



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

DEC 20 2010

VIA CERTIFIED MAIL/RETURN RECEIPT REQUESTED

Mark S. Johnson, Assistant Regional Counsel
Office of Regional Counsel
U.S. General Services Administration
26 Federal Plaza, Rm 18-105
New York, N.Y. 10278

Re: In the Matter of the United States General Services Administration
Docket No. RCRA-02-2011-7502

Dear Mr. Johnson:

Please find enclosed a copy of the Consent Agreement and Final Order ("CA/FO") in the above-referenced matter, signed by the Regional Administrator of the United States Environmental Protection Agency ("EPA"), Region 2.

Please assure that your client, the United States General Services Administration, makes arrangement for payment of the civil penalty in accordance with the timeframe specified in the CA/FO. Please also assure that the deadlines for compliance are met in accordance with the time frames specified in the CA/FO.

Thank you for your cooperation in working with us to resolve this matter. If you have any questions, please contact me at (212) 637-3224.

Sincerely yours,

Bruce H. Aber
Assistant Regional Counsel

Enclosure

cc: Karen Maples, Region 2 Regional Hearing Clerk
Wanda Garcia Ayala, Director (PREQB)

U.S. ENVIRONMENTAL
PROTECTION AGENCY REG. II
2010 DEC 21 P 12:50
REGIONAL HEARING
CLERK

bcc: John Senn (Public Affairs Division-Public Outreach Branch)
George Meyer (2DECA-RCB)
Carl-Axel P. Soderberg (2CEPD)
Blake Edwards, Cincinnati Finance Center
Kathleen Malone (2DECA-CAPS)
Charles Zafonte (2DECA-CAPS)
Bruce Aber (2ORC-WTS)

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2**

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II
2009 DEC 21 P 12:50
HEARINGS
OFFICE

-----X
In the Matter of :
 :
United States General Services :
Administration : CONSENT AGREEMENT AND
 : FINAL ORDER
Respondent :
 : Docket No. RCRA-02-2011-7502
 :
Proceeding Under Section 9006 :
of the Solid Waste Disposal Act, :
as amended :
-----X

PRELIMINARY STATEMENT

This administrative proceeding was instituted pursuant to Section 9006 of the Solid Waste Disposal Act, as amended, 42 U.S.C. §6901 et seq. (collectively referred to as the “Act” or “RCRA”) and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22 (hereinafter “CROP”). The Complainant in this proceeding is the Director of the Division of Enforcement and Compliance Assistance, United States Environmental Protection Agency, Region 2 (“EPA”).

This Consent Agreement and Final Order (“CA/FO”) resolves alleged violations of RCRA Subtitle I, 42 U.S.C. Sections 6991-6991m, and the Commonwealth of Puerto Rico’s federally approved underground storage tank (“UST”) program by the Respondent, the United States General Services Administration, in connection with its USTs at Respondent’s facilities located in Hato Rey and Guaynabo, Puerto Rico.

Section 9007 of the RCRA, 42 U.S.C. Section 6991f, provides, inter alia, that each department, agency, and instrumentality of the executive, legislative, and judicial branches of the

Federal Government (1) having jurisdiction over any underground storage tank system, or (2) engaged in any activity resulting, or which may result, in the installation, operation, management, or closure of any underground storage tank, release response activities related thereto, or in the delivery, acceptance, or deposit, of any regulated substance to an underground storage tank or underground storage tank system shall be subject to, and comply with, all Federal, State, interstate, and local requirements, both substantive and procedural, respecting underground storage tanks in the same manner, and to the same extent, as any person is subject to such requirements.

Effective January 30, 1998, pursuant to Section 9004 of the Act, 42 U.S.C. Section 6991c, and 40 C.F.R. Part 281, Subpart A, the Commonwealth of Puerto Rico (which is a “State” as that term is defined in Section 1004 of RCRA) was granted final approval to administer an UST program *in lieu* of the Federal underground storage tank program established under Subtitle I of the Act. 40 C.F.R. Section 282.102. The provisions of the Puerto Rico UST program, through the final approval, have become requirements of Subtitle I of the Act, and are, accordingly, enforceable by EPA pursuant to Section 9006 of the Act, 42 U.S.C. Section 6991e. Puerto Rico’s approved program regulations are set forth in the “Puerto Rico Underground Storage Tanks Control Regulation” (hereinafter “PRUSTR”), see P.R. Admin. Regulation 4362 Rule 101 et seq.

Section 9006(d) of the RCRA, 42 U.S.C. Section 6991e(d), authorizes EPA to assess a civil penalty against any owner or operator of an underground storage tank who fails to comply with, inter alia, any requirement or standard promulgated under Section 9003 of RCRA, 42 U.S.C. Section 6991b (40 C.F.R. Part 280) or any requirement of or standard of a State

underground storage tank program that has been approved by EPA pursuant to Section 9004 of RCRA, 42 U.S.C. Section 6991c.

Pursuant to Section 22.13(b) of the CROP, where the parties agree to settlement of one or more causes of action before filing of an Administrative Complaint, a proceeding may be simultaneously commenced and concluded by issuance of a Consent Agreement and Final Order (“CA/FO”) pursuant to 40 C.F.R. Sections 22.18(b)(2) and 22.18(b)(3). Complainant and Respondent agree that settling this matter by entering into this CA/FO pursuant to 40 C.F.R. Sections 22.13(b), 22.18(b)(2) and 22.18(b)(3) of the CROP, is an appropriate means of resolving this matter without litigation.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Respondent is the United States General Services Administration (hereinafter “the Respondent”).
2. Respondent is a department, agency or instrumentality of the executive branch of the federal government.
3. Respondent is a "person" as that term is defined in Section 9001(5) of the Act, 42 U.S.C. § 6991(5), and in Rule 105 of PRUSTR.
4. Respondent operated and owned, and continues to operate and own, “underground storage tanks” or “USTs”, as those terms are defined in Sections 9001(3), 9001(4), and 9001(10) of the Act, 42 U.S.C. §§ 6991(1) and 6991(3), 6991(4), and 6991(10), and in Rule 105 of PRUSTR, located at the following locations: the Federico Degetau Federal Building, 150 Carlos Chardon St., Hato Rey, Puerto

Rico 00918 (“the Degetau Facility”); and the GSA Service Center, 651 Federal Drive, Guaynabo, Puerto Rico 00965 (“the GSA Service Center Facility”), for all times relevant to this Complaint.

5. On May 19, 2008 and May 21, 2008, pursuant to Section 9005 of the Act, 42 U.S.C. Section 6991d, authorized representatives of EPA inspected the Degetau and GSA Service Center Facilities, respectively, in order to determine whether the USTs at the facilities were in compliance with Subtitle I of the Act and the Rules in Parts 1 through 13 of PRUSTR.
6. At the Degetau Facility, EPA found that one 9,000 gallon steel UST was used to store fuel solely for use by an emergency power generator.
7. At the GSA Service Center Facility, EPA found that two 8,000 gallon fiberglass USTs were used to store gasoline and diesel fuel for motor vehicles at the Facility.
8. On July 10, 2008, EPA sent separate Information Request Letters (“IRL”) and Notice of Violations (“NOVs”) to Respondent concerning the USTs at the Degetau and GSA Service Center facilities (collectively, the “Faciliites”).
9. Respondent submitted a response to EPA’s NOV on October 9, 2008 for the GSA Service Center Facility.
10. Respondent submitted a response to EPA’s NOV on October 16, 2008 for the Degetau Facility
11. Based on the May 19, 2008 inspection of the Degetau Facility by EPA, the October 16, 2008 response to EPA’s IRL and NOV, and further information

provided by Respondent, EPA has determined that Respondent committed violations of the following UST upgrade regulations for the UST system at the Degetau Facility:

- (i) Rule 302 of PRUSTR (Failure to conduct triennial testing of the cathodic protection system);
- (ii) Rule 201(C) (1)(b) of PRUSTR (Failure to have overfill prevention equipment on the UST system); and
- (iii) Rule 201 (C) (1)(a) of PRUSTR (Failure to have spill prevention equipment on the UST system).

12. Based on the May 21, 2008 inspection of the GSA Service Center Facility by EPA, and the October 9, 2008 response to EPA's IRL and NOV, EPA determined that Respondent committed violations of the following UST release detection regulations at both UST systems at the GSA Service Center Facility:

- (i) Rule 402 (A) & (B) of PRUSTR (Failure to provide the required release detection monitoring of tanks and piping and failure to maintain records of release detection for tanks and piping);
- (ii) Rule 402 (B)(1)(a) of PRUSTR (Failure to conduct annual test of the automatic line leak detectors for pressurized piping for UST systems at the Facility).

13. With respect to the GSA Service Center Facility, Respondent has provided documentation that since April 2010 it has been performing interstitial monitoring as a method of release detection for the two USTs at the Facility. In addition,

Respondent has provided documentation that in April 2010 it performed an annual test of the automatic line leak detector for the pressurized piping on the two USTs at the Facility.

14. With respect to the Degetau Facility, Respondent tested the cathodic protection in September 2008 and provided documentation to EPA that the system “passed.” Respondent has also provided documentation that it has upgraded the UST system by equipping it with spill and overfill prevention equipment. Furthermore, although not required by Federal or Commonwealth of Puerto Rico UST regulations, Respondent has installed automated release detection (Automatic Tank Gauging) to detect releases from occurring at its UST system that stores fuel solely for use by an emergency power generator.
15. EPA has given the Commonwealth of Puerto Rico notice of the issuance of this CA/FO in accordance with Section 9006(a)(2) of RCRA, 42 U.S.C. Section 6991e(a)(2).

CONSENT AGREEMENT

Based upon the foregoing, and pursuant to Section 9006 of the Act, 42 U.S.C. §6991e, and 40 C.F.R. Sections 22.13(b) and 22.18 of the CROP, it is hereby agreed that:

1. Respondent shall hereafter maintain compliance with all applicable provisions of Federal and Commonwealth of Puerto Rico UST laws and regulations at the Degetau

and GSA Service Center Facilities, including but not limited to the rules specifically cited in paragraphs 11 and 12 of the above Findings of Fact and Conclusions of Law.

2. Respondent shall pay, by cashiers or certified check, a civil penalty in the amount of One Hundred and Six Thousand and Five Hundred Dollars (\$106,500), 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: United States General Services Administration, Docket No. RCRA-02-2011-7502. 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

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

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

and

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th 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”).

- a. Failure of Respondent to pay the penalty in full pursuant to this Consent Agreement will result in further action for collection or other appropriate action without prejudice to the right of Respondent to oppose, contest, or challenge such action or any determination upon which such action is made so long as Respondent does not contest the terms of this Consent Agreement; and
 - b. 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.
 - c. The civil penalty constitutes a penalty within the meaning of 26 U.S.C. Section 162(f).
3. For purposes of this proceeding, Respondent (a) admits the jurisdictional basis for this matter, and (b) neither admits nor denies the Findings of Fact and Conclusions of Law contained in this Consent Agreement, (c) consents to the

terms of the Consent Agreement, and (d) consents to the issuance of the Final Order.

4. The person signing this Consent Agreement on behalf of the Respondent certifies to EPA by his signature herein that Respondent, as of the date of this Consent Agreement, is in compliance with the provisions of Subtitle I of the Act, 42 U.S.C. Sections 6991-6991m, and the Commonwealth of Puerto Rico's federally approved underground storage tank program at the two Facilities identified in paragraph 4 of the Findings of Fact and Conclusions of Law.
5. Complainant shall have the right to institute further actions to recover appropriate relief if Complainant obtains evidence that the information provided and/or representations made by Respondent to EPA regarding matters at issue in the CA/FO are false or, in any material respect, inaccurate. Respondent is aware that the submission of false or misleading information to the United States government may subject Respondent to separate civil and/or criminal liability.
6. This CA/FO does not waive, extinguish, or otherwise affect Respondent's obligation to comply with all applicable provisions of federal, Commonwealth, or local law concerning USTs, nor shall it be construed to be a ruling on, or determination of, any issue related to any Federal, Commonwealth, or local permit, nor does this CA/FO constitute a waiver, suspension or modification of the requirements of subtitle I of the Act, 42 U.S.C. Sections 6991-6991m, or any regulations promulgated thereunder.

7. 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.
8. This CA/FO is being voluntarily and knowingly entered into by the parties to resolve (conditional upon full payment of the civil penalty herein) Respondent's liability pursuant to Section 9006 of the Act for violations of approved Puerto Rico UST requirements described in paragraphs 11 and 12 of the Findings of Fact and Conclusions of Law. 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.
9. Respondent has read the Consent Agreement, 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.
10. Respondent explicitly and knowingly consents to the assessment of the civil penalty and agrees to pay this penalty in accordance with the terms of this Consent Agreement.
11. Respondent explicitly waives its right to request or to seek any Hearing on this Consent Agreement or on the Findings of Fact and Conclusions of Law herein, or on the accompanying Final Order.
12. Respondent waives its right to contest or appeal this Consent Agreement and the accompanying Final Order.

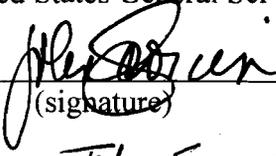
13. This CA/FO and any provision herein shall not be construed as an admission of liability in any criminal or civil action or other administrative or legal proceeding, except in an action or proceeding to enforce or seek compliance with the terms of this CA/FO.
14. Each undersigned signatory to this Consent Agreement 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.
15. Respondent waives its right to confer with the Administrator pursuant to Section 6001(b)(2), 42 U.S.C. Section 6961(b)(2).
16. The provisions of this CA/FO shall be binding upon both EPA and Respondent, and their officials, officers, directors, agents, servants, authorized representatives and successors or assigns.
17. 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 EPA Regional Administrator, the EPA Deputy Regional Administrator, or the Regional Judicial Officer 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.
18. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the

environment. In addition, this settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in 40 C.F.R. Section 22.18(c). Further, EPA reserves any rights and remedies available to it under the Act, the regulations promulgated or approved thereunder, and any other Federal laws or regulations for which EPA has jurisdiction. Respondent reserves all available rights and defenses it may have, consistent with the terms of this CA/FO, to defend itself in any such action.

19. Each party hereto agrees to bear its own costs and fees in this matter.
20. Respondent consents to service upon Respondent of a copy of this CA/FO by an EPA employee other than the Regional Hearing Clerk.
21. 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.

In the Matter of United States General Services Administration, Docket No. RCRA-02-2011-7502

RESPONDENT: United States General Services Administration

BY: 
(signature)

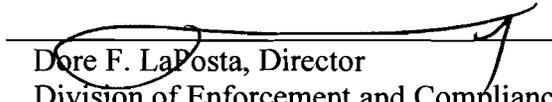
NAME John Scorcio
(Please Print)

TITLE: Regional Commissioner PBS

DATE: December 13, 2010

In the Matter of United States General Services Administration, Docket No. RCRA-02-2011-
7502

COMPLAINANT: **United States Environmental Protection Agency**
Region 2

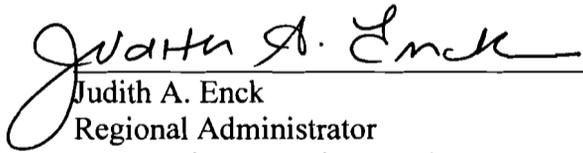
BY: 
Dore F. LaPosta, Director
Division of Enforcement and Compliance Assistance
U.S. Environmental Protection
Agency - Region 2
290 Broadway
New York, N.Y. 10007-1866

DATE: DECEMBER 15, 2010

In the Matter of United States General Services Administration, Docket No. RCRA 02-2011-7502

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 United States General Services Administration, Docket No. RCRA-02-2011-7502. 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, 26th Floor
New York, New York 10007-1866

DATE: 12/16/10

In the Matter of United States General Services Administration, Docket No. RCRA-02-2011-7502

CERTIFICATE OF SERVICE

This is to certify that I have this day caused to be sent the foregoing fully executed CONSENT AGREEMENT AND FINAL ORDER, bearing the above-referenced docket number, in the following manner to the respective addressees below:

Original and One Copy by Hand:

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

Copy by Certified Mail,
Return Receipt Requested:

Mark S. Johnson, Assistant Regional Counsel
Office of Regional Counsel
U.S. General Services Administration
New York, N.Y. 10007-1866

Dated: DEC 20, 2010
New York, N.Y.


Mildred Baez