

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

SUBJECT: Transmittal Memorandum
Consent Agreement and Final Order
In the Matter of Tanay, LLC. and Swami, LLC.
RCRA-03-2016-0225

FROM: Mary B. Coe
Regional Counsel (3RC00)

Catherine Libertz, Acting Director
Land and Chemicals Division (3LC00)

TO: Joseph J. Lisa
Regional Judicial Officer (3RC00)

REGIONAL JUDICIAL OFFICER
EPA REGION III PHILADELPHIA

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The attached Consent Agreement and Final Order (“CAFO”) have been negotiated 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”), 40 C.F.R. Part 22, including, specifically, 40 C.F.R. §§ 22.18(b)(2) and (3).

The CAFO resolves violations of RCRA Subtitle I, 42 U.S.C. §§ 6991-6991i, and the Commonwealth of Virginia’s federally authorized underground storage tank program by Respondents, Tanay, LLC. and Swami, LLC. (collectively the “Respondents”), in connection with their underground storage tanks at Respondents’ facility located at 1243 Norview Avenue, Norfolk, Virginia (the “Facility”). Please refer to the attached Administrative Complaint filed against the Respondents on September 26, 2016 for further details concerning the violations at the Facility.

Under the terms of the settlement, Respondents will pay a civil penalty in the amount of \$45,000.00. This settlement was determined after consideration of the statutory factors set forth in Section 9006(c) of RCRA, 42 U.S.C. § 6991e(c), and other settlement adjustment factors set forth in the “U.S. Penalty Guidance for Violation of UST Regulations” dated November, 1990 (“UST Penalty Policy”). Complainant has also considered the appropriate *Adjustment of Civil Monetary Penalties for Inflation*, pursuant to 40 C.F.R. Part 19, and the July 27, 2016 memorandum by EPA Assistant Administrator Cynthia Giles, entitled *Amendments to the U.S. Environmental Protection Agency’s Civil Penalty Policies to Account for Inflation (Effective August 1, 2016)*, including the *Transmittal of the 2017 Annual Civil Monetary Penalty Inflation Adjustment Rule* dated January 1, 2017 from Susan Shinkman, Director, Office of Civil Enforcement.

We concur with the terms of the enclosed Consent Agreement and Final Order. Accordingly, we recommend that you sign the Final Order and return it to the Office of Regional Counsel for further processing.

cc: Rudrax Patel
407 Lorton Court
Chesapeake, VA 23323
Email: rudrax@gmail.com]

Louis F. Ramalho, Esq.
Sr. Assistant Regional Counsel
U.S. EPA, Region III
Email: ramalho.louis@epa.gov

set forth in the Virginia Administrative Code as Underground Storage Tanks: Technical Standards and Corrective Action Requirements (“VA UST Regulations”), 9 VAC § 25-580-10 *et seq.*

GENERAL PROVISIONS

1. For purposes of this proceeding only, Respondents admit to the jurisdictional allegations set forth in this CAFO.
2. Respondents neither admit nor deny the specific factual allegations, the alleged violations, and conclusions of law set forth in the Administrative Complaint, and Notice of Right to Request Hearing (“Complaint”) filed against Respondents by Complainant on September 26, 2016, except as provided in Paragraph 1, above.
3. Respondents agree not to contest EPA’s jurisdiction with respect to the execution of this Consent Agreement (“CA”), the issuance of the attached Final Order (“FO”), or the enforcement thereof.
4. For the purposes of this proceeding only, Respondents hereby expressly waive their right 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 set forth therein. The settlement agreed to by the parties in this CAFO reflects the desire of the parties to resolve this matter without litigation. This CAFO resolves whatever liability for civil penalties Respondents may have for the violations alleged in the factual allegations and conclusions of law set forth in the Complaint.
6. Respondents shall bear their own costs and attorney’s fees.
7. The provisions of this CAFO shall be binding upon EPA, Respondents, and Respondents’ officers, directors, employees, successors and assigns.
8. This CAFO shall not relieve Respondents of their 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 I, 42 U.S.C. §§ 6991-6991m, or any regulations promulgated thereunder.
9. 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 this 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. Respondents reserves all available rights and defenses it may have, consistent with the terms of this CAFO, to defend itself in any such action.

10. 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).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

11. Complainant incorporates by reference the specific factual allegations, findings of fact and conclusions of law, set forth in the Complaint.

CIVIL PENALTY

12. 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 Forty-Five Thousand Dollars (\$45,000.00) which Respondents shall be liable to pay in accordance with the terms set forth below. Such civil penalty amount shall become due and payable immediately upon Respondents' receipt of a true and correct copy of this CAFO. If Respondents pay the entire penalty of \$45,000.00 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 the Respondents pursuant to 40 C.F.R. § 13.11(a)(1).
13. 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 RCRA Section 9006(c) and (e), 42 U.S.C. § 6991e(c) and (e), with specific reference to EPA's Penalty Guidance for Violations of UST Regulations ("UST Guidance") dated November 4, 1990. Complainant has also considered the appropriate *Adjustment of Civil Monetary Penalties for Inflation*, pursuant to 40 C.F.R. Part 19, and the July 27, 2016 memorandum by EPA Assistant Administrator Cynthia Giles, entitled *Amendments to the U.S. Environmental Protection Agency's Civil Penalty Policies to Account for Inflation (Effective August 1, 2016)*, including the *Transmittal of the 2017 Annual Civil Monetary Penalty Inflation Adjustment Rule* dated January 1, 2017 from Susan Shinkman, Director, Office of Civil Enforcement.
14. Respondents have asserted that it will not be able to pay the civil penalty amount in full within thirty (30) calendar days of the date on which this CAFO is mailed or hand-delivered. As a result, the Respondent has agreed to pay the civil penalty in the amount of **Forty-Five Thousand Dollars (\$45,000.00)** in twelve (12) equal monthly installments with interest at the rate of 1% per annum on the outstanding principal balance according to the following schedule:

1st payment is due within 30 days of the date on which the CAFO is mailed or hand-delivered to the Respondents = \$3,786.98;

2nd payment is due within 60 days of the date on which the CAFO is mailed or hand-delivered to the Respondents = \$3,783.90;

3rd payment is due within 90 days of the date on which the CAFO is mailed or hand-delivered to the Respondents = \$3,780.82;

4th payment is due within 120 days of the date on which the CAFO is mailed or hand-delivered to the Respondents = \$3,777.74;

5th payment is due within 150 days of the date on which the CAFO is mailed or hand-delivered to the Respondents = \$3,774.86;

6th payment is due within 180 days of the date on which the CAFO is mailed or hand-delivered to the Respondents = \$3,771.58;

7th payment is due within 210 days of the date on which the CAFO is mailed or hand-delivered to the Respondents = \$3,768.49;

8th payment is due within 240 days of the date on which the CAFO is mailed or hand-delivered to the Respondents = \$3,765.41;

9th payment is due within 270 days of the date on which the CAFO is mailed or hand-delivered to the Respondents = \$3,762.33;

10th payment is due within 300 days of the date on which the CAFO is mailed or hand-delivered to the Respondents = \$3,759.25;

11th payment is due within 330 days of the date on which the CAFO is mailed or hand-delivered to the Respondents = \$3,756.16; and

12th payment is due within 360 days of the date on which the CAFO is mailed or hand-delivered to the Respondents = \$3,753.08.

15. Under this proposed repayment schedule, the Respondents will pay the civil penalty of \$45,000.00 plus interest of \$240.60 as further outlined in the chart below:

Payment	Principal	Interest	Payment Amount Due
1	\$ 3,750.00	\$36.98	\$ 3,786.98
2	\$3,750.00	\$33.90	\$ 3,783.90
3	\$3,750.00	\$30.82	\$ 3,780.82
4	\$3,750.00	\$27.74	\$ 3,777.74

5	\$3,750.00	\$24.86	\$3,774.86
6	\$3,750.00	\$21.58	\$3,771.58
7	\$3,750.00	\$18.49	\$3,768.49
8	\$3,750.00	\$15.41	\$3,765.41
9	\$3,750.00	\$12.33	\$3,762.33
10	\$3,750.00	\$9.25	\$3,759.25
11	\$3,750.00	\$6.16	\$3,756.16
12.	\$3,750.00	\$3.08	\$3,753.08
TOTAL:	\$45,000.00	\$240.60	\$45,240.60

16. Respondents shall pay the civil penalty monthly installments set forth in Paragraph 14, above, by sending either a cashier's check, certified check, or electronic wire transfer, in the following manner:

- A. All payments by Respondents shall reference Respondents' name and address, and the Docket Number of this action, *i.e.*, RCRA-03-2016-0225;
- 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: Craig Steffen 513-487-2091

- 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 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

- F. 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

- G. 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

H. On-Line Payment Option:

WWW.PAY.GOV/PAYGOV

Enter sfo 1.1 in the search field. Open and complete the form.

I. Additional payment guidance is available at:

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

A copy of Respondent's check or a copy of Respondent's electronic transfer shall be sent simultaneously to:

Regional Hearing Clerk (3RC00)
EPA Region III
1650 Arch Street
Philadelphia, Pennsylvania 19103 - 2029, and

Louis F. Ramalho
Senior Assistant Regional Counsel
U.S. Environmental Protection Agency - Region III
1650 Arch Street
Philadelphia, PA 19103-2029.

17. 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. Accordingly, Respondents' failure to make timely payment or to comply with the conditions in this CAFO shall result in the assessment of late payment charges including interest, penalties, and/or administrative costs of handling delinquent debts.
18. Interest on the civil penalty assessed in this CAFO will begin to accrue on the date that a true and correct copy of this CAFO is mailed or hand-delivered to Respondents. 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).
19. 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.

20. A late payment penalty of six percent (6%) 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). The late payment penalty on any portion of the civil penalty that remains delinquent more than ninety days shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).
21. The Respondents agree not to deduct for federal tax purposes the civil monetary penalty specified in this Consent Agreement and the accompanying Final Order.

FULL AND FINAL SATISFACTION

22. 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 Complaint.

RESERVATION OF RIGHTS

23. 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. Respondents reserve all available rights and defenses it may have, consistent with the terms of this CAFO, to defend itself in any such action. This CAFO and any provision herein shall not be construed as an admission of liability in any criminal or civil action or other administrative proceeding, except in an action of proceeding to enforce or seek compliance with this CA and accompanying FO.

OTHER APPLICABLE LAWS

24. Nothing in this CAFO shall relieve Respondents of the obligation to comply with all applicable federal, state, and local laws and regulations.

CERTIFICATION

25. The person signing this CA on behalf of each Respondent certifies to EPA by his or her signature herein that such Respondent, as of the date of execution of this CA, is 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 9 VAC § 25-580-10 *et seq.* at the Facility referenced herein. This certification is based on the personal knowledge of the signer or based on an inquiry of the person or persons responsible for the Facility's compliance with Subtitle I of RCRA.

AUTHORITY TO BIND THE PARTIES

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

ENTIRE AGREEMENT

27. 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

28. This CAO shall become effective upon filing with the Regional Hearing Clerk.

For the Respondent:

Tanay, LLC.


Date: 3/7/17

By: 
Rudrax Patel
Manager

For the Respondent:

Swami, LLC.

Date: 3/7/17

By: 
Rudrax Patel
Manager

For Complainant:

**U.S. Environmental Protection Agency,
Region III**

Date: 3/9/17

By: _____

Louis F. Ramalho
Senior Assistant Regional Counsel

The Land and Chemicals Division, United States Environmental Protection Agency - Region III, recommend that the Regional Administrator of the U.S. EPA Region III or the Regional Judicial Officer issue the accompanying Final Order.

Date: 3-20-17

By: _____

Catherine A. Libertz, Acting Director
Land and Chemicals Division
U.S. EPA - Region III

**BEFORE THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION III**

In the Matter of:

**Tanay, LLC.
1243 Norview Avenue
Norfolk, Virginia 23513**

**Swami, LLC.
407 Lorton Court
Chesapeake, Virginia 23323**

RESPONDENTS,

**CITGO Norview Gas Station
1243 Norview Avenue
Norfolk, Virginia 23513**

FACILITY.

Docket No.: RCRA-03-2016-0225

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

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EPA REGION III PHILA. PA

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FINAL ORDER

Complainant, the Director, Land and Chemicals Division, U.S. Environmental Protection Agency–Region III, and Tanay, LLC., and Swami, LLC., (collectively “Respondents”), 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 Section 22.18(b)(2) and (3)). The terms of the foregoing Consent Agreement are acceptable to 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 the 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) and (e) of the Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. § 6991e(c) and (e), with specific reference to EPA’s Penalty Guidance for Violations of UST Regulations (“UST Guidance”) dated November 4, 1990.

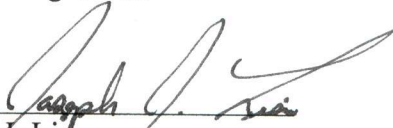
NOW, THEREFORE, PURSUANT TO Section 9006(c) of RCRA, 42 U.S.C. § 6991e(c), and Section 22.18(b)(3) of the Consolidated Rules of Practice, **IT IS HEREBY ORDERED** that Respondents pay a civil penalty of **FORTY-FIVE THOUSAND DOLLARS**

Docket No.: RCRA-03-2016-0225

(\$45,000) in accordance with the payment provisions set forth in the Consent Agreement, and comply with the terms and conditions of the Consent Agreement.

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.

March 21, 2017
Date



Joseph J. Lisa
Regional Judicial and Presiding Officer
U.S. Environmental Protection Agency, Region III

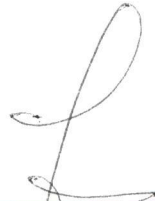
CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on the date listed below, a true and correct copy of the attached Consent Agreement and Final Order, Docket No. RCRA-03-2016-0225, was sent by electronic e-mail and a hard copy mailed overnight via UPS, confirmation of receipt requested to:

Rudrax Patel
407 Lorton Court
Chesapeake, VA 23323
Email: rudrax@gmail.com]

Date

3/21/17



Louis F. Ramalho
Sr. Assistant Regional Counsel
U.S. EPA - Region III
1650 Arch Street
Philadelphia, PA 19103-2029

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