

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2**

In the Matter of:

Puerto Rico Air National Guard, U.S.  
Air Force,

Respondent,

Proceeding Under Section 9006 of the  
Solid Waste Disposal Act, as  
amended.

**CONSENT AGREEMENT  
AND FINAL ORDER**

Docket No. RCRA-02-2009-7506

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REGION 2  
2010 JUN 29 PM 2:05  
REGIONAL HEARINGS  
CLERK

**PRELIMINARY STATEMENT**

This civil administrative proceeding was instituted pursuant to Section 9006 of the Solid Waste Disposal Act, as amended, 42 U.S.C. Section 6901 et seq. (hereinafter referred to as the “Act”). The Complainant in this proceeding, the Director of the Division of Enforcement and Compliance Assistance, Region 2, United States Environmental Protection Agency (“EPA” or “Complainant”), issued a “Complaint, Compliance Order, and Notice of Opportunity for Hearing” on or about September 29, 2009 to the Puerto Rico Air National Guard, U.S. Air Force.

The Complaint alleged violations of the Act and the Commonwealth of Puerto Rico’s approved underground storage tank regulations, called the “Puerto Rico Underground Storage Tanks Control Regulation” (hereinafter “PRUSTR”) promulgated by the Commonwealth of Puerto Rico Environmental Quality Board pursuant to the Puerto Rico Public Policy Environmental Act of 1970. The Commonwealth of Puerto Rico received Program Approval for its underground storage tank program on January 30, 1998.

The Complainant and Respondent have reached an amicable resolution of this matter and agree that, by entering into this Consent Agreement and Final Order (“CA/FO”) pursuant to 40 C.F.R. subsections 22.18(b)(2) & (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (“CROP”), settlement of this matter upon the terms set forth in this CA/FO is an appropriate means of resolving this case without further litigation.

### **EPA’S FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. Respondent is the Puerto Rico Air National Guard, U.S. Air Force (hereinafter “PRANG” or “Respondent”).
2. Respondent is a component of the Puerto Rico National Guard and the United States Air Force operating in the Commonwealth of Puerto Rico.
3. Respondent is a department, agency or instrumentality of the executive branch of the federal government.
4. Respondent is a "person" as that term is defined in Section 9001(5) of the Act, 42 U.S.C. Section 6991(5), and in 40 C.F.R. Section 280.12.
5. Respondent has been and remains the owner and operator of two “underground storage tanks” or “USTs”, as those terms are defined in Sections 9001(3) and 9001(4) of the Act, 42 U.S.C. Sections 6991(3) and 6991(4), and in 40 C.F.R. Section 280.12, located at the Punta Salinas Radar Site at Carr. #868, Km. 0.9,

Toa Baja, Puerto Rico 00949 (the "Facility"), at all times relevant to this action.  
The capacity of each UST system is 4,000 gallons.

6. On or about February 25, 2009, pursuant to Section 9005 of the Act, 42 U.S.C. Section 6991d, authorized representatives of EPA inspected the Facility, in order to determine the Respondent's compliance with Subtitle I of the Act and the Rules in Parts 1 through 13 of PRUSTR.
7. EPA sent an Information Request Letter ("IRL") and Notice of Violation ("NOV") to Respondent on March 19, 2009, to determine the status of Respondent's compliance with the Act.
8. Respondent submitted a response to EPA's NOV on May 15, 2009 which stated that it no longer required a fuel station and would not need the two UST systems any longer.
9. Respondent's response to EPA's NOV on May 15, 2009 included documentation that its two UST systems had been emptied and de-gassed and were temporarily closed pursuant to Rule 701 of PRUSTR.
10. Respondent submitted a supplemental response on June 9, 2009 to EPA's follow-up questions concerning release detection and line leak detector testing.

11. Respondent submitted a response to EPA's IRL on August 14, 2009.
12. Based on the February 25, 2009 inspection by EPA, the May 15, 2009 and June 9, 2009 responses to EPA's NOV, and the August 14, 2009 response to EPA's IRL, EPA issued a Complaint on September 24, 2009, alleging that Respondent committed violations of the following regulations:
  - (i) Rule 203 of PRUSTR (failure to notify the Puerto Rico Environmental Quality Board of required information for the two UST systems);
  - (ii) Rule 305(B)(4), Rule 305(C), Rule 402(A) and Rule 406(B) (failure to provide required release detection monitoring and to maintain release detection records for the tank components of the two UST systems);
  - (iii) Rule 305(B)(4), Rule 305(C), Rule 402(B)(1)(b), and Rule 406(B) (failure to provide required release detection monitoring and to maintain release detection records for the piping components of the two UST systems);and
  - (iv) Rule 305(B)(4), Rule 305(C), Rules 405(A) and 406(B) (failure to conduct an annual test of the operation of the automatic line leak detector (ALLD) for the piping components of the two UST systems).
13. On December 4, 2009, Respondent filed an Answer to the Complaint.

## CONSENT AGREEMENT

Based upon the foregoing, and pursuant to Section 9006 of the Act, 42 U.S.C. Section 6991e, and Section 22.18 of the CROP, it is hereby agreed by and between the Complainant and the Respondent that:

1. Respondent admits the jurisdictional allegations contained herein and neither admits nor denies specific factual allegations contained in the Complaint.
2. Respondent shall pay, by cashier's or certified check, or by electronic fund transfer, a civil penalty in the amount of Eighty-Eight Thousand Dollars (\$88,000.00) in settlement of this case. If payment is by cashier's or certified check, such payment shall be payable to the "Treasurer, United States of America."

The check shall be identified with the notation of the name and docket number of this case as follows: In the Matter of Puerto Rico Air National Guard, U.S. Air Force, Docket No. RCRA-02-2009-7506.

The check shall be mailed to:

United States Environmental Protection Agency  
Fines & Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000

**OVERNIGHT DELIVERY**

If overnight delivery is preferred, Respondent may mail the check to the following address:

U.S. Bank  
100 Convention Plaza  
Mail Station S1-MO-C2L  
Attn: USEPA Box #979077  
St. Louis, MO 63101

**WIRE TRANSFER**

If Respondent chooses to pay by electronic fund transfer (“EFT”), Respondent shall provide the following information to the remitter bank (Federal Reserve Bank of New York):

- A) Amount of Payment (\$88,000.00)
- B) SWIFT address = FRNYUS33  
33 Liberty Street  
New York, N.Y. 10045
- C) Account Code for Federal Reserve Bank of New York (receiving payment) = 68010727
- D) Federal Reserve Bank of New York ABA routing number = 021030004
- E) Field Tag 4200 of the Fedwire message should read “D 68010727  
Environmental Protection Agency”
- F) Name of Respondent (Puerto Rico Air National Guard, U.S. Air Force)
- G) Case Docket Number (RCRA-02-2009-7506 )

Regardless of the method of payment selected above, Respondent shall also send proof of payment to:

Bruce Aber  
Assistant Regional Counsel  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 2  
290 Broadway, 16<sup>th</sup> Floor  
New York, N.Y. 10007-1866; and

Karen Maples  
Office of the Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 2  
290 Broadway, 16<sup>th</sup> Floor  
New York, N.Y. 10007-1866

The check must be received at the above address for regular mail or overnight delivery, or the EFT must be received by the Federal Reserve Bank of New York, on or before 45 calendar days after the date of signature of the Final Order, which is located at the end of this CA/FO (the date by which payment must be received shall hereafter be referred to as the "due date").

- a. Failure to pay the penalty in full according to the above provisions will result in referral of this matter to the United States Department of Justice or the United States Department of the Treasury for collection or other appropriate action.
  - b. If timely payment is not received on or before the due date, a late payment handling charge of fifteen dollars (\$15.00) will be assessed for each thirty (30) day period (or any portion thereof) following the due date in which the balance remains unpaid.
3. Pursuant to 40 C.F.R. Section 22.31(b), the effective date of this Consent Agreement and Final Order shall be the date of filing with the Regional Hearing Clerk, U.S. E.P.A. Region 2, New York, New York.
  4. By no later than December 31, 2010, Respondent shall provide a written certification to EPA, along with records that document that Respondent has

performed a site assessment and completed permanent closure (see Rules 702 and 703 of PRUSTR) for the two UST systems at the Facility. Additionally, Respondent shall also submit the Permanent Closure report to EPA and the appropriate EQB offices.

5. In all documents or reports submitted to EPA pursuant to this Order, the Respondent shall, by its officers, certify under penalty of law that the information contained in such document or report is true, accurate, and not misleading, by including and signing the following statement:

I certify that the information contained in this written notice and the accompanying documents is true, accurate and complete. As to the identified portions of this response for which I cannot personally verify accuracy, I certify under penalty of law that this response and all attachments were prepared in accordance with a system designed to assure that the qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage that system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant potential penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

6. If, in the future, EPA believes that any of the information, including records demonstrating compliance, certified to pursuant to paragraphs 4 and 5 above, is inaccurate, EPA will advise Respondent of its belief and its basis for such, and will afford Respondent an opportunity to respond to EPA. If EPA still believes the certification(s) is (are) materially inaccurate, EPA may, in addition to seeking



stipulated penalties pursuant to paragraph 7, below, for noncompliance, initiate a separate criminal investigation pursuant to 18 USC Section 1001 et seq. or any other applicable law.

7. If Respondent fails to provide, in a timely manner, the certifications and documentation and reports required in paragraphs 4 and 5, above, then Respondent shall be liable to EPA for a stipulated penalty in accordance with the following schedule, commencing on the first day of noncompliance and continuing through the date upon which compliance is achieved. The stipulated penalties shall accrue as follows:

**STIPULATED PENALTY AMOUNTS**

<u>Period of Failure to Comply</u>	<u>Penalty Per Day</u>
1st to 10th day	\$500
11 <sup>th</sup> to 30 <sup>th</sup> day	\$1,000
31st to 60th day	\$2,000
Each day in excess of 60 days	\$3,000

8. The Complainant may grant an extension of the date of performance established in paragraph 4 of this Consent Agreement with regard to the certification and documentation required by paragraphs 4 and 5, if good cause exists for such extension, including, but not limited to, failures arising from causes beyond the reasonable contemplation of the parties and beyond the reasonable control and without fault or negligence of the Respondent. If Respondent submits a request

for extension, such request shall be accompanied by supporting documentation and submitted to EPA no later than fourteen (14) calendar days prior to any due date (or later if the grounds for such extension were not reasonably known to PRANG at such time) set forth in this Consent Agreement, or other deadline established pursuant to this Consent Agreement. Such extension, if any, shall be approved in writing.

9. Unless Respondent provides EPA with a written explanation in accordance with paragraph 10 below, all stipulated penalties are due and payable within thirty (30) calendar days of the Respondent's receipt from EPA of a written demand for payment of the penalties. Respondent agrees that such demand may be mailed to Respondent via its counsel, Philip Burton Gray, Office of the Chief Counsel (NGB-JA), National Guard Bureau, 1411 Jefferson Davis Highway, Suite 11300, Arlington, VA. 22202-3231. All stipulated penalty payments shall be made by cashier's or certified check in accordance with the delivery instructions (i.e., regular mail, overnight mail, or wire transfer) and to the addresses as specified in Paragraph 2 of this Consent Agreement. Penalties shall accrue as provided above regardless of whether EPA has notified the Respondent of the violation or made a

demand for payment, but need only be paid upon demand. Any payment of stipulated penalties shall be in addition to any other payments required under any other paragraph of this CA/FO. Nothing in this CA/FO, including payment of penalties identified in this CA/FO, shall preclude EPA from initiating a separate criminal investigation pursuant to 18 U.S.C. Section 1001 et seq. or any other applicable law. Failure to pay any stipulated penalty in full will result in referral of this matter to the United States Department of Justice or the United States Department of the Treasury for collection and/or other appropriate action.

10. After receipt of a demand from EPA for stipulated penalties pursuant to paragraph 9 above, Respondent shall have twenty (20) calendar days in which to provide Complainant with a written explanation of why it believes that a stipulated penalty is not appropriate for the cited violation(s) of this Consent Agreement (including any technical, financial or other information that Respondent deems relevant). Pursuant to paragraph 11, below, EPA shall evaluate the written explanation provided by the Respondent.

11. The Complainant may, in her sole discretion, reduce or eliminate any stipulated penalty due under this CA/FO if Respondent has, in writing, demonstrated to EPA's satisfaction good cause for such action by EPA or if the Complainant independently, in her own discretion, decides to take such action. If, after review of Respondent's submission pursuant to the preceding paragraph, Complainant determines that Respondent has failed to comply with the provisions of this

Consent Agreement, and Complainant does not, in her sole discretion, eliminate the stipulated penalties demanded by EPA, Complainant will notify Respondent, in writing, that either the full stipulated penalty or a reduced stipulated penalty must be paid by Respondent. Respondent shall pay the stipulated penalty amount indicated in EPA's notice within thirty (30) calendar days of its receipt of such written notice from EPA. Failure of Respondent to pay any stipulated penalty demanded by EPA pursuant to this Consent Agreement may result in further action for collection or appropriate action.

12. For any new UST system(s) that Respondent installs at the Facility, the new UST system shall comply with Part II of PRUSTR Rules 201 through 203) (UST Systems: Design, Construction, Installation and Notification), including the new UST system(s) performance standards in Rule 201 of PRUSTR.
13. Respondent shall hereinafter maintain compliance with all applicable provisions of the PRUSTR.

14. Respondent shall submit copies of any communications or reports with respect to the compliance provisions of this Consent Agreement to:

Charles Zafonte

Compliance Assistance and Program Support Branch

Division of Enforcement and Compliance Assistance

U.S. Environmental Protection Agency, Region 2

290 Broadway, 21<sup>st</sup> Floor

New York, N.Y. 10007-1866

15. The civil penalty and any applicable stipulated penalties provided for herein are penalties within the meaning of Title 26, Section 162(f) of the United States Code, 26 U.S.C. § 162(f), and are not deductible expenditures for purposes of federal, Commonwealth or local law.
16. This Consent Agreement is being voluntarily and knowingly entered into by the Complainant and Respondent to resolve (conditional upon full payment of the civil penalty herein, and of any applicable stipulated penalty that becomes due, the performance of obligations set forth in the Consent Agreement, and the accuracy of the Respondent's representations in this proceeding) the civil and administrative claims alleged in the Complaint against Respondent, PRANG. Nothing herein shall be read to preclude EPA or the United States, on behalf of

EPA, however, from pursuing appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

17. Respondent has read the Consent Agreement, understands its terms, finds it to be reasonable and consents to its terms. Respondent consents to the issuance of the accompanying Final Order. Respondent agrees that all terms of settlement are set forth herein.
18. Respondent explicitly and knowingly consents to the assessment of the civil penalty and any applicable stipulated penalties as set forth in this Consent Agreement and agrees to pay these penalties in accordance with the terms of this Consent Agreement.
19. Respondent explicitly and knowingly waives its right to request or to seek any Hearing on the Complaint or any of the allegations therein asserted, on this Consent Agreement or on the Findings of Fact and Conclusions of Law herein, or on the accompanying Final Order.
20. Respondent waives its right to appeal this Consent Agreement and the accompanying Final Order.

21. This Consent Agreement 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 or proceeding to enforce or seek compliance with this Consent Agreement and its accompanying Final Order.
22. Respondent explicitly waives any right it may have pursuant to 40 C.F.R. § 22.8 to be present during discussions with or to be served with and to reply to any memorandum or communication addressed to the Regional Administrator, Deputy Regional Administrator, or Regional Judicial Officer for Region 2, where the purpose of such discussion, memorandum, or communication is to discuss a proposed settlement of this matter or to recommend that such official accept this Consent Agreement and issue the attached Final Order.
23. Nothing in this Consent Agreement shall be interpreted to require obligation or payment of funds in violation of the Anti-Deficiency Act, 31 U.S.C. Section 1341, or other applicable law.
24. This Consent Agreement and Final Order does not waive, extinguish, or otherwise affect Respondent's obligations to comply with all applicable provisions of Federal, Commonwealth of Puerto Rico or local law concerning USTs nor shall it be construed to be a ruling on, or a determination of, any issue related to any Federal, Commonwealth or local permit.

28. Any failure by Respondent to perform fully any requirement herein will be considered a violation of this CA/FO.
29. Each party hereto agrees to bear its own costs and fees in this matter.
30. Respondent consents to service upon itself of a copy of this Consent Agreement and Final Order by an EPA employee other than the Regional Hearing Clerk.



**In the Matter of Puerto Rico Air National Guard RCRA-02-2009-7506**

RESPONDENT: Puerto Rico Air National Guard

BY: Carlos A. Quiñones  
(Signature)

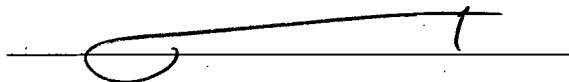
NAME: CARLOS A. QUIÑONES, Col, PRANG

TITLE: 156<sup>th</sup> Airlift Wing Commander

DATE: 21 JUNE 2010

**In the Matter of Puerto Rico Air National Guard, RCRA-02-2009-7506**

COMPLAINANT:

A handwritten signature in black ink, appearing to read "Dore F. LaPosta", is written over a horizontal line.

Dore F. LaPosta, Director  
Division of Enforcement  
and Compliance Assistance  
U.S. Environmental Protection  
Agency - Region 2

DATE: JUNE 23, 2010

**In the Matter of Puerto Air National Guard, RCRA-02-2009-7506**

FINAL ORDER

The Regional Administrator (or anyone duly delegated to act on her behalf) of the U.S. Environmental Protection Agency, Region 2, concurs in the foregoing Consent Agreement in the case of In the Matter of Puerto Rico Air National Guard, U.S. Air Force, Docket Number RCRA-02-2009-7506. The Consent Agreement, having been duly accepted and entered into by the parties to this matter, is hereby ratified, incorporated into this Final Order, and issued as an Order pursuant to Section 9006 of the Act and 40 C.F.R. Section 22.18(b)(3). The effective date of this Order shall be the date of filing with the Regional Hearing Clerk of EPA, Region 2, 40 C.F.R. Section 22.31(b).

Judith A. Enck  
Regional Administrator  
U.S. Environmental Protection  
Agency - Region 2  
290 Broadway, 26<sup>th</sup> Floor  
New York, New York 10007

DATE: 6/28/10

*Judith A. Enck*

In the Matter of Puerto Rico Air National Guard, U.S. Air Force,  
Docket No. RCRA-02-2009-7506

CERTIFICATE OF SERVICE

I certify that I have this day caused to be sent the foregoing fully executed Consent Agreement and Final Order ("CA/FO"), bearing the above-referenced docket number, in the following manner to the addressees listed below:

Copy by Facsimile  
& Certified Mail/Return  
Receipt Requested

Honorable Susan L. Biro  
Chief, Administrative Law Judge  
U.S. Environmental Protection Agency  
Office of Administrative Law Judges  
Mail Code 1900 L  
1200 Pennsylvania Avenue, N.W.,  
Washington, D.C. 20460

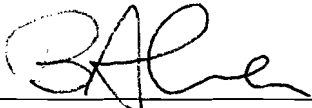
Copy by Facsimile &  
Certified Mail/Return Receipt  
Requested:

Phillip Burton Gray,  
NGB-JA Office of Chief Counsel  
Jefferson Plaza #1, Suite 11300  
1411 Jefferson Davis Highway  
Arlington, Virginia 22202-3682

Original and Copy  
By Hand Delivery:

Karen Maples  
Regional Hearing Clerk  
U.S. Environmental Protection Agency  
Region 2  
290 Broadway, 16<sup>th</sup> Floor  
New York, N.Y. 10007-1866

Dated: June 28, 2010  
New York, New York

  
\_\_\_\_\_  
Bruce Aber  
Assistant Regional Counsel