or combination of methods of release detection, in violation of 7 Del. Admin. C. §§ 1300-Part B, 1.8-1.9 (1995).
25. Respondent’s acts or omissions as the owner and operator of USTs or USTs systems at the Facility, alleged in Paragraphs 23 and 24, constitute violations by Respondent of 7 Del. Admin. C. §§ 1300-Part B, 1.8-1.9 (1995).
26. In failing to comply with 7 Del. Admin. C. §§ 1300-Part B, 1.8-1.9 (1995), Respondent is subject to the assessment of penalties under Section 9006(d)(2) of RCRA, 42 U.S.C. § 6991e(d)(2).

CIVIL PENALTY

27. 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 **SEVEN THOUSAND SIX HUNDRED AND FIFTY-SIX dollars (\$7,656.00)**, which Respondent shall be liable to pay in accordance with the terms set forth below.
28. 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 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 reflect 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.
29. 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-03-2023-0071**;
- 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 by email to:

Conner Kingsley
Assistant Regional Counsel
U.S. EPA, Region III (3RC40)
kingsley.conner@epa.gov

and

U.S. EPA Region III Regional Hearing Clerk
R3_Hearing_Clerk@epa.gov.

- 30. 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.
- 31. 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 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).

32. 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 Respondent is notified of its debt to the United States as established upon the ratification and filing of the fully executed Consent Agreement and Final Order with the Regional Hearing Clerk. 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).
33. 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). If payment is not received within 30 calendar days of the effective date of this Consent Agreement, EPA will also 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. 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).
35. Respondent agrees not to deduct for federal tax purposes the civil penalty assessed in this Consent Agreement and Final Order.
36. **The parties consent to service of the Final Order by e-mail at the following valid e-mail addresses: kingsley.conner@epa.gov for Complainant, and brinelysep@gmail.com for Respondent.**

GENERAL SETTLEMENT CONDITIONS

37. 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.
38. 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, 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

39. Respondent certifies to EPA, upon personal investigation and 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

40. 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 RCRA, or any regulations promulgated thereunder.

RESERVATION OF RIGHTS

41. This Consent Agreement and Final Order resolves only EPA's claims for civil penalties for the specific violations alleged against Respondent in this Consent Agreement and 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 and Final Order after its effective date.

EXECUTION /PARTIES BOUND

42. This Consent Agreement and 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 and Final Order.

EFFECTIVE DATE

43. The effective date of this Consent Agreement and 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

44. 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:

Canal Boatyard

Date: March 27, 2023

By: 

Harry Parsons
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.

By: _____
[*Digital Signature and Date*]
Karen Melvin, Director
Enforcement & Compliance Assurance Division
U.S. EPA – Region III
Complainant

Attorney for Complainant:

By: _____
[*Digital Signature and Date*]
Conner Kingsley
Assistant Regional Counsel
U.S. EPA – Region III

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	:	Proceeding under Section 9006 of the Resource
	:	Conservation and Recovery Act, as amended,
Respondent.	:	42 U.S.C. Section 6991e
	:	
	:	

FINAL ORDER

Complainant, the Director of the Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency, Region III, and Respondent, Harry Parsons d/b/a Canal Boatyard, 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 (with specific reference to Sections 22.13(b) and 22.18(b)(2) and (3)). 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.

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 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; the statutory factors set forth in 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.

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 **SEVEN THOUSAND SIX HUNDRED AND FIFTY-SIX (\$7,656.00)**, 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: _____

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

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

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	:	42 U.S.C. Section 6991e
	:	

CERTIFICATE OF SERVICE

I certify that the foregoing *Consent Agreement and Final Order* was filed with the EPA Region III Regional Hearing Clerk on the date that has been electronically stamped on the *Consent Agreement and Final Order*. I further certify that on the date set forth below, I caused to be served a true and correct copy of the foregoing to each of the following persons, in the manner specified below, at the following addresses:

Copies served via email to:

Harry Parsons
Owner
brinelysep@gmail.com
107 Anglers Road
Lewes, DE 19958

Conner Kingsley
Assistant Regional Counsel
U.S. EPA, Region III
kingsley.conner@epa.gov

Melissa Toffel
UST Enforcement Officer
U.S. EPA, Region III
toffel.melissa@epa.gov

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