

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

IN RE:

National Institute of Standards and Technology,

Respondent,

100 Bureau Drive
Gaithersburg, Maryland 20899

Facility.

Docket No. RCRA-03-2011-0135

CONSENT AGREEMENT

Preliminary Statement

This Consent Agreement (“CA”) is entered into by the Director of the Land and Chemicals Division, U.S. Environmental Protection Agency, Region III (“EPA” or “Complainant”) and the National Institute of Standards and Technology (“Respondent”), pursuant to Sections 3008, 9006, and 9007 of the Resource Conservation and Recovery Act (“RCRA”), as amended, 42 U.S.C. §§ 6928, 6991e, and 6991f, 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).

Regulatory Background

This CA and the accompanying Final Order (collectively “CAFO”) resolve violations of RCRA, Subtitles C and I, 42 U.S.C. §§ 6921- 6939e and 6991-6991i, and regulations in the authorized Maryland hazardous waste and underground storage tank programs in connection with Respondent’s facility located Gaithersburg, Maryland.

The State of Maryland Hazardous Waste Management Regulations (“MdHWMR”), are set forth at the Code of Maryland Regulations (“COMAR”), Title 26, Subtitle 13 et seq. The MdHWMR were originally authorized by EPA on February 11, 1985, pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b). Revisions to the MdHWMR set forth at COMAR, Title 26, Subtitle 13 were authorized by EPA effective July 31, 2001 and September 24, 2004. The provisions of the revised authorized program are enforceable by EPA pursuant to Section 3008(a)

of RCRA, 42 U.S.C. § 6928(a).

Effective July 30, 1992, pursuant to Section 9004 of RCRA, 42 U.S.C. § 6991c, and 40 C.F.R. Part 281, Subpart A, the State of Maryland was granted final authorization to administer a state underground storage tank management program *in lieu* of the Federal underground storage tank management program. The provisions of the Maryland underground storage tank management program, through this final authorization, have become requirements of Subtitle I of RCRA and are, accordingly, enforceable by EPA pursuant to Section 9006 of RCRA, 42 U.S.C. § 6991e. Maryland's authorized underground storage tank program regulations are set forth in COMAR. Section 9006(a)-(d) of RCRA, 42 U.S.C. § 6991e(a)-(d), authorizes EPA: (a) to take an enforcement action whenever it is determined that a person is in violation of any requirement of RCRA Subtitle I, EPA's regulations thereunder, or any regulation of a state underground storage tank program which has been authorized by EPA; and (b) to assess a civil penalty against any person who violates any requirement of RCRA Subtitle I.

Respondent was previously notified regarding the RCRA allegations recited herein under cover letter dated January 20, 2011. In accordance with Sections 3008(a)(2) and 9006(a)(2) of RCRA, 42 U.S.C. §§ 6928(a)(2) and 6991e(a)(2), EPA has notified the Maryland Department of the Environment of EPA's intent to enter into a CAFO with Respondent resolving the RCRA violations set forth herein.

General Provisions

1. For purposes of this proceeding only, Respondent admits the jurisdictional allegations set forth in this CAFO.
2. Respondent neither admits nor denies the specific factual allegations and conclusions of law set forth in this CAFO, except as provided in Paragraph 1, above.
3. Respondent agrees not to contest EPA's jurisdiction with respect to the execution of this CA, the issuance of the attached Final Order, or the enforcement of the CAFO.
4. For the 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, or any right to confer with the Administrator pursuant to RCRA Section 6001(b)(2), 42 U.S.C. § 6961(b)(2).
5. Respondent consents to the issuance of this CAFO and agrees to comply with its terms and conditions.
6. Respondent shall bear its own costs and attorney's fees.
7. Respondent certifies to EPA by its signature herein that it is presently in compliance with

the provisions of RCRA referenced herein.

8. The provisions of this CAFO shall be binding upon Complainant and Respondent and any successors, assigns, or other entities or persons otherwise bound by law.
9. This CAFO shall not relieve Respondent of its obligation 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 C, 42 U.S.C. §§ 6921- 6939e, RCRA, Subtitle I, 42 U.S.C. §§ 6991-6991i, or any regulations promulgated thereunder.

EPA's Findings of Fact and Conclusions of Law

10. In accordance with the Consolidated Rules at 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3), Complainant makes the findings of fact and conclusions of law which follow.
11. Respondent is the owner and operator of the facility located at 100 Bureau Drive, Gaithersburg, Maryland (the "Facility").
12. EPA conducted an inspection of Respondent's Facility on June 25 – 26, 2008 ("EPA Inspection").

COUNT I (RCRA SUBTITLE C-OPERATING WITHOUT A PERMIT)

13. Paragraphs 1-12 of this CAFO are incorporated by reference as though fully set forth herein.
14. Respondent, is a federal agency within the U.S. Department of Commerce and is a "person" as defined by RCRA Section 1004(15), 42 U.S.C. § 6903(15), and COMAR 26.13.01.03B.
15. Respondent is and has been through the period of the violations alleged herein, the "owner" and "operator" of a "facility" as these terms are defined by COMAR 26.13.01.03B.
16. Respondent is and has been through the period of the violations alleged herein, a "generator" of, and has engaged in the "storage" of, materials that are "solid wastes" and "hazardous waste" at the Facility as those terms are defined by COMAR 26.13.01.03B.
17. Respondent is and, at all times relevant to the violations in this CAFO, has been a large quantity generator who generates hazardous waste in an amount greater than 1,000 kilograms per month at the Facility.

18. Sections 3005(a) and (e) of RCRA, 42 U.S.C. §§ 6925(a) and (e), and COMAR 26.13.07.01A provide, in pertinent part, that a person may not operate a hazardous waste storage, treatment or disposal facility unless such person has first obtained a permit for the facility.
19. COMAR 26.13.03.05E(3) provides, in pertinent part, that a generator may accumulate as much as 55 gallons of hazardous waste or 1 quart of acutely hazardous waste listed in COMAR 26.13.02.19E in containers at or near any point of generation where wastes initially accumulate, which is under the control of the operator of the process generating the waste, without a permit and without complying with §E(1) provided the generator:
- (a) Complies with COMAR 26.13.05.09B-D; and
 - (b) Marks his containers either with the words "Hazardous Waste" or with other words that identify the contents of the containers.
20. COMAR 26.13.05.09(D) provides that a container holding hazardous waste shall always be closed during storage, except when it is necessary to add or remove waste.
21. During the EPA Inspection, containers of hazardous waste were open at a time when waste was not being added or removed, as follows:
- (A) A one gallon container of what was labeled as "organic waste" in Building 227, Room A-260;
 - (B) Two one gallon containers in Building 227, Room A-252; one of which was labeled as containing "Nochromix" and one of which was labeled as containing "organic waste;" and
 - (C) A one gallon container in Building 227, Room B-237, labeled as containing "HCL waste."
22. During the EPA Inspection, hazardous wastes were in storage at the Facility in containers that were not labeled with either the words "Hazardous Waste" or with other words that identified the contents of the container in accordance with COMAR 26.13.03.05E(3), as follows:
- (A) A one gallon container inside a laboratory fume hood in Building 227, Room B-217; and
 - (B) A small container under a sink in Building 227, Room B-317, which held, according to a Facility representative, 1.5% HNO₃ and HCL.
23. The contents of the containers described in Paragraph 21 and 22, above, are and were, at

all times relevant to the violations alleged herein, "solid wastes" and "hazardous wastes" as defined at COMAR 26.13.01.03B.

24. Respondent's containers as described in Paragraph 21 and 22, above, are and were, at all times relevant to the violations alleged herein, "containers" of "hazardous waste" in "storage" at the Facility within the meaning of COMAR 26.13.01.03B.
25. Respondent has never had a permit or interim status pursuant to COMAR 26.13.07, Section 3005 of RCRA, 42 U.S.C. § 6925, or 40 C.F.R. § 270.1(b) for the storage of hazardous waste at the Facility.
26. Respondent failed to qualify for the "less than 90 day" generator accumulation exemption of COMAR 26.13.03.05E for the Facility by failing to satisfy the conditions for that exemption.
27. Respondent violated COMAR 26.13.07.01A. and Section 3005(a) of RCRA, 42 U.S.C. § 6925(a), by operating a hazardous waste storage facility without a permit or interim status.

COUNT II (RCRA Subtitle C-Failure to keep containers closed during storage)

28. Paragraphs 1-27 of this CAFO are incorporated by reference as though fully set forth herein.
29. Based on the activities described in Paragraph 21 of this CAFO, above, Respondent violated COMAR 26.13.03.05E(3), which incorporates the requirements of COMAR 26.13.05.09(D), by failing to keep containers of hazardous waste closed during storage at the Facility even though it was not necessary to add or remove waste from such containers.

COUNT III (RCRA Subtitle I-Leak Detection Records)

30. Paragraphs 1 through 29 of the CAFO are incorporated by reference as though fully set forth herein.
31. Respondent is a department, agency and/or instrumentality of the United States and is a "person" as defined by Sections 1004(15) and 9001(5) of RCRA, 42 U.S.C. §§ 6903(15) and 6991(5), and as defined by COMAR 26.10.02.04 and 26.13.01.03.B.
32. Respondent is, and was at all times relevant hereto, the "owner" and "operator" of underground storage tanks ("USTs") as defined in COMAR 26.10.02.04 and Section 9001(3), (4), and (10) of RCRA, 42 U.S.C. § 6991(3), (4), and (10), at its Facility. Building 303, a vehicle maintenance building, has several USTs, including a 6,000 gallon

gasoline UST identified as Tank 303-2A.

33. Respondent's UST at its Facility referenced above in Paragraph 32 is, and was at all times relevant hereto, a "petroleum UST system" used to store "regulated substances" as defined in COMAR 26.10.02.04 and a "petroleum" "UST" used to store "regulated substances" as defined in Section 9001(1), (2) and (8) of RCRA, 42 U.S.C. § 6991(1), (2) and (8).
34. COMAR 26.10.05.01 A requires that the owner and/or operator of petroleum UST systems must provide release detection for tanks and piping as described in the Maryland regulations.
35. COMAR 26.10.05.06.B requires, in relevant part, that the results of any sampling, testing, or monitoring be maintained for at least one (1) year.
36. COMAR 26.10.04.05.C.(4) requires, in relevant part, that the owner and operator maintain documentation of recent compliance with release detection requirements. In addition, COMAR 26.10.04.05.D.(1)(a) requires, in relevant part, that the owner and/or operator must keep the required records at the UST site and immediately available for inspection by the implementing agency. In the alternative, pursuant to COMAR 26.10.04.05.D.(1)(b) the records may be kept at a readily available alternative site and be provided upon request.
37. At the time of the EPA Inspection, the Facility did not have release detection records pertaining to Tank 303-2A in Building 303, or its associated piping, available for review, either immediately or readily available.
38. Respondent violated COMAR 26.10.05.06.B, COMAR 26.10.04.05.C.(4), COMAR 26.10.04.05.D.(1)(a), and COMAR 26.10.04.05.D.(1)(b) by not having release detection records for Tank 303-2A in Building 303, or its associated piping, available for review.

CIVIL PENALTY

39. Respondent consents to the assessment of a civil penalty of **Eight Thousand Nine Hundred Dollars (\$8,900.00)** in full satisfaction of all claims for civil penalties for the violations alleged in the above alleged three counts of this CAFO. Respondent must pay the civil penalty no later than **THIRTY (30)** calendar days after the date on which this CAFO is mailed or hand-delivered to Respondent.
40. For the violations alleged in Counts I - II, EPA considered a number of factors including, but not limited to, the statutory factors set forth in Section 3008(a)(3) of the RCRA, 42 U.S.C. § 6928(a)(3), *i.e.*, the seriousness of Respondent's violations and the good faith efforts by Respondent to comply with the applicable requirements of the RCRA, and the

RCRA Civil Penalty Policy (2003). EPA has also considered the *Adjustments of Civil Penalties for Inflation and Implementing the Debt Collection Improvement Act of 1996* ("DCIA"), as set forth in 40 C.F.R. Part 19, and the December 29, 2008 memorandum by EPA Assistant Administrator Granta Y. Nakayama entitled, *Amendments to EPA's Civil Penalty Policies to Implement the 2008 Civil Monetary Penalty Inflation Adjustment Rule (Effective January 12, 2009)* ("2008 Nakayama Memorandum"), which specify that for violations that occurred after January 30, 1997, statutory penalties and penalties under the RCRA Civil Penalty Policy for, *inter alia*, RCRA Subtitle C violations, were increased 10% above the maximum amount to account for inflation and, statutory penalties for, *inter alia*, RCRA Subtitle C violations that occurred after March 15, 2004 through January 12, 2009, were increased by an additional 17.23% above the maximum amount to account for inflation.

41. For the violation alleged in Count III, EPA considered 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(d), 42 U.S.C. § 6991e(d), and EPA's *Penalty Guidance for Violations of UST Regulations* ("UST Guidance") dated November 4, 1990. EPA has also considered the DCIA, as set forth in 40 C.F.R. Part 19, and the 2008 Nakayama Memorandum, which specify that for violations that occurred after January 30, 1997, statutory penalties and penalties under the UST Guidance were increased 10% above the maximum amount to account for inflation and, statutory penalties for violations that occurred after March 15, 2004 through January 12, 2009, were increased by an additional 17.23% above the maximum amount to account for inflation.

42. Payment of the civil penalty amount required under the terms of Paragraph 39, above, shall be made by either cashier's check, certified check or electronic wire transfer, in the following manner:

- a. All payments by Respondent shall reference its name and address and the Docket Number of this action (Docket No. RCRA-03-2011-0135);
- 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. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

The Customer Service contact for the above method of payment is Eric Volck at 513-487-2105.

- d. All payments made by check and sent by overnight delivery service shall be addressed and sent 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

The Customer Service number for the above method of payment is 314-418-1028.

- e. All electronic wire transfer payments shall be directed to:

Federal Reserve Bank of New York
ABA = 021030004
Account = 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 payments through the Automated Clearinghouse (ACH), also known as Remittance Express (REX), shall be directed to:

US Treasury REX/Cashlink ACH Receiver
ABA = 051036706
Transaction Code 22 - checking
Account 310006, Environmental Protection Agency
CTX Format Transaction Code 22 - Checking

Physical location of U.S. Treasury Facility:

5700 Rivertech Court
Riverdale, MD 20737

The Customer Service contact for the above method of payment is Jesse White at 301-887-6548, or REX at 1-866-234-5681.

- g. There is an on-line payment option available through the Department of the Treasury. This payment option can be accessed from: WWW.PAY.GOV. Enter sfo 1.1 in the search field and complete all required fields in the form.
- h. At the same time that any payment is made, Respondent shall mail copies of any corresponding check, or written notification confirming any electronic wire transfer, to:

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

and to

Daniel L. Isales (3RC60)
Environmental Science Center
U.S. Environmental Protection Agency, Region III
701 Mapes Road
Fort Meade, MD 20755-5350

43. In accordance with 40 C.F.R. § 13.3, any debt owed to the EPA as a result of Respondent's failure to make timely payments in accordance with Paragraph 39 above, shall be resolved by negotiation between the EPA and Respondent or by referral to the General Accounting Office.

EFFECT OF SETTLEMENT

44. Payment of the penalty specified in Paragraph 39, above, in the manner set forth in Paragraph 42, above, shall constitute full and final satisfaction of all civil claims for penalties which Complainant may have under RCRA Subtitle C and RCRA Subtitle I for the specific violations alleged in Counts I - III, above. Compliance with this CAFO shall not be a defense to any action commenced at any time for any other violation of the federal laws and regulations administered by EPA.

RESERVATION OF RIGHTS

45. This CAFO resolves only the civil claims for monetary penalties for the specific violations alleged in the CAFO. 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. 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. Respondent reserves all available rights and defenses it may have to defend itself in any such action.

FULL AND FINAL SATISFACTION

46. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to Sections 3008 and 9006 of RCRA, 42 U.S.C. §§ 6928 and 6991e, for the specific violations alleged in this CAFO. This CAFO constitutes the entire agreement and understanding of the parties regarding settlement of all claims pertaining to 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 CAFO.

ANTIDEFICIENCY ACT

47. Failure to obtain adequate funds or appropriations from Congress does not release Respondent from its obligation to comply with RCRA, the applicable regulations thereunder, or with this CAFO. Nothing in this CAFO shall be interpreted to require obligation or payment of funds in violation of the Antideficiency Act, 31 U.S.C. § 1341.

AUTHORITY TO BIND THE PARTIES

48. The undersigned representative of Respondent certifies that he or she is fully authorized by the Respondent to enter into the terms and conditions of this Consent Agreement and to bind the Respondent to it.

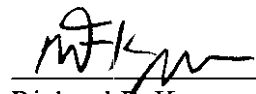
EFFECTIVE DATE

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

For Respondent:

National Institute of Standards and Technology

April 5, 2011
Date



Richard F. Kayser, Ph.D.
Chief Safety Officer
Office of Safety, Health and Environment
National Institute of Standards and Technology

For Complainant:

U.S. Environmental Protection Agency,
Region III

4/18/11

Date

Daniel L. Isaacs

Daniel L. Isaacs
Assistant Regional Counsel
U.S. EPA - Region III

Accordingly, I hereby recommend that the Regional Administrator or his designee, the Regional Judicial Officer, issue the Final Order attached hereto.

4/25/11

Date

Samantha P. Beers

Samantha P. Beers, Director
Office of Enforcement, Compliance, and
Environmental Justice
U.S. EPA - Region III

4/26/11

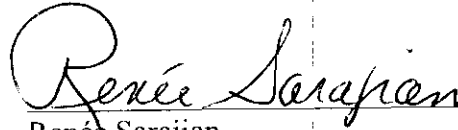
Date

Abraham Ferdas

Abraham Ferdas, Director
Land and Chemicals Division
U.S. EPA - Region III

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

5/2/11
Date



Renée Sarajian
Regional Judicial Officer
U.S. Environmental Protection Agency, Region III