



COMMONWEALTH OF PUERTO RICO
 PUERTO RICO NATIONAL GUARD
 JOINT FORCES HEADQUARTERS

THE ADJUTANT GENERAL'S OFFICE
 P.O. BOX 9023786, SAN JUAN, PUERTO RICO 00902-3786



HON. ANÍBAL ACEVEDO VILÁ
 GOVERNOR

PR-SJA

6 June 2008

Karen Maples
 Regional Hearing Clerk
 EPA Region 2
 US Environmental Protection Agency, Region 2
 290 Broadway, 16th Floor
 New York, NY 10007-1866

(787) 289-1400
 2008 JUN 10 AM 8:59
 REGIONAL HEARING
 CLERK
 U.S. ENVIRONMENTAL
 PROTECTION AGENCY-REG.11

RE: In the Matter of Puerto Rico Army National Guard et al.,
 Docket No. RCRA-02-2008-7502.

Dear Ms Maples:

Please find enclosed an original and one copy of an Answer and Request for Hearing on behalf of Respondent, Puerto Rico Army National Guard submitted pursuant to 40 C.F.R. § 22.15 regarding the above-captioned matter. Please have this documents marked *filed* and return a conformed copy to me along with a written response that the Request for Hearing has been granted.

Respondent PRARNG also wish to pursue the possibility of settlement and would like to schedule an informal conference with the EPA to discuss settlement options, including the use of Supplemental Environmental Projects as part of a negotiated settlement.

Please contact the undersigned at (787) 289-1489 or via e-mail at william.e.oconnor@ng.army.mil so that we may schedule a conference with the appropriate government representatives at your earliest convenience.

There are other counsel who will be appearing and participating in the settlement process.

For the National Guard Bureau

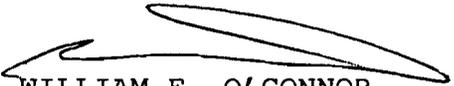
WFO
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Please include the listed counsel in the communications regarding this matter.



WILLIAM E. O'CONNOR
CPT, JA
Full Time Judge Advocate
Attorney for the PRARNG

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

In the Matter of

Puerto Rico Army National
Guard, Camp Santiago; and
the Army and Air Force
Exchange Service, Camp
Santiago, Salinas, Puerto
Rico

Respondents

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

ANSWER AND REQUEST FOR HEARING

Docket No. RCRA-02-2008-7502

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II
2008 JUN 10 AM 8:59
REGIONAL HEARING
CLERK

ANSWER

Respondents, Puerto Rico Army National Guard, Camp Santiago (PRARNG) by way of Answer to United States Environmental Protection Agency (USEPA) Complaint, dated 31 March 2008 and received on 7 April 2008, hereby state:

1. Admitted as to the first part.
2. No admission is required since this paragraph sets forth a statement in law.
3. Admitted in part. Respondent PRARNG is the "operator" of the tanks. However, the U.S. Government, through the Army, is the "owner" of the tanks. Also, Respondent PRARNG states in the Answer to the Complaint, that the U.S. Government, through the Defense Energy Support Center (DESC), is the owner of the fuels stored in those tanks.
4. Admitted.
5. Admitted.
6. Admitted.

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7. Neither admitted nor denied since this paragraph does not constitute a factual allegation.

8. Neither admitted nor denied since this paragraph does not constitute a factual allegation.

9. Neither admitted nor denied since this paragraph does not constitute a factual allegation. Also, this paragraph is not directed at Respondent PRARNG.

10. Neither admitted nor denied since this paragraph does not constitute a factual allegation.

11. Neither admitted nor denied since this paragraph does not constitute a factual allegation.

12. Neither admitted nor denied since this paragraph does not constitute a factual allegation and sets forth statements or conclusions of law.

13. Neither admitted nor denied since this paragraph does not constitute a factual allegation and sets forth statements or conclusions of law.

14. Neither admitted nor denied since this paragraph does not constitute a factual allegation and sets forth statements or conclusions of law.

15. Neither admitted nor denied since this paragraph does not constitute a factual allegation and sets forth statements or conclusions of law.

16. Neither admitted nor denied since this paragraph does not constitute a factual allegation and sets forth statements or conclusions of law.

17. Neither admitted nor denied since this paragraph does not constitute a factual allegation and sets forth statements or conclusions of law.

18. Admitted, as to the fact that Respondent PRARNG UST Systems in the POL and MATES areas store either diesel or gasoline for use of Military Vehicles. The fuel is owned by DESC as stated in paragraph 3 of this Answer. The rest of the paragraph requires no admission or denial since it does not constitute a factual allegation and sets forth statements or conclusions of law.

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19. Admitted.

20. Admitted.

21. Admitted.

22. Admitted.

23. Admitted.

24. Admitted. However, respondent PRARNG would like to clarify that Camp Santiago is owned by the Federal Government. The PRARNG operates Camp Santiago under a license granted by the Secretary of the Army through the U.S. Army Corps of Engineers.

25. Admitted, as stated in the Respondent's NOV Response of 23 August 2007. However this paragraph is not directed to Respondent PRARNG.

26. Admitted.

Count 1

**Respondent PRARNG's Failure to Submit Accurate Notification
to the Environmental Quality Board for POL UST System 2**

27. Answers to paragraphs 1 through 26 are incorporated by reference and as if set forth in their entirety herein.

28. Neither admitted nor denied since this paragraph does not constitute a factual allegation and sets forth statements or conclusions of law.

29. Admitted.

30. Admitted.

31. Neither admitted nor denied. Respondent has no actual knowledge of the Inspector's observation at the time of the inspection.

32. Denied. Respondent PRARNG did submit its annual PR EQB UST Notification Form as mandated by PRUSTR on May 8, 2007. The Notification was submitted within the period prescribed by regulation for the filing of that document.

33. Admitted. In said notification it stated that, for the period described in the report, there was one UST that had suction piping and that the other UST had pressurized piping.

34. Admitted. See response to paragraph 32.

35. Admitted, as stated in the 24 September 2007 e-mail. Said e-mail was in response to the Complainant's Follow-up for information request sent via e-mail dated 5 September 2007.

36. Denied. Respondent representative visited the PREQB UST Office regarding this issue and was told that under PRUSTR any changes made to the UST's during the year could be informed on the next Notification Form which is due on June of every year. It is Respondent's contention, that it did not willfully commit any deviation from notification procedures nor disregarded any of our reporting requirements.

37. Denied. See response to paragraph 36.

Count 2

**Respondent PRARNG's Failure to Operate and Maintain
Corrosion Protection System and to Maintain Documentation
of the Operation of Corrosion Protection Equipment
For POL Tanks 1 and 2**

38. Answers to paragraphs 1 through 37 are incorporated by reference and as if set forth in their entirety herein.

39. Neither admitted nor denied since this paragraph does not constitute a factual allegation and sets forth statements or conclusions in law.

40. Admitted.

41. Neither admitted nor denied. Respondent has no actual knowledge of the Inspector's observations. However, Respondent admits the construction of the POL UST Systems 1 and 2 as stated in paragraph 41. This fact was part of Respondent's Information Request Letter Response dated 23 August 2007.

42. Admitted. See also answer to paragraph 41.

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43. Admitted, as stated in the Respondent's NOV Response dated 23 August 2007.

44. Admitted, as stated in the Respondent's NOV Response dated 23 August 2007.

45. Admitted.

46. Neither admitted nor denied. Respondent has no actual knowledge of the inspector's observations.

47. Admitted. Respondent would like to clarify that at the time of the inspection, Respondent's representative did not have that information at hand.

48. Admitted. As stated in Respondent's NOV Response dated 23 August 2007.

49. Admitted. As stated in Respondent's NOV Response dated 23 August 2007. The installation of the new Cathodic Protection System was completed and the required inspections, monitoring of the corrosion protection equipment have been taking place.

50. Admitted.

51. Admitted.

52. Admitted. However, it does refer to a document, which was provided by Respondent in its 23 August 2007 Information Request Letter Response. More importantly, paragraph states that CH2M Hill, the company who issued the July 2007 was Respondent's contractor. CH2M Hill, (The Company) was contracted by DESC, through the Naval Facilities Engineering Command. DESC is the owner of the fuel stored in the UST's. This fact was included in Respondent's NOV Response. Finally, the document issued by the Company after the Complainant's April 2007 inspection.

53. Admitted. The new Cathodic Protection System was installed on or about October 2007. Since the installation was completed the required inspections have been conducted. This e-mail demonstrated Respondent's corrections of any deficiencies that might have existed regarding the cathodic protection of the UST's.

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54. Neither admitted nor denied since this paragraph does not constitute a factual allegation and sets forth statements or conclusions in law.

55. Neither admitted nor denied since this paragraph does not constitute a factual allegation and sets forth statements or conclusions in law.

56. Neither admitted nor denied since this paragraph sets forth statements or conclusions in law.

57. Admitted.

58. Admitted.

59. Denied. Respondent PRARNG provided documentation regarding the installation of Cathodic Protection System in 1998. It also provided documentation to the extent of informing the Complainant about the steps the respondent was taking to correct any existing or potential deficiencies in this regard.

60. Admitted.

61. Admitted.

62. Neither admitted nor denied since this paragraph does not constitute a factual allegation and sets forth a statement or conclusion in law.

63. Neither admitted nor denied since this paragraph does not constitute a factual allegation and sets forth statements or conclusions in law.

Count 3

Respondent PRARNG'S Failure to Inspect Cathodic Protection System of the POL UST Systems 1 and 2 Within Six Months of Installation and Every 3 Years Thereafter and to Maintain Records of Results of Testing from the Last 2 Triennial Inspections.

WBO
64. Answers to paragraphs 1 through 63 are incorporated by reference and as if set forth in their entirety herein.

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65. Neither admitted nor denied since this paragraph does not constitute a factual allegation and sets forth statements or conclusions in law.

66. Admitted.

67. Admitted. However, since April 2007, Respondent has corrected any deficiencies regarding the Cathodic Protection System. The required inspections have been taking place since the installation of the new UST systems. The deficiencies alleged in this count have not resulted in any discharge of regulated substances into the environment.

68. Admitted, as stated in the Respondent's NOV Response dated 23 August 2007. See also answer to paragraph 67.

69. Admitted, as stated in the Respondent's NOV Response dated 23 August 2007. See also answer to paragraph 67-68.

70. Neither admitted nor denied since this paragraph does not constitute a factual allegation and sets forth statements or conclusions in law.

71. Neither admitted nor denied since this paragraph does not constitute a factual allegation and sets forth statements or conclusions in law.

72. Admitted.

73. Admitted. Respondent has been conducting all required inspections and tests since the new UST Cathodic Protection System were installed. See also answer to paragraph 67.

74. Admitted. See also answer to paragraph 67.

75. Admitted. See also answer to paragraph 67.

76. Admitted.

77. Neither admitted nor denied since this paragraph does not constitute a factual allegation and sets forth statements or conclusions in law.

78. Neither admitted nor denied since this paragraph does not constitute a factual allegation and sets forth statements or conclusions in law.

WTD

Count 4

Respondent PRARNG's Failure to Inspect Every Sixty (60) Days the Cathodic Protection System of POL UST Systems 1 and 2 and to Maintain Records of the Results of the Last 3 Sixty (60) Day Inspections

79. Answers to paragraphs 1 through 78 are incorporated by reference and as if set forth in their entirety herein.

80. Admitted.

81. Neither admitted nor denied since this paragraph does not constitute a factual allegation and sets forth statements or conclusions in law.

82. Admitted. However, Respondent PRARNG is currently conducting inspections every 30 days since the new Cathodic Protection Systems were installed. It is important to note that there is no evidence of UST damage or leakage prior and during the April 2007 EPA inspection.

83. Admitted.

84. Admitted.

85. Neither admitted nor denied since this paragraph does not constitute a factual allegation and sets forth statements or conclusions in law.

86. Neither admitted nor denied since this paragraph does not constitute a factual allegation and sets forth statements or conclusions in law.

87. Admitted.

88. Admitted.

89. Admitted.

90. Neither admitted nor denied since this paragraph does not constitute a factual allegation and sets forth statements or conclusions in law.

91. Neither admitted nor denied since this paragraph does not constitute a factual allegation and sets forth statements or conclusions in law.

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Count 5

**Respondent PRARNG's Failure to Have Overfill Prevention
Equipment on POL UST Systems 1 and 2 and the MATES UST
System**

92. Answers to paragraphs 1 through 91 are incorporated by reference and as if set forth in their entirety herein.

93. Neither admitted nor denied since this paragraph does not constitute a factual allegation and sets forth statements or conclusions in law.

94. Neither admitted nor denied. Respondent has no actual knowledge of the inspector's observations. However, as stated in the Respondents NOV Response dated 23 August 2007, there was no overfill protection system in place at the time of the inspection.

95. Admitted. As stated in the Respondents NOV Response dated 23 August 2007.

96. Admitted. In May 2007, a new overfill protection equipment was installed on the above referenced UST's.

97. Admitted. As stated in the Respondents NOV Response dated 23 August 2007.

98. Neither admitted nor denied since this paragraph does not constitute a factual allegation and sets forth statements or conclusions in law.

99. Neither admitted nor denied since this Paragraph does not constitute a factual allegation and sets forth statements or conclusions in law.

Count 6

**Respondent PRARNG's Failure to Provide Required Release
Detection Monitoring and to Maintain Release Detection
Records for POL UST System 1 and the MATES UST System**

100. Answers to paragraphs 1 through 99 are incorporated by reference and as if set forth in their entirety herein.

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101. Neither admitted nor denied since this paragraph does not constitute a factual allegation and sets forth statements or conclusions in law.

102. Neither admitted nor denied since this paragraph does not constitute a factual allegation and sets forth statements or conclusions in law.

103. Neither admitted nor denied since this paragraph does not constitute a factual allegation and sets forth statements or conclusions in law.

104. Admitted.

105. Neither admitted nor denied since this paragraph does not constitute a factual allegation and sets forth statements or conclusions in law.

106. Admitted.

107. Admitted. POL System 1 is a suction piping system as correctly notified to the EQB in May 2007.

108. Neither admitted nor denied since this paragraph does not constitute a factual allegation and sets forth statements or conclusions in law.

109. Denied. Respondent PRARNG has been conducting monthly vapor leak detection monitoring. PRUSTR, Rule 405, requires that leak detection monitoring be conducted and it states that the methods described in Rule 404, PRUSTR, can be utilized to conduct that inspection. Rule 404, lists vapor leak as an approved monitoring method. Therefore, it is Respondent's understanding that by utilizing this approved monitoring method, that Respondent is complying with the pertinent regulatory provisions.

110. Admitted. See paragraph 109.

111. Neither admitted nor denied since this paragraph does not constitute a factual allegation and sets forth statements or conclusions in law.

112. Admitted.

113. Admitted.

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114. Admitted.

115. Neither admitted nor denied since this paragraph does not constitute a factual allegation and sets forth statements or conclusions in law.

116. Neither admitted nor denied since this paragraph does not constitute a factual allegation and sets forth statements or conclusions in law.

117. Neither admitted nor denied since this paragraph does not constitute a factual allegation and sets forth statements or conclusions in law.

118. Admitted. As stated in the Respondents NOV Response of 23 August 2007.

119. Admitted.

120. Admitted.

121. Admitted.

122. Neither admitted nor denied since this paragraph does not constitute a factual allegation and sets forth statements or conclusions in law.

123. Neither admitted nor denied since this paragraph does not constitute a factual allegation and sets forth statements or conclusions in law.

124. Neither admitted nor denied since this paragraph does not constitute a factual allegation and sets forth statements or conclusions in law.

125. Neither admitted nor denied since this paragraph does not constitute a factual allegation and sets forth statements or conclusions in law.

126. Admitted.

127. Admitted.

128. Admitted.

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129. Neither admitted nor denied since the paragraph does not constitute a factual allegation and sets forth statements or conclusions in law.

130. Neither admitted nor denied since the paragraph does not constitute a factual allegation and sets forth statements or conclusions in law.

Count 7

**Respondent PRARNG's Failure to Provide Required Release
Detection Monitoring and to Maintain Release Detection
Records for POL UST System 2**

131. Answers to paragraphs 1 through 130 are incorporated by reference and as if set forth in their entirety herein.

132. Neither admitted nor denied since the paragraph does not constitute a factual allegation and sets forth statements or conclusions in law.

133. Admitted.

134. Neither admitted nor denied since the paragraph does not constitute a factual allegation and sets forth statements or conclusions in law.

135. Admitted.

136. Admitted.

137. Neither admitted nor denied since the paragraph does not constitute a factual allegation and sets forth statements or conclusions in law.

138. Denied. See response to paragraph 109.

139. Admitted as to the part of Respondent's PRARNG comments to the inspector. The rest of the allegation is denied since Respondent PRARNG has been conducting monthly vapor leak detection monitoring. PRUSTR, Rule 405, requires that leak detection monitoring be conducted and it states that the methods described in Rule 404, PRUSTR, can be utilized to conduct that inspection. Rule 404, lists vapor leak as an approved monitoring method. Therefore, it is Respondent's understanding that by utilizing this approved monitoring

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method that Respondent is complying with the pertinent regulatory provisions.

140. Admitted.

141. Admitted.

142. Admitted.

143. Admitted.

144. Admitted. Respondent's NOV and Information Request Letter Response speak for itself.

145. Admitted.

146. Admitted.

147. Admitted.

148. Neither admitted nor denied since this paragraph does not constitute a factual allegation and sets forth statements or conclusions in law.

149. Neither admitted nor denied since this paragraph does not constitute a factual allegation and sets forth statements or conclusions in law.

150. Neither admitted nor denied since this paragraph does not constitute a factual allegation and sets forth statements or conclusions in law.

151. Neither admitted nor denied since this paragraph does not constitute a factual allegation and sets forth statements or conclusions in law.

152. Admitted.

153. Admitted.

154. Admitted.

155. Neither admitted nor denied since the paragraph does not constitute a factual allegation and sets forth statements or conclusions in law.

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156. Neither admitted nor denied since this paragraph does not constitute a factual allegation and sets forth statements or conclusions in law.

Count 8

Respondent's PRARNG's Failure to Conduct an Annual Test of the Operation of the Automatic Line Leak Detectors (ALLD'S) for POL UST System 2 and to Maintain Records of the Test.

157. Answers to paragraphs 1 through 157 are incorporated by reference and as if set forth in their entirety herein.

158. Neither admitted nor denied since this paragraph does not constitute a factual allegation and sets forth statements or conclusions in law.

159. Admitted.

160. Admitted.

161. Neither admitted nor denied since this paragraph does not constitute a factual allegation and sets forth statements or conclusions in law.

162. Neither admitted nor denied since this paragraph does not constitute a factual allegation and sets forth statements or conclusions in law.

163. Admitted.

164. Denied. At the time of the inspection, Respondent had been conducting monthly vapor leak monitoring. See paragraph 109.

165. Admitted. However, Respondent had been conducting monthly vapor leak monitoring.

166. Admitted. Respondent's NOV Response of 23 August 2007, speaks for itself.

167. Admitted. Respondent's NOV Response of 23 August 2007, speaks for itself.

168. Neither admitted nor denied since this paragraph does not constitute a factual allegation and sets forth statements or conclusions in law.

169. Neither admitted nor denied since this paragraph does not constitute a factual allegation and sets forth statements or conclusions in law.

170. Neither admitted nor denied since this paragraph does not constitute a factual allegation and sets forth statements or conclusions in law.

171. Neither admitted nor denied since this paragraph does not constitute a factual allegation and sets forth statements or conclusions in law.

172. Denied. At the time of the inspection, Respondent had been conducting monthly vapor leak monitoring. See paragraph 109.

173. Denied. At the time of the inspection, Respondent had been conducting monthly vapor leak monitoring. See paragraph 109.

174. Neither admitted nor denied since this paragraph does not constitute a factual allegation and sets forth statements or conclusions in law.

175. Neither admitted nor denied since this paragraph does not constitute a factual allegation and sets forth statements or conclusions in law.

REQUEST FOR HEARING AND AFFIRMATIVE DEFENSES

A. REQUEST FOR HEARING

Respondents hereby request a hearing to contest factual issues and penalty assessments as set forth in the Complaint and raise the following defenses:

B. AFFIRMATIVE DEFENSES

1. The violations alleged in the Complaint are technical and/or administrative in nature and did not result in any discharge of regulated substances into the environment. There was not, at any time, a real or perceived threat to human health or the environment. No clean up actions were required as a result of any of the alleged violations.

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2. Respondent PRARNG has not committed any willful or negligent omission of its environmental responsibilities.

3. EPA's penalty assessment matrix does not comport with the requirements of the Administrative Procedures Act, 5 U.S.C. §§ 551 et seq, is not promulgated pursuant to regulation, and therefore, is not enforceable. The administrative rulemaking process has not been followed and there has been no opportunity for public comment and input. At best, the penalty matrix should be used for guidance purposes only.

4. Economic benefit is not properly assessable against any governmental agency. EPA guidance states: "The economic benefit component represents the economic advantage that a violator has gained by delaying capital and/or non-depreciable costs and by avoiding operational and maintenance costs associated with compliance". Respondents do not and did not realize or gain any economic advantage. Respondents are not in a "for profit" enterprise whereby savings could be made. There is no provision for assessment of economic benefit under the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 et seq. or the UST Regulations, 40 C.F.R. Part 280.

5. Respondent PRARNG have demonstrated good faith by the response provided in both the NOV and RFI. That good faith should be considered here as a factor. Accordingly, a 25% reduction should be taken in the violator specific adjustments to matrix value for degree of cooperation.

6. Respondent PRARNG have either corrected or taken the necessary steps to correct the alleged violations.

7. The gravity based component has been improperly weighted. Respondent tanks, at the time of installation, complied with all applicable regulations. Respondent recognizes that some issues developed over time regarding the Cathodic Protection Systems. Respondent at all times, prior and after the inspection has either consulted with or sought Complainant's guidance over this issue. Also Respondent has consulted with PR EQB over this matter as demonstrated in the Answer to the present complaint. Thus, the potential for harm and extent of deviation should be lowered.

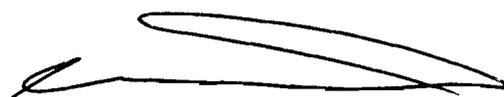
8. Respondents reserve the right to amend and supplement this Answer up until the time of hearing.

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DATED:

BY: 6 June 2008



William E. O'Connor, Esq
Attorney for Respondent
Puerto Rico National
Guard