



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2  
290 BROADWAY  
NEW YORK, NEW YORK 10007-1866

JAN 26 2010

Joy Vilardi Rizzuto, Esq.  
Senior Attorney  
Dept. Of Veterans Affairs  
Office of Regional Counsel  
VA Caribbean Healthcare System  
San Juan, PR 00921-3201

U.S. ENVIRONMENTAL  
PROTECTION AGENCY  
2010 JAN 26 PM 4:45  
REGIONAL HEARING  
CLERK

Re: U.S. Department of Veterans Affairs  
Docket No. RCRA-02-2008-7507

Dear Ms.Rizzuto:

Enclosed please find a fully executed Order. This Order is effective upon the date of filing with the Regional Hearing Clerk. Please note that the first payment is due within forty-five (45) days of the date the Order was signed by the Regional Administrator.

Sincerely,

Carl R. Howard  
Assistant Regional Counsel

cc: Hon. Barbara A. Gunning, Administrative Law Judge  
✓Karen Maples, RHC  
Julio Rodriguez, PREQB

Enc.

In the Matter of U.S Department of Veterans Affairs,  
Docket No. RCRA-02-2008-7507

CERTIFICATE OF SERVICE

I certify that I have this day caused (or am causing) to be sent the foregoing Consent Agreement and Final Order to the following addressees listed herein in the manner listed below:

Copy by facsimile and  
Pouch Mail:

Judge Barbara A. Gunning  
Office of Administrative Law Judges  
U.S. Environmental Protection Agency  
Mail Code 1900L  
1200 Pennsylvania Avenue, N.W.  
Washington, DC 20460-2001

✓ Original and One Copy  
Hand Delivered to:

Office of the Regional Hearing Clerk  
U.S. Environmental Protection  
Agency, Region II  
290 Broadway  
New York, NY 10007-1866

Copy by Regular Mail to  
Attorney for Respondent:

Ms. Joy Vilardi Rizzuto, Esq.  
Senior Attorney  
Dept. of Veterans Affairs  
Office of Regional Counsel  
VA Caribbean Healthcare System  
10 Casia Street  
San Juan, PR 00921-3201

Jan. 26, 2010  
Date

  
\_\_\_\_\_

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2

U.S. ENVIRONMENTAL PROTECTION AGENCY REGION 2  
2010 JAN 26 PM 1:14  
REGISTRAR HEARING  
CLERK

-----X  
In the Matter of :  
 :  
U.S. Department of Veterans :  
Affairs, :  
 :  
Respondent. :  
 :  
Proceeding Under Section 9006 :  
of the Solid Waste Disposal Act, :  
as amended :  
-----X

CONSENT AGREEMENT AND FINAL ORDER

Docket No. RCRA-02-2008-7507

RAC -  
Original

**PRELIMINARY STATEMENT**

This administrative proceeding was instituted pursuant to the Resource Conservation and Recovery Act, as amended, 42 U.S.C. §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 September 29, 2008 to U.S. Department of Veterans Affairs ("Respondent").

CA 1-26-10 1

The Complaint alleged violations of the Act and the Commonwealth of Puerto Rico's approved regulations, called the "Puerto Rico Underground Storage Tank Regulations" (hereinafter "PRUSTR") promulgated by the Commonwealth of Puerto Rico Environmental Quality Board. (The Commonwealth of Puerto Rico received Program Approval on January 30, 1998.)

Specifically, the Complaint alleged several violations of the PRUSTR by the Respondent. The Complainant and Respondent have reached an amicable resolution of this matter and agree, by entering into this Consent Agreement and Final Order ("CA/FO") pursuant to 40 C.F.R. subsections 22.18(b)(2) and (3), that settlement of this matter upon the terms set forth in this CA/FO is an appropriate means of resolving this case without further litigation.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. Respondent is the U.S. Department of Veterans Affairs.
2. Respondent is a "person" within the meaning of Section 9001(5) of the Act, 42 U.S.C. § 6991(5), and Rule 105 of PRUSTR.

3. Respondent is a department, agency or instrumentality of the executive branch of the federal government.
4. Respondent has been and remains the “owner” and “operator” of “Underground Storage Tanks” or “UST” systems, as those terms are defined in Section 9001 of the Act, 42 U.S.C. § 6991, and in Rule 105 of PRUSTR, at the Veterans Affairs Caribbean Healthcare System (“VACHS”) located at 10 Calle Casia, San Juan, Puerto Rico 00921-3201 (“the VACHS San Juan facility” or “the Facility”).
5. Respondent owns and operates two UST systems (Tanks 1 and 2), which were installed on September 23, 1993, in Area A of the Facility, and three UST systems (Tanks 3, 4 and 5), which were installed on June 28, 1999 (Tank 3) and on December 1, 2005 (Tanks 4 and 5) in Area B of the Facility. Specific information on these UST Systems appears in the following table:

**VACHS UST INFORMATION**

<b>Tank #</b>	<b>Capacity (gallons)</b>	<b>Contents</b>	<b>Tank/Piping Material</b>	<b>Fuel Usage</b>
1	1,200	Gasoline	Composite/Steel	Vehicles for emergencies
2	30,000	Diesel	Composite/Steel	Emergency generators and boilers
3	20,000	Diesel	FRP/FRP	Emergency generators and boilers
4	14,500	Diesel	FRP/FRP	Emergency generators only
5	14,500	Diesel	FRP/FRP	Emergency generators only

FRP = Fiberglass Reinforced Plastic

6. The tanks owned and operated by Respondent at the Facility are referred throughout this document as Tanks 1, 2, 3, 4 and 5.
7. The tanks and piping owned and operated by Respondent at the Facility are referred throughout this document as UST Systems 1, 2, 3, 4 and 5, when referring to both tanks and piping.
8. Pursuant to Sections 2002, 9002, and 9003 of the Act, 42 U.S.C. §§ 6912, 6991a, and 6991b, EPA promulgated rules setting forth requirements for owners and operators of UST Systems, set forth at 40 C.F.R. Part 280. Pursuant to the Puerto Rico Public Policy Environmental Act of 1970, the Commonwealth of Puerto Rico Environmental Quality Board (“EQB” or “the Board”) promulgated Underground Storage Tank Regulations on November 7, 1990, setting forth requirements for owners and operators of UST Systems.

9. Pursuant to 40 C.F.R. Part 281, the Commonwealth of Puerto Rico received State Program Approval, as set forth in the Federal Register, 63 Fed. Reg. 4591 (Jan. 30, 1998).
10. The federal codification and description of the State Program Approval of the Commonwealth of Puerto Rico UST program are set forth at 40 C.F.R. Section 282.102.
11. Pursuant to 40 C.F.R. Section 280.12, the Commonwealth of Puerto Rico Environmental Quality Board is the “implementing agency” responsible for enforcing the requirements of the Act and the regulations promulgated pursuant thereto.
12. EPA retains the authority to exercise its enforcement authorities under Section 9006 of Subtitle I of RCRA, 42 U.S.C. Section 6991e, for violations of approved Commonwealth of Puerto Rico regulations, and notified the Commonwealth of Puerto Rico pursuant to Section 9006(a)(2), 42 U.S.C. Section 6991e(a)(2) prior to issuing the administrative Complaint in this action.
13. The UST Systems 1, 2 and 3 at the Facility store either diesel fuel or gasoline for use in vehicles or for use in emergency generators and boilers, and thus are subject to the UST requirements set forth in the Rules in Parts 1 through 13 of PRUSTR. The UST Systems 4 and 5 store diesel fuel for emergency generators only and thus are subject to all the UST requirements of PRUSTR except for release detection.
14. On or about February 13, 2008, pursuant to Section 9005 of the Act, 42 U.S.C. § 6991d, an authorized representative of EPA inspected the Facility to determine the Respondent’s compliance with the Act and the Rules in Parts 1 through 13 of PRUSTR (“February 2008 Inspection”).
15. On or about April 21, 2008, a Notice of Violation (“NOV”) and an Information Request Letter (“IRL”) were issued to representatives of Respondent.
16. EPA’s NOV listed UST violations that were identified by EPA representatives during the February 2008 Inspection.
17. EPA’s IRL sought general information about the USTs owned and/or operated by the Respondent at the Facility, as well as information about any actions taken to correct the violations, and to prevent recurrence of the violations, identified in the NOV.
18. On May 23, 2008, Respondent submitted a response to EPA’s NOV and IRL. On June 23, 2008, Respondent submitted a second response to EPA’s NOV and on July 3, 2008, Respondent submitted a third response to EPA’s NOV and IRL.
19. Based on the EPA inspection and Respondent’s responses to EPA’s NOV and IRL, EPA determined that Respondent had failed to: have a qualified cathodic protection tester inspect

the cathodic protection system of UST Systems 1 and 2 within six (6) months of installation and every three (3) years thereafter which constitutes a violation of Rule 302(B) of PRUSTR; conduct monitoring for releases from UST Systems 1 and 2 which constitutes a violation of Rule 402(A) of PRUSTR; maintain records of the results of testing from the last two triennial inspections of UST Systems 1 and 2 which constitutes a violation of Rule 302(D)(2) of PRUSTR; maintain the records of compliance with release detection requirements for UST Systems 1 and 2 which constitutes a violation of Rule 305(B)(4) and Rule 406(B) of PRUSTR; and, maintain the results of at least a year of monitoring for releases from UST System 3 which constitutes a violation of Rule 305(B)(4) and Rule 406(B) of PRUSTR.

20. The parties have agreed to settle this matter and that this settlement will include a Supplemental Environmental Project ("SEP"), as described further below. Respondent submitted a description of the SEP on June 24, 2009, but the part of the projected cost associated with training Respondent's own employees is not eligible for SEP credit.

### **CONSENT AGREEMENT**

Based upon the foregoing, and pursuant to Section 9006 of the Act, 42 U.S.C. §6991e, and Section 22.18 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. §22.18, it is hereby agreed by and between the Complainant and the Respondent that:

1. For purposes of this proceeding, Respondent (a) admits the jurisdictional allegations for this proceeding, as specified in this Consent Agreement and Final Order; (b) neither admits nor denies the above Findings of Fact and Conclusions of Law, and (c) consents to the terms of this Consent Agreement.
2. Respondent shall maintain its USTs in compliance with the applicable requirements found in Part 2 (Rules 201 through 203), Part 3 (Rules 301 through 305), and Part 4 (Rules 401 through 406) of PRUSTR, including but not limited to corrosion protection and release detection requirements.
3. Respondent shall submit, within fifteen (15) days of the effective date of this Order, records documenting compliance with Rules 302(B), 302(D)(2), 305(B)(4), 402(A), and 406(B) for the UST systems at the VACHS San Juan facility.
4. If Respondent is unable to comply with a particular provision by the end of the 15-day period as provided in paragraph 3 above, Respondent shall notify EPA in writing within the 15-day period. The notice shall explain the reasons for the noncompliance and shall also provide a schedule for achieving expeditious compliance with the requirement.

5. In all documents or reports submitted to EPA pursuant to this Compliance 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 their accuracy, I certify under penalty of law that this response and all attachments were prepared in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the UST systems, 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

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Signature of Authorized Representative of Respondent

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Name

---

Title

6. Respondent shall submit the documents specified above, as well as the above written notice required to be submitted pursuant to this paragraph to:

**Charles Zafonte**  
**Enforcement Officer**  
**U.S. EPA Region 2**  
**Division of Enforcement & Compliance Assistance**  
**Compliance Assistance and Program Support Branch**  
**290 Broadway, 21<sup>st</sup> Floor**  
**New York, NY 10007-1866**

7. Respondent shall pay, by either a cashiers or certified check, or by Electronic Funds Transfer (“EFT”), a civil penalty in the amount of Thirteen Thousand Dollars (\$13,000), payable to the “Treasurer, United States of America.” The check shall be identified with a notation of the name and docket number of this case as follows: In the Matter of U.S. Department of Veterans Affairs, Docket No. RCRA-02-2008-7507. The check shall be mailed to:

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

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

U.S. Bank  
1005 Convention Plaza  
Mail Station SL-MO-C2GL  
Attn: USEPA Box #979077  
St. Louis, MO. 63101

a. If Respondent chooses to make the payment by EFT, then Respondent shall provide the following information to its remitter bank:

- 1) Amount of Payment
- 2) SWIFT address: FRNYUS33, 33 Liberty Street, New York, NY 10045.
- 3) Account Code for Federal Reserve Bank of New York receiving payment: 68010727.
- 4) Federal Reserve Bank of New York ABA routing number: 021030004.
- 5) Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency."
- 6) Name of Respondent: : In the Matter of U.S. Department of Veterans Affairs
- 7) Docket No. RCRA-02-2008-7507

Respondent shall also send copies of this payment to each of the following

Carl R. Howard, Esq.  
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

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

The payment must be received at the above address on or before forty-five (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”).

- b. Failure of Respondent to pay the penalty in full pursuant to this Consent Agreement will result in further action for collection or appropriate action without prejudice to the right of Respondent to oppose, contest, or challenge such action so long as Respondent does not contest the terms of this Consent Agreement; and
- c. 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.

8. As part of the settlement of this matter, Respondent agrees to implement a Supplemental Environmental Project (“SEP”) in accordance with the “EPA Supplemental Environmental Projects Policy” (“SEP Policy”) which became effective on May 1, 1998. The implementation of the SEP, which is set forth in the following paragraphs, is estimated to cost approximately \$90,000 over a one (1)-year period. (Respondent estimated this cost as \$111,000 but as this figure included training Respondent’s personnel which cost cannot be included in this SEP, EPA reduced the SEP cost 20%, assuming that 20% of the audience may be comprised by Respondent’s personnel.) Thus, the Respondent shall expend at least \$90,000 on EPA-approved SEP-specific activities (“Required SEP Expenditure”).

9. Respondent shall hire an experienced UST training contractor to provide hands-on UST compliance training (e.g., over-sight of the trainees physically performing the skills being taught) in Spanish to small UST owner/operators in the San Juan area of Puerto Rico.

10. Respondent agrees to implement the SEP in accordance with the terms and the schedule set forth in this CA/FO. For purposes of this Consent Agreement, days shall mean calendar days. Any proposed changes to the SEP must be approved by EPA.

11. Respondent shall perform the SEP activities in accordance with the requirements and schedule set forth below. All Plans and Reports shall be submitted in the English language.

Activity	Date Deliverable Due
Submittal of a detailed SEP Workplan to EPA for review and comment. The SEP	No later than sixty (60) days from the Regional

<p>Workplan will detail/identify, in English:</p> <ul style="list-style-type: none"> <li>-how each of the four (4) training sessions will be administered and how they will be publicized in advance to owners and operators of USTs (provide a copy of the invitation and guest (invitee) list;</li> <li>-the person(s) who will teach/conduct the compliance promotion seminar and include a copy of the instructor(s) resume and qualification dossier;</li> <li>-a date and time and location;</li> </ul> <p>This document will be reviewed and revised as described in paragraph 12, below.</p>	<p>Administrator's signature of the Final Order.</p>
<p>Respondent shall conduct the four (4) training sessions within one year. The sessions shall be held according to a schedule approved by EPA.</p> <p>Respondent's employees shall not compose more than 20% of the attendees at each session unless there is unfilled space at the time the session is being held.</p> <p>Respondent shall submit semi-annual SEP Progress Reports in a form approved by EPA.</p>	<p>Start Date: February 1, 2010 End Date: February 1, 2011</p> <p>Due Date: starting six (6) months after the effective date of the Final Order and continuing until the SEP is completed</p>
<p>SEP Completion Report .</p>	<p>Date Due: By August 1, 2011</p>

12. Within 30 days of receipt of EPA's comments, if any, on the SEP Workplan, Respondent shall revise the SEP Plan to address EPA's comments.

13. Respondent's semi-annual Progress Reports shall inform EPA of Respondent's progress in implementing the SEP, identify any issues or problems that have arisen in the implementation of the SEP, detail how issues or problems were addressed, itemize and document the expenditures that Respondent has made in connection with the SEP and provide information on what percentage of the attendees at the training sessions were not affiliated with the Respondent. Unless otherwise approved by EPA, copies of all invoices and a copy of documents related to the SEP and created or paid or received by Respondent during the reporting period shall be enclosed with the semi-annual Progress Reports when transmitted to EPA. Respondent shall send the semi-annual Progress Reports to the addressees in paragraph 14, below.

14. Respondent shall provide EPA with a SEP Completion Report for the SEP as provided in paragraph 11, documenting the completion of the SEP and the expenditures made in connection with the performance of the SEP. All SEP expenditures are subject to approval by EPA. Said documentation shall be mailed 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

and

Carl R Howard, Esq.  
Office of Regional Counsel  
U.S. Environmental Protection Agency- Region 2  
290 Broadway, 16<sup>th</sup> Floor  
New York, NY 10007-1866.

15. The SEP Completion Report, shall contain the following information:

- a) Detailed description of the SEP as implemented;
- b) Description of any problems encountered and the solutions thereto;
- c) Itemization of costs incurred which Respondent feels are eligible for SEP credit, accompanied by copies of invoices, purchase orders, or other documentation that specifically identifies and itemizes the individual costs of the goods and services for which payment is being made (if the itemization and documentation have been previously provided with a Progress Report, it will suffice to refer to the prior submittal );
- d) Certification that the SEP has been fully implemented pursuant to the provisions of this Consent Agreement and Final Order; and,
- e) Description of the environmental and public health benefits resulting from implementation of the SEP (with quantification of the benefits if possible).

16. Respondent agrees that failure to timely submit the SEP Progress Reports or SEP Completion Report shall be deemed a violation of this Consent Agreement and Final Order, and Respondent shall become liable for stipulated penalties pursuant to paragraph 22 B., below.

17. Following receipt of any Progress Report and the SEP Completion Report, EPA will:

- a) accept the report; or
- b) reject the report, notify Respondent in writing of deficiencies in the report and grant Respondent an additional thirty (30) days in which to correct any deficiencies and to resubmit the report to EPA. If EPA, after allowing

Respondent thirty (30) days to correct any deficiencies, finds that the same type of deficiencies remain, then EPA may seek stipulated penalties in accordance with paragraph 22 B, below.

18. If EPA elects to exercise option 17(b) above, EPA shall permit Respondent the opportunity to object in writing to the notification of deficiency pursuant to this paragraph within 10 days of receipt of such notification. EPA and Respondent will have an additional thirty (30) days (or such time as the parties may agree to) from the due date of Respondent's notification of objection to reach agreement. If agreement cannot be reached on any such issue within this thirty (30)-day period, Respondent may ask that the Complainant or her representative review the matter. Thereafter, EPA shall provide a written statement of its decision to Respondent, which decision shall be final and binding upon Respondent. In the event the SEP is not completed as contemplated herein, stipulated penalties shall be due and payable by Respondent to EPA in accordance with paragraph 22, below.

19. In all documents or reports, including without limitation, SEP Progress Reports and the SEP Completion Report, which are submitted to EPA pursuant to this CA/FO, the following certification shall be signed by a responsible agency official of Respondent:

I certify that, to the best of my knowledge and belief, the information contained in this written certification and in any documents accompanying this certification is true, accurate and complete. In making this statement, I have not made an independent review of all statements contained therein and have relied in good faith on information, statements, and representations furnished to me by employees or contractors. Based on my inquiry of the person or persons (or the supervisors of such persons) directly responsible for gathering the information contained in this written certification and in any documents accompanying this certification, this document is, to the best of my knowledge and belief, true accurate and complete. I am aware that there are significant potential penalties for submitting materially false information, including the possibility of fines and imprisonment for knowing violations.

20. Whether Respondent has complied with the terms of this CA/FO through the implementation of the SEP project as herein required, whether the SEP has been satisfactorily completed, whether the Respondent has made good-faith, timely effort to implement the SEP, and whether costs expended are creditable to the SEP shall be the sole determination of EPA. Should EPA have any concerns about the satisfactory completion of the SEP, EPA will communicate those concerns to Respondent and provide it with an opportunity to respond, and/or correct the deficiencies. If EPA makes a determination that the SEP has been satisfactorily completed, it will provide Respondent with written confirmation of the determination within a reasonable amount of time.

21. Respondent shall maintain in one central location legible copies of documentation concerning the development, implementation, and financing of the SEP and documentation

supporting information in documents or reports submitted to EPA pursuant to this CA/FO, including the reports required to be submitted for the SEP, such as the Semi-Annual Progress Reports and the SEP Completion Report for the SEP required pursuant to this CA/FO. Respondent shall grant EPA and its authorized representatives access to such documentation and shall provide copies of such documentation to EPA within thirty (30) days of Respondent's receipt of a request by EPA for such information, or within such additional time as is approved by EPA in writing. The provisions of this paragraph shall remain in effect for five (5) years from the effective date of this CA/FO or from three (3) years from the satisfactory completion of the required SEP, whichever is later.

22. Stipulated penalties for non-compliance with the SEP will be calculated as follows:

A. In the event that EPA determines, in its sole discretion, that Respondent fails to comply with any of the terms or provisions of this CA/FO relating to the performance of the SEP described in paragraphs 10 to 12 above (but excluding the violations specifically described in paragraph 22 B) and/or to the extent that the actual creditable expenditures for the SEP do not equal or exceed the required minimum expenditure for the SEP, Respondent shall be liable for stipulated penalties (except as provided in subparagraphs (ii) and (iii), immediately below) according to the following provisions:

i) If EPA determines, in its sole discretion, that the SEP has not been completed satisfactorily, Respondent shall pay a stipulated penalty in the amount of **Fifty Thousand Dollars (\$50,000)**. Payment shall be transmitted using the same procedure specified in paragraph 7, above.

ii) If EPA determines, in its sole discretion, that the SEP is not completed satisfactorily, but:

(a) EPA determines that Respondent made good-faith and timely efforts to complete the project; and

(b) Respondent certifies, with supporting documentation, that at least ninety (90) percent of the amount of money which was required pursuant to paragraph 8 to be spent was expended on the SEP and EPA accepts that such expenditures are creditable for the SEP, then Respondent shall not pay any stipulated penalty.

iii) If EPA determines, in its sole discretion, that the SEP is satisfactorily completed, but:

(a) Respondent spent less than ninety (90) percent of the amount of money required to be spent for the SEP, and

(b) Respondent certifies, with supporting documentation, the costs that were expended on the SEP, and EPA accepts that such expenditures are creditable for the SEP, then:

Respondent shall pay a stipulated penalty in an amount equal to two (2) times the difference between the required expenditure for the SEP as set forth in Paragraph 8 above, and the amount the Respondent has expended that EPA determines is properly credited toward the SEP.

B. Notwithstanding any other provision of this CA/FO, stipulated penalties shall accrue per day per violation for the following types of matters: failure to comply with any schedule to submit records and documentation, including but not limited to reports and work plans, failure to include the required certifications or public statement and/or to revise any documents on schedule following receipt of comments; and/or failure to maintain and/or provide records. If deviation from the due dates/schedule in this Consent Agreement for the documents/reports/records described in this paragraph, has not been approved by EPA in writing pursuant to paragraph 29, below, and if Respondent is determined by EPA to be liable to EPA for a stipulated penalty, such liability shall commence on the first day of noncompliance and continue through the final date of completion of the activity for which compliance is achieved. Simultaneous penalties shall accrue for separate violations of the CA/FO. 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

C. Unless Respondent provides EPA with a written explanation in accordance with subparagraph D, below, all stipulated penalties are due and payable within sixty (60) 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, Joy Vilardi-Rizzuto, Department of Veterans Affairs, Office of Regional Counsel, VA Caribbean Healthcare System, 10 Casia Street, San Juan, PR 00921-3210. All stipulated penalty payments shall be made in accordance with the payment instructions in Paragraph 7 of this CA/FO. 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.

D. After receipt of a demand from EPA for stipulated penalties pursuant to the preceding paragraph, Respondent shall have thirty (30) 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 CA/FO (including any technical, financial or other information that Respondent deems relevant). Pursuant to paragraph 23, below, EPA shall evaluate the written explanation provided by the Respondent.

23. The Complainant may, at her sole discretion, reduce or eliminate any stipulated penalty due if Respondent has, in writing, demonstrated to EPA's satisfaction good cause for such action by EPA. 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 forty-five (45) 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 or other appropriate action.

24. At any time prior to Respondent's payment of stipulated penalties, the Director, may, for good cause as independently determined by her, reduce or eliminate the stipulated penalty(ies). If the Director makes such determination, EPA shall notify Respondent in writing of any such action.

25. Any public statement, oral or written, made by Respondent making reference to the SEP shall include the following language: "This project was undertaken in connection with the settlement of an enforcement action taken by the U.S. Environmental Protection Agency for violations of regulations concerning the management of underground storage tanks."

26. Delays:

a) If any event occurs which causes or may cause delays in the completion of the SEP as required under this CA/FO, Respondent shall notify EPA in writing within thirty (30) days of the delay or Respondent's knowledge of the anticipated delay, whichever is earlier. The notice shall describe in detail the anticipated length of delay, the precise cause of delay, the measures taken by Respondent to prevent or minimize delay, and the timetable by which those measures will be implemented. Respondent shall adopt all reasonable measures to avoid or minimize any such delay. Failure by Respondent to comply with the notice requirements of this paragraph shall render this paragraph void and of no effect as to the particular incident involved and may constitute a waiver of Respondent's right to request an extension of its obligation under this Consent Agreement based on such incident.

b) If the parties agree that the delay or anticipated delay in the completion of the SEP has been or will be caused by circumstances entirely beyond the control of Respondent, the time for performance hereunder may be extended for a period no longer than the delay resulting from such circumstances. In such event, the parties shall stipulate to such extension of time.

c) In the event that EPA does not agree that a delay in completing the SEP in accordance with the requirements of this Consent Agreement has been or will be caused by circumstances beyond the control of Respondent, EPA will notify Respondent in writing of its decision and any delays in completion of the SEP shall not be excused.

d) The burden of proving that any delay is caused by circumstances entirely beyond the control of Respondent shall rest with Respondent. Increased cost or expenses associated with the performance of the SEP under this CA/FO shall not, in any event, be a basis for changes in this Consent Agreement or extensions of time under section b) of this paragraph. Delay in achievement of one interim step shall not necessarily justify or excuse delay in achievement of subsequent steps.

27. The civil penalties and 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.

28. The SEP to be completed by Respondent, described in paragraphs 10 and 11 of this CA/FO, has been accepted by Complainant solely for purposes of settlement of this civil administrative proceeding.

29. EPA Region 2 may grant an extension of the date(s) of performance or such other dates as are established in this CA/FO with regard to any of the SEP components, if Respondent has first demonstrated in writing good cause for such extension. If Respondent submits a request for extension, such request shall be accompanied by supporting documentation and submitted to EPA no later than thirty (30) calendar days prior to any due date set forth in this Consent Agreement, or other deadline established pursuant to this Consent Agreement. Such extension, if any, shall be approved in writing.

30. Respondent hereby certifies that, as of the date of this CA/FO, Respondent is not required to perform or develop the SEP described in paragraphs 10 and 11 above, by any federal, Commonwealth, local law, regulation or Executive Order; nor is Respondent required to perform or develop each SEP by agreement, grant, or as injunctive relief in this or any other case or in compliance with Commonwealth or local requirements. Respondent further certifies that Respondent has not received, and is not presently negotiating to receive, credit in any other enforcement action for the SEP. Respondent certifies that it had not committed to perform the SEP prior to the commencement of this action.

31. If EPA determines that Respondent's certification in paragraph 30 is inaccurate, then Respondent shall pay a stipulated penalty in the amount of Fifty Thousand dollars (\$50,000). Payment shall be transmitted using the same procedure specified in paragraph 7, above.

32. If in the future EPA believes that any of the information certified to, pursuant to Paragraphs 5 and 19 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 the certification is materially inaccurate, EPA may, in addition to seeking stipulated penalties pursuant to paragraph 22.B, above, for noncompliance, initiate a separate criminal investigation pursuant to 18 U.S.C. § 1001 *et seq.*, or any other applicable law.

33. This CA/FO is being voluntarily and knowingly entered into by the Complainant and Respondent to resolve the civil and administrative claims specifically alleged in the Complaint against Respondent (upon full payment of the penalty and any stipulated penalty that comes due and the performance of obligations set forth in the CA/FO). Nothing herein shall be read to preclude EPA, or the United States on behalf of EPA, from pursuing the remedies mentioned in 40 C.F.R. Section 22.18(c) for any violations of law.

34. Respondent has read the CA/FO, understands its terms, finds it to be reasonable and



consents to the issuance and its terms. Respondent consents to the issuance of the accompanying Final Order. Respondent agrees that all terms of settlement are set forth herein.

35. Respondent explicitly and knowingly consents to the assessment of the civil penalty and stipulated penalties as set forth in this CA/FO and agrees to pay these penalties in accordance with the terms of this CA/FO.

36. Respondent explicitly 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.

37. Respondent waives its right to appeal the proposed Final Order accompanying the CA/FO.

38. This CA/FO 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 CA/FO and its accompanying Final Order.

39. 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 CA/FO and issue the attached Final Order.

40. Nothing in this CA/FO 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.

41. This CA/FO does not waive, extinguish, or otherwise affect Respondent's obligation 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 determination of any issue related to a federal or Commonwealth or local permit.

42. Each undersigned signatory to this CA/FO certifies that he or she is duly and fully authorized to enter into and ratify this CA/FO and all the terms and conditions set forth in this CA/FO.

43. The provisions of this CA/FO shall be binding upon both EPA and Respondent, its officers, directors, officials, agents, servants, authorized representatives and successors or assigns.

44. Each party hereto agrees to bear its own costs and fees in this matter.

45. Respondent consents to service upon itself of a copy of this CA/FO by an EPA employee other than the Regional Hearing Clerk.

46. Pursuant to 40 C.F.R. § 22.31(b), the effective date of the Final Order herein shall be the date when filed with the Regional Hearing Clerk of the United States Environmental Protection Agency, Region 2.

47. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines may present a potential for an imminent and substantial endangerment to the public health, public welfare, or the environment. 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 CA/FO, following its filing with the Regional Hearing Clerk. Respondent reserves all available rights and defenses it may have, consistent with the terms of this CAFO, to defend itself in any such action.

RESPONDENT: U.S Department of Veterans Affairs

BY: Wanda Minis  
(signature)

NAME Wanda Minis  
(Please Print)

TITLE: Director VA Caribbean Healthcare Syst

DATE: 1-20-10

COMPLAINANT: United States Environmental Protection Agency  
Region 2

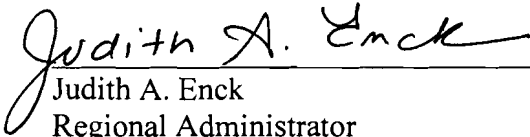
BY: [Signature]  
Dore LaPosta, Director  
Division of Enforcement and Compliance Assistance  
U.S. Environmental Protection  
Agency - Region 2  
290 Broadway  
New York, N.Y. 10007-1866

DATE: JANUARY 21, 2010

In the Matter of U. S. Department of Veterans Affairs,  
Docket No. RCRA-02-2008-7507

**FINAL ORDER**

The Regional Administrator of the U.S. Environmental Protection Agency, Region 2, ratifies the foregoing Consent Agreement. The Consent Agreement, entered into by the Complainant and Respondent to this matter, is hereby approved, incorporated herein, 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, U.S. EPA, Region 2, New York, New York.

  
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Judith A. Enck  
Regional Administrator  
U.S. Environmental Protection  
Agency – Region 2  
290 Broadway  
New York, New York 10007-1866

DATE: 1/22/10