



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

SEP 24 2009

**CERTIFIED MAIL- RETURN RECEIPT REQUESTED**

Chief, General Litigation Division  
Office of the Judge Advocate General  
c/o Col. Thomas Zimmerman  
112 Luke Ave., Suite 343  
Bolling AFB, Washington, D.C. 20032

Carlos A. Quinones, Colonel, PRANG  
156<sup>th</sup> Airlift Wing Commander  
Muniz Air National Guard Base  
200 Jose A. Santana Avenue  
Carolina, PR 00979-1502

Joint Force Headquarters  
National Guard, Puerto Rico  
Parada 3 ½ Puerta De Tierra  
San Juan, Puerto Rico 00902  
Attn: Benjamin Guzman

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

Dear Sir/Madam:

Enclosed is the Complaint, Compliance Order and Opportunity for Hearing in the above-referenced proceeding. The Complaint alleges violations of the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901 *et seq.* related to the Puerto Rico Air National Guard Punta Salinas, located in Toa Baja, Puerto Rico.

You have the right to a formal hearing to contest any of the allegations in the Complaint and/or to contest the penalty proposed in the Complaint. If you wish to contest the allegations and/or the penalty proposed in the Complaint, you must file an Answer within **thirty (30)** days of your receipt of the enclosed Complaint with the Regional Hearing Clerk of the Environmental Protection Agency ("EPA"), Region 2, at the following address:

U.S. ENVIRONMENTAL  
PROTECTION AGENCY REGIONAL  
2009 OCT -1 11:10:33  
REGIONAL HEARINGS  
CLERK

Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 2  
290 Broadway, 16th floor  
New York, New York 10007-1866

If you do not file an Answer within thirty (30) days of receipt of this Complaint and have not obtained a formal extension for filing an Answer from the Regional Judicial Officer of Region 2, a default order may be entered against you and the entire proposed penalty may be assessed.

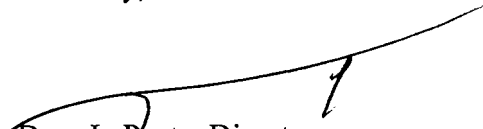
Whether or not you request a formal hearing, you may request an informal conference with EPA to discuss any issue relating to the alleged violations and the amount of the proposed penalty. EPA encourages all parties against whom it files a Complaint to pursue the possibility of settlement and to have an informal conference with EPA. However, a request for an informal conference *does not* substitute for a written Answer, affect what you may choose to say in an Answer, or extend the thirty (30) days by which you must file an Answer requesting a hearing.

You will find enclosed a copy of the "Consolidated Rules of Practice," which govern this proceeding. (A brief discussion of some of these rules appears in the latter part of the Complaint.)

EPA encourages the use of Supplemental Environmental Projects, where appropriate, as part of any settlement. I am enclosing a brochure on "EPA's Supplemental Environmental Projects Policy." Please note that these are only available as part of a negotiated settlement and are not available if this case has to be resolved by a formal adjudication.

If you have any questions or wish to schedule an informal conference, please contact the attorney whose name is listed in the Complaint.

Sincerely,



Dore LaPosta, Director  
Division of Enforcement and Compliance Assistance

Enclosures

cc: Jose Soto, Senior Master Sgt.  
Puerto Rico Air National Guard  
Puntas Salinas Radar Site  
Carr. #868, Km. 9  
Toa Baja, Puerto Rico 00949

Wanda Garcia Ayala, Director  
Water Quality Area  
Puerto Rico Environmental Quality Board  
P.O. Box 11488  
Santurce, Puerto Rico 00910

Karen Maples, Regional Hearing Clerk (without enclosures)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REG-011  
OCT - 1 11:10:33  
REGIONAL HEARING  
NEW YORK

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.

COMPLAINT, COMPLIANCE ORDER,  
AND NOTICE OF OPPORTUNITY  
FOR HEARING

Docket No. RCRA-02-2009-7506

**COMPLAINT**

This is a civil administrative proceeding instituted pursuant to Section 9006 of the Solid Waste Disposal Act, as amended, 42 U.S.C. § 9601 et seq. (hereinafter collectively referred to as the "Act"). Complainant in this proceeding, Dore LaPosta, Director, Division of Enforcement and Compliance Assistance of the United States Environmental Protection Agency, Region 2, ("EPA") has been duly delegated the authority to institute this action.

1. Respondent is the Puerto Rico Air National Guard, U.S. Air Force ("the Respondent" or "PRANG").
2. The Puerto Rico Air National Guard is a component of the United States Air Force operating in the Commonwealth of Puerto Rico.
3. Respondent is a "person" within the meaning of Section 9001(5) of the Act, 42 U.S.C. Section 6991(5), and Rule 105 of the Puerto Rico Underground Storage Tank regulation (hereinafter "PRUSTR").
4. Respondent's headquarters address is: Puerto Rico National Guard Joint Force Headquarters, Parada 3 ½, Puerta de Tierra, San Juan, Puerto Rico 00902-3786.
5. Respondent's main branch location is: National Guard, Puerto Rico Air National Guard, Muniz Air Force Base, 200 Jose A. Santana Avenue, Carolina, Puerto Rico 00979-1502.

6. Respondent has been and remains the "owner" and "operator" of two "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, that are located at the Punta Salinas Radar Site at Carr. #868, Km. 0.9, Toa Baja, PR 00949 ("the Facility").
7. Respondent's August 14, 2009 response to EPA's Information Request letter indicates that the Respondent is the owner and operator of each UST system at the Facility.
8. In describing the legal relationship between the owner of the property and the operator of the facility, Respondent's August 14, 2009 response to EPA's Information Request Letters states: "Air Force licensed [sic, likely, "leased"] [the] property to Puerto Rico Air National Guard (PRANG). PRANG operates the facility."
9. The Facility consists of several buildings for Facilities maintenance, radar equipment for monitoring aircraft, administrative offices and emergency generators.
10. The Facility is located next to a National Park and at the end of a peninsula that extends into the ocean west of San Juan, Puerto Rico.
11. The tanks owned and operated by Respondent at the Facility are referred throughout this document as Tanks 1 and 2.
12. The combined tanks and piping owned and operated by Respondent at the Facility are referred throughout this document as the UST Systems 1 and 2, when referring to both tanks and piping.
13. The two tanks that Respondent owns and operates at the Facility each have a capacity of 4,000 gallons.
14. The two tanks that Respondent owns and operates at the Facility were installed in June 1994.
15. Respondent's two UST systems were used to fuel vehicles at the Facility.
16. Pursuant to §§ 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. These rules include required notifications, release detection and recordkeeping, and testing requirements.
17. Pursuant to the Puerto Rico Public Policy Environmental Act of 1970, the Commonwealth of Puerto Rico Environmental Quality Board promulgated

Underground Storage Tank Regulations on November 7, 1990, setting forth requirements for owners and operators of UST Systems (hereinafter “Puerto Rico Underground Storage Tank Regulations” or “PRUSTR” or “Rules” of PRUSTR).

18. 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. 4593 (Jan. 30, 1998).
19. 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.
20. The Commonwealth of Puerto Rico Environmental Quality Board is the “implementing agency,” as that term is defined in 40 C.F.R. Section 280.12, responsible for enforcing the requirements of the Act and the regulations promulgated pursuant thereto.
21. 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 has issued notice to the Commonwealth of Puerto Rico pursuant to Section 9006(a)(2), 42 U.S.C. Section 6991e(a)(2), prior to issuing this administrative Complaint.
22. The UST Systems at the Facility stored either diesel fuel or gasoline for use in military or other vehicles, and thus are subject to the UST requirements set forth in the Rules in Parts 1 through 13 of PRUSTR.
23. On or about February 25, 2009, pursuant to Section 9005 of the Act, 42 U.S.C. § 6991d, authorized EPA representatives inspected the Facility to determine the Respondent’s compliance with the Act and the Rules in Parts 1 through 13 of PRUSTR (“February 2009 Inspection”).
24. On or about March 19, 2009, EPA sent one letter addressed to representatives of Respondent, and said letter contained the following two attachments: an Information Request Letter (“IRL”) and a Notice of Violation (“NOV”), which were issued pursuant to Sections 9005(a) and 9006 of the Act, 42 U.S.C. § 6991d(a) and 42 U.S.C. § 6991e, respectively.
25. EPA’s NOV listed UST violations that were identified by EPA representatives during the February 2009 Inspection.
26. EPA’s Information Request Letter 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.

27. On May 15, 2009, Respondent submitted a response to EPA's NOV (hereinafter "NOV Response").
28. Respondent's response to EPA's NOV states that the Facility no longer requires a fuel station and therefore would not need any UST systems.
29. Respondent's response to EPA's NOV states that the two UST systems at the Facility have been emptied and are in the process of temporary closure.
30. On June 9, 2009, Respondent submitted a response to EPA's follow-up questions concerning release detection and line leak detector testing.
31. On August 14, 2009, Respondent submitted a response to EPA's IRL.
32. During the February 2009 Inspection and for all time periods relevant to this Complaint, all of the UST systems at the Facility were "Petroleum UST Systems" as that term is defined in Rule 105 of PRUSTR.

### Count 1

#### **Respondent's Failure to Notify the Puerto Rico Environmental Quality Board of Required Information for UST Systems 1 and 2**

33. Paragraphs 1 through 32 are realleged and incorporated herein.
34. Pursuant to Rule 203 (A) of PRUSTR, all owners and operators of UST Systems must submit a notice regarding the existence of an UST System to the Puerto Rico Environmental Quality Board ("EQB").
35. Pursuant to Rule 203(A) & (C) of PRUSTR, the notice must be in the form prescribed in Appendix I of PRUSTR and must provide all the information in Sections I to VII of the prescribed form for each tank for which notice must be given.
36. Sections I to VII of Appendix I of PRUSTR include information on the following: (i) ownership of tanks, (ii) location of tanks, (iii) type of owner, (iv) type of facility, (v) Contact Person in charge of Tanks, (vi) Financial Responsibility and (vii) certification.
37. On the form prescribed in Appendix I of PRUSTR, Respondent provided information responsive to Sections I to VII for each tank for which notice had to be given.
38. Pursuant to Rule 203(D)(4) of PRUSTR, all owners and operators must certify in the notification form compliance with release detection under Rule 402 and 403 of PRUSTR.

39. Section XI of the notification form prescribed in Appendix I of PRUSTR requires UST owners and operators to report information concerning compliance with release detection and upgrade requirements, including spill prevention and overfill protection.
40. The notification form which Respondent submitted to EQB for UST Systems 1 and 2 at the Facility did not provide any required information regarding release detection, spill and overfill protection.
41. During the February 2009 Inspection, EPA's inspectors observed that UST Systems 1 and 2 had release detection (which was not functioning), spill prevention and overfill protection.
42. Pursuant to Rule 203 of PRUSTR, since the USTs were installed in June 1994, the Respondent was required to notify EQB (on the notification form prescribed in Appendix I of PRUSTR) of information concerning UST Systems 1 and 2 no later than July 31, 1994.
43. Between July 31, 1994, and April 8, 2009, when the tanks were emptied, Respondent did not notify EQB of required information concerning its UST Systems 1 and 2.
44. The Respondent's failures described in paragraph 43, above, constitute a violation of Rule 203 of PRUSTR.

**Count 2**  
**Respondent's Failure to Provide Required Release Detection  
Monitoring, and to Maintain Release Detection Records,  
For Tanks 1 and 2**

45. Paragraphs 1 through 44 are realleged and incorporated herein.
46. Pursuant to Rule 402 of PRUSTR, owners and operators of petroleum UST systems must provide release detection for tanks.
47. Pursuant to Rule 402(A) of PRUSTR, tanks must be monitored at least every thirty (30) days for releases using one of the methods listed in Rule 404(D)-(H) of PRUSTR.
48. Pursuant to Rule 404(D) of PRUSTR, automatic tank gauging ("ATG") is a method of release detection for tanks.
49. Respondent employed an ATG method of release detection with interstitial monitoring for UST systems 1 and 2.



50. During the February 2009 Inspection, EPA's Inspectors observed that the ATG system was not functioning.
51. During the February 2009 Inspection, EPA's Inspectors determined that Respondent was unable to perform interstitial monitoring for UST systems 1 and 2.
52. In the Notice of Violation Response, dated May 15, 2009 (hereinafter "the NOV Response), Respondent acknowledged that the automatic tank gauge (i.e., the automatic leak monitoring system) stopped functioning on January 5, 2005.
53. In the NOV Response, Respondent stated that since January 5, 2005, it has used manual tank gauging as an alternative form of release detection for Tanks 1 and 2 at the Facility.
54. Pursuant to Rule 404B(5) of PRUSTR, Manual Tank Gauging is not a permissible method of release detection for tanks that are greater than 2,000 gallons.
55. Tanks 1 and 2 at the Facility were greater than 2,000 gallons.
56. In the NOV Response, Respondent stated that the UST systems 1 and 2 were emptied on April 8, 2009.
57. Pursuant to Rule 305(B)(4) of PRUSTR, owners and operators of UST systems must maintain records of recent compliance with release detection requirements (Rule 406).
58. Pursuant to Rule 406 of PRUSTR, owners and operators of UST systems must maintain records of recent compliance with release detection requirements in accordance with Rule 305 of PRUSTR.
59. Pursuant to Rule 406(B) of PRUSTR, owners and operators of USTs must maintain the results of any sampling, testing, or monthly release detection monitoring for at least one year.
60. Pursuant to Rule 305(C) of PRUSTR, owners and operators of UST systems must keep the records required either: (1) at the UST site and immediately available for inspection by the Environmental Quality Board; or (2) at a readily available alternative site and be provided for inspection to the Environmental Quality Board upon request.
61. During the February 2009 Inspection, Respondent's representatives could not provide the results of monthly release detection monitoring for Tanks 1 and 2 for the twelve-month period prior to the Inspection.
62. Between January 5, 2005 and April 8, 2009, Respondent did not conduct monitoring for releases from Tanks 1 and 2, using any method compliant with PRUSTR.

63. Between February 25, 2008, and February 25, 2009, Respondent did not maintain the results of release detection monitoring for Tanks 1 and 2.
64. Respondent's failure to maintain the results of at least a year of monitoring for releases from Tanks 1 and 2 constitutes a violation of Rule 305(B)(4), Rule 305(C), and Rule 406(B) of PRUSTR.
65. Respondent's failure to conduct monitoring for releases from Tanks 1 and 2 constitutes a violation of Rule 402(A) of PRUSTR.

### **Count 3**

#### **Respondent's Failure to Provide Required Release Detection Monitoring, and to Maintain Release Detection Records, for Piping for UST Systems 1 and 2**

66. Paragraphs 1 through 65 are realleged and incorporated herein.
67. Pursuant to Rule 402 (B) of PRUSTR, owners and operators of underground piping that routinely contain regulated substances must be monitored for releases in accordance with this section.
68. The UST Systems 1 and 2 both had underground piping that routinely contained regulated substances.
69. The UST Systems 1 and 2 both had underground pressurized piping (i.e., they conveyed regulated substances under pressure).
70. Pursuant to Rule 402(B) (1)(b) of PRUSTR, "Underground piping that conveys regulated substances under pressure must: (b) Have an annual line tightness test conducted in accordance with Rule 405(B) or have monthly monitoring in accordance with Rule 405(C)."
71. Rule 405(C) of PRUSTR states that monthly monitoring of pressurized piping must use one of the methods listed in Rule 404(E)-(H) (ie., vapor monitoring, groundwater monitoring or interstitial monitoring).
72. The pressurized piping of UST Systems 1 and 2 did not have an annual line tightness test conducted in accordance with Rule 405(B) of PRUSTR.
73. During the February 2009 Inspection, Respondent acknowledged that no annual line tightness tests of the pressurized piping had been performed by Respondent.
74. During the February 2009 Inspection, Respondent's representative informed EPA's

Inspectors that it uses automatic tank gauging with interstitial monitoring system for the pressurized piping of UST System 1 and 2.

75. In the NOV Response, Respondent acknowledged that the automatic leak monitoring system for the tanks and piping was not working, and had not been operational since January 5, 2005.
76. During the February 2009 Inspection, EPA representatives observed that Respondent was unable to perform interstitial monitoring for tanks and piping, because the automatic tank gauging system stopped functioning and was non-operational.
77. Pursuant to Rule 305(B)(4) of PRUSTR, owners and operators of UST Systems must maintain records of recent compliance with release detection requirements (Rule 406).
78. Pursuant to Rule 406 of PRUSTR, owners and operators of UST Systems must maintain records of recent compliance with release detection requirements in accordance with Rule 305 of PRUSTR.
79. Pursuant to Rule 406(B) of PRUSTR, owners and operators of USTs must maintain the results of any sampling, testing, or monthly release detection monitoring for at least one year.
80. Pursuant to Rule 305(C) of PRUSTR, owners and operators of UST Systems must keep the records required either: (1) at the UST site and immediately available for inspection by the Environmental Quality Board; or (2) at a readily available alternative site and be provided for inspection to the Environmental Quality Board upon request.
81. During the February 2009 Inspection, Respondent's representatives could not provide the results of annual line tightness testing or any monthly monitoring for pressurized piping.
82. Between January 5, 2005 and April 8, 2009, Respondent did not conduct monitoring for releases from UST Systems 1 and 2 pressurized piping, using any method compliant with PRUSTR.
83. Between February 25, 2008, and February 25, 2009, Respondent did not maintain the results of release detection monitoring for piping for UST Systems 1 and 2.
84. Respondent's failure to maintain the results of at least a year of monitoring for releases from piping of UST Systems 1 and 2 constitutes a violation of Rule 305(B)(4), Rule 305(C), and Rule 406(B) of PRUSTR.
85. Respondent's failure to conduct monitoring for releases from piping of UST Systems 1 and 2 constitutes a violation of Rule 402 (B)(1) of PRUSTR.

**Count 4**

**Respondent's Failure to Conduct an Annual Test of the Operation of the Automatic Line Leak Detectors (ALLDs) for Piping of UST Systems 1 and 2 and to Maintain Records of the Test**

86. Paragraphs 1 through 85 are realleged and incorporated herein.
87. Pursuant to Rule 402(B) of PRUSTR, owners and operators of underground piping that routinely contains regulated substances must be monitored for releases in accordance with this section.
88. The UST Systems 1 and 2 had underground piping that routinely contained regulated substances.
89. The UST Systems 1 and 2 had pressurized pumping.
90. Pursuant to Rule 402(B)(1)(a) of PRUSTR, "Underground piping that conveys regulated substances under pressure must: (a) Be equipped with an automatic line leak detector conducted in accordance with Rule 405(A) of PRUSTR."
91. Pursuant to Rule 405(A) of PRUSTR, an annual test of the operation of the automatic line leak detector must be conducted in accordance with the manufacturer's requirements.
92. UST Systems 1 and 2 were equipped with Automatic Line Leak Detectors (ALLDs).
93. As of January 5, 2005 the ALLDs were damaged and not functioning properly.
94. During the February 2009 Inspection, Respondent's representative could not provide evidence of having conducted an annual test of the operation of the ALLDs for UST Systems 1 and 2.
95. During the February 2009 Inspection, Respondent's representatives stated that no annual tests of the operation of the ALLDs for pressurized piping had been performed by Respondent during the past three years.
96. In its May 15, 2009 NOV Response, Respondent stated that no annual testing of the operation of the ALLDs has occurred.
97. Respondent, in its June 9, 2009 response to EPA's question of whether the ALLDs were ever tested, stated that "There is no record available for any test."

98. Pursuant to Rule 305(B)(4) of PRUSTR, owners and operators of UST systems must maintain records of recent compliance with release detection requirements (Rule 406).
99. Pursuant to Rule 406(B) of PRUSTR, owners and operators of USTs must maintain the results of any sampling, testing, or monthly release detection monitoring for at least one year.
100. Pursuant to Rule 305(C) of PRUSTR, owners and operators of UST Systems must keep the records required either: (1) at the UST site and immediately available for inspection by the Environmental Quality Board; or (2) at a readily available alternative site and be provided for inspection to the Environmental Quality Board upon request.
101. Between February 25, 2006 and April 8, 2009, when the tanks were emptied, Respondent did not conduct annual tests of the operation of the ALLDs for the pressurized pumping of UST Systems 1 and 2, as specified in Rule 405(A) of PRUSTR.
102. Between at least February 25, 2006 and April 8, 2009, Respondent did not maintain any records demonstrating that annual tests of the operation of the ALLDs had been conducted on the pressurized pumping of UST Systems 1 and 2, as specified in Rule 305(B)(4) and Rule 406(B) of PRUSTR.
103. Respondent's failure to maintain records of the annual tests of the operation of the ALLDs on the pressurized pumping of the UST Systems 1 and 2 constitutes a violation of Rule 305(B)(4) and Rule 406(B) of PRUSTR.
104. Respondent's failure to conduct annual tests of the operation of the ALLDs on the pressurized piping of UST System 1 and 2 constitutes a violation of Rule 402 B(1)(a) and 405(A) of PRUSTR.

### **PROPOSED CIVIL PENALTY**

Section 9007 of the Act and Section 9006(d)(2)(A) of the Act, 42 U.S.C. Section 6991e (d)(2)(A), authorizes the assessment of a civil penalty against a federal department or agency of up to \$10,000 for each tank for each day of violation of any requirement or standard promulgated by the Administrator. The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection and Improvement Act of 1996, Pub. L. No. 104-34, 110 Stat. 1321 (1996), required EPA to adjust its penalties for inflation on a periodic basis. EPA issued a Civil Monetary Penalty Inflation Adjustment Rule on December 31, 1996, see 61 Fed. Reg. 69360 (1996), on February 13, 2004, see 69 Fed. Reg. 7121 (2004), codified at 40 C.F.R. Part 19, and on December 11, 2008, see 73 Fed. Reg. 75340 (2008).

Under Table I of the Civil Monetary Penalty Inflation Adjustment Rule, the maximum civil penalty under 42 U.S.C. Section 6991e(d)(2) for each tank for each day of violation occurring

after March 15, 2004 and before January 13, 2009 is \$11,000. The maximum penalty for violations occurring after January 12, 2009 is \$16,000.

The penalties are proposed pursuant to the "U.S. EPA Penalty Guidance for Violations of UST Requirements" dated November 1990 ("UST Guidance"). The penalty amounts in this guidance were amended by a September 21, 2004 document entitled "Modifications to EPA Penalty Policies to implement the Civil Monetary Penalty Inflation Rule (pursuant to the Debt Collection Improvement Act of 1996, Effective on October 1, 2004)" and a December 29, 2008 document entitled, "Amendments to EPA Civil Penalty Policies to Implement the 2008 Civil Monetary Penalty Inflation Adjustment Rule (Effective on January 12, 2009)." (These documents are available upon request.) This UST guidance provides a rational, consistent, and equitable calculation methodology for applying the statutory penalty factors to particular cases.

Based upon the facts alleged in this Complaint and taking into account factors such as the seriousness of the violations and any good faith efforts by the Respondent to comply with the applicable requirements, the Complainant proposes, subject to receipt and evaluation of further relevant information, to assess the following civil penalties:

<u>Count 1:</u> Failure to Notify EQB of Required Information for UST Systems 1 and 2 .....	\$8,385
<u>Count 2:</u> Failure to Provide Required Release Detection Monitoring and to Maintain Release Detection Records for Tanks 1 and 2 .....	\$52,924
<u>Count 3:</u> Failure to Provide Required Release Detection Monitoring and to Maintain Release Detection Records for Pressurized Piping for UST Systems 1 and 2 .....	\$46,668
<u>Count 4:</u> Failure to Conduct an Annual Test of the Operation of the Automatic Line Leak Detectors (ALLDs) for Pressurized Piping for UST Systems 1 and 2 and to Maintain Records of the Tests.....	\$46,376
Total Overall Proposed Penalty Amount.....	<b>\$154,353</b>

Penalty Computation Worksheets explaining the rationale for the proposed civil penalties in this case are attached to this Complaint.

**COMPLIANCE ORDER**

Based on the foregoing, and pursuant to the authority of Sections 9006 and 9007 of the Act, 42 U.S.C. § 6991e and 6991f, Complainant issues the following Compliance Order to the Respondent, which shall take effect thirty (30) days after service of this Order (i.e., the effective date) unless by that date Respondent has requested a hearing on the parts applicable to it,

pursuant to 40 C.F.R. § 22.15. See 42 U.S.C. § 6991(e)(b) and 40 C.F.R. §§ 22.37(b) and 22.7(c):

1. Respondent shall submit, within fifteen (15) days of the effective date of this Order, records documenting compliance with temporary closure requirements (Rule 701 of the PRUSTR) for the two UST systems at its Facility.
2. Respondent shall submit, by no later than 12 months after the date of temporary closure (April 8, 2009), or by April 8, 2010, records documenting compliance with site assessment and permanent closure requirements (Rules 702 and 703 of PRUSTR) for UST Systems 1 and 2 at the Facility.
3. Respondent shall maintain closure records in accordance with Rule 705 of PRUSTR for UST Systems 1 and 2 at the Facility.
4. If Respondent decides to resume operation of UST Systems 1 and 2 at the Facility, then Respondent shall maintain its UST systems 1 and 2 in compliance with the applicable requirements found in Part 4 (Release Detection).

The Respondent shall, within forty-five (45) calendar days after effective date of this Order, submit to EPA written notice of the status of the UST Systems 1 and 2 at the Facility, including status of compliance (accompanied by a copy of all appropriate supporting documentation) or noncompliance with each of the requirements set forth in this Compliance Order. If the Respondent is in non-compliance with a particular requirement of this Compliance Order, the Respondent shall provide notice of non-compliance to EPA. The notice shall state the reasons for the noncompliance and shall 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 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 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.

---

Signature of Authorized Representative of Respondent

---

Name Printed

---

Title

Respondent shall submit the documents specified above, as well as the above written certification statement, to:

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

#### **NOTICE OF LIABILITY FOR ADDITIONAL CIVIL PENALTIES**

Pursuant to Sections 9006(a)(3) and 9007 of the Act, 42 U.S.C. Section 699e(a)(3) and 6991(f), and in accordance with the Debt Collection and Improvement Act of 1996, Pub. L. No. 104-34, 110 Stat. 1321 (1996) and the regulations promulgated thereunder (see the Civil Monetary Inflation Rule, 61 Fed. Reg. 69630 (Dec. 31, 1996) and 73 Fed. Reg. 75340 (December 11, 2008) to be codified at 40 C.F.R. Part 19), a violator failing to comply with a Compliance Order within the time specified in the Order is liable for a civil penalty up to \$37,500 for each day of continued noncompliance.

#### **PROCEDURES GOVERNING THIS ADMINISTRATIVE LITIGATION**

The rules of procedure governing this civil administrative litigation have been set forth in 64 Fed. Reg. 40138 (July 23, 1999), entitled, "CONSOLIDATED RULES OF PRACTICE GOVERNING THE ADMINISTRATIVE ASSESSMENTS OF CIVIL PENALTIES, ISSUANCE OF COMPLIANCE OR CORRECTIVE ACTION ORDERS, AND THE REVOCATION, TERMINATION OR SUSPENSION OF PERMITS", and which are codified at 40 C.F.R. Part 22 (hereinafter "Consolidated Rules"). A copy of these rules accompanies this "Complaint, Compliance Order and Notice of Opportunity for Hearing" (hereinafter referred to as the "Complaint").

#### **A. Answering The Complaint**



Where Respondent intends to contest any material fact upon which the Complaint is based, to contend that the proposed penalty and/or the Compliance Order is inappropriate or to contend that Respondent is entitled to judgment as a matter of law, Respondent must file with the Regional Hearing Clerk of EPA, Region 2, both an original and one copy of a written Answer to the Complaint, and such Answer must be filed within 30 days after service of the Complaint. See 40 C.F.R. §§ 22.15(a) and 22.7(c). The address of the Regional Hearing Clerk of EPA, Region 2, is:

**Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 2  
290 Broadway, 16th floor  
New York, New York 10007-1866**

Respondent shall also then serve one copy of the Answer to the Complaint upon Complainant. See 40 C.F.R. § 22.15(a).

Respondent's Answer to the Complaint must clearly and directly admit, deny, or explain each of the factual allegations that are contained in the Complaint. See 40 C.F.R. § 22.15(b). Where Respondent lacks knowledge of a particular factual allegation and so state in its Answer, the allegation is deemed denied. See 40 C.F.R. § 22.15(b). The Answer shall also set forth: (1) the circumstances or arguments that are alleged to constitute the grounds of defense, (2) the facts that Respondent disputes (and thus intend to place at issue in the proceeding) and (3) whether Respondent requests a hearing. See 40 C.F.R. § 22.15(b).

Respondent's failure to affirmatively raise in the Answer facts that constitute, or that might constitute, the grounds of their defense may preclude Respondent, at a subsequent stage in this proceeding, from raising such facts and/or from having such facts admitted into evidence at a hearing.

#### B. Opportunity To Request A Hearing

If requested by the Respondent in its Answer, a hearing upon the issues raised by the Complaint and Answer may be held. See 40 C.F.R. § 22.15(c). If, however, Respondent does not request a hearing, the Presiding Officer (as defined in 40 C.F.R. § 22.3) may hold a hearing if the Answers raise issues appropriate for adjudication. See 40 C.F.R. § 22.15(c). With regard to the Compliance Order in the Complaint, unless Respondent requests a hearing pursuant to 40 C.F.R. § 22.15 within thirty (30) days after such Order is served, such order shall automatically become final. See 40 C.F.R. § 22.37.

Any hearing in this proceeding will be held at a location determined in accordance with 40 C.F.R. § 22.21(d). A hearing of this matter will be conducted in accordance with the applicable provisions of the Administrative Procedure Act, 5 U.S.C. §§ 551-59, and the procedures set forth in Subpart D of 40 C.F.R. Part 22.

### C. Failure To Answer

If Respondent fails in its Answer to admit, deny, or explain any material factual allegation contained in the Complaint, such failure constitutes an admission of the allegation. See 40 C.F.R. § 22.15(d). If Respondent fails to file timely [*i.e.* in accordance with the thirty (30)-day period set forth in 40 C.F.R. § 22.15(a)] Answer to the Complaint, Respondent may be found in default upon motion. See 40 C.F.R. § 22.17(a). Default by Respondent constitutes, for purposes of the pending proceeding only, an admission of all facts alleged in the Complaint and a waiver of Respondent's right to contest such factual allegations. See 40 C.F.R. § 22.17(a). Following a default by Respondent for a failure to timely file an Answer to the Complaint, any default order shall be issued pursuant to 40 C.F.R. § 22.17(c).

Any penalty assessed in the default order shall become due and payable by Respondent without further proceedings thirty (30) days after the default order becomes final under 40 C.F.R. § 22.27(c). See 40 C.F.R. § 22.17(d). If necessary, EPA may then seek to enforce such final default order against Respondent, and to collect the assessed penalty amount. Any default order requiring compliance action shall be effective and enforceable against Respondent without further proceeding on the date the default order becomes final under 40 C.F.R. § 22.27(c). See 40 C.F.R. § 22.17(d).

### D. Exhaustion Of Administrative Remedies

Where Respondent fails to appeal an adverse initial decision to the Environmental Appeals Board pursuant to 40 C.F.R. § 22.30, and that initial decision thereby becomes a final order pursuant to the terms of 40 C.F.R. § 22.27(c), Respondent waives its opportunity to confer with the Administrator. See 40 C.F.R. § 22.31(e).

In order to appeal an initial decision to EPA's Environmental Appeals Board ("EAB"); [see 40 C.F.R. § 1.25(e)], Respondent must do so "within thirty (30) days after the initial decision is served upon the parties." See 40 C.F.R. § 22.30(a). Pursuant to 40 C.F.R. § 22.07(c), where service is effected by mail, "five days shall be added to the time allowed by these rules for the filing of a responsive pleading or document." Note that the forty-five (45) day period provided for in 40 C.F.R. § 22.27(c) [discussing when an initial decision becomes a final order] does not pertain to or extend the time period prescribed in 40 C.F.R. § 22.30(a) for a party to file an appeal to the EAB of an adverse initial decision.

### **INFORMAL SETTLEMENT CONFERENCE**

Whether or not Respondent requests a formal hearing, EPA encourages settlement of this proceeding consistent with the provisions of the Act and its applicable regulations. See 40 C.F.R. § 22.18(b). At an informal conference with a representative(s) of Complainant, Respondent may comment on the charges made in this Complaint, and Respondent may also

provide whatever additional information that it believes is relevant to the disposition of this matter, including: (1) actions Respondent has taken to correct any or all of the violations herein alleged, (2) any information relevant to Complainant's calculation of the proposed penalty, (3) the effect the proposed penalty would have on Respondent's ability to continue in business and/or (4) any other special facts or circumstances Respondent wishes to raise. Complainant has the authority to modify the amount of the proposed penalty, where appropriate, to reflect any settlement agreement reached with Respondent, to reflect any relevant information previously not known to Complainant or to dismiss any or all of the charges, if Respondent can demonstrate that the relevant allegations are without merit and that no cause of action as herein alleged exists. Respondent is referred to 40 C.F.R. § 22.18.

Any request for an informal conference or any questions that Respondent may have regarding this Complaint should be directed to:

**Bruce Aber**  
**Assistant Regional Counsel**  
**Office of Regional Counsel**  
**U.S. Environmental Protection Agency, Region 2**  
**290 Broadway, 17<sup>th</sup> floor**  
**New York, New York 10007-1866**  
**(212) 637-3224**

The parties may engage in settlement discussions irrespective of whether Respondent has requested a hearing. See 40 C.F.R. § 22.18(b)(1). Respondent's requesting a formal hearing does not prevent it from also requesting an informal settlement conference; the informal conference procedure may be pursued simultaneously with the formal adjudicatory hearing procedure. A request for an informal settlement conference constitutes neither an admission nor a denial of any of the matters alleged in the Complaint. Complainant does not deem a request for an informal settlement conference as a request for a hearing as specified in 40 C.F.R. § 22.15(c).

A request for an informal settlement conference does not affect Respondent's obligation to file a timely Answer to the Complaint pursuant to 40 C.F.R. § 22.15. No penalty reduction, however, will be made simply because an informal settlement conference is held.

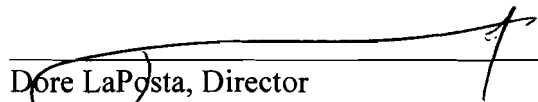
Any settlement that may be reached as a result of an informal settlement conference shall be embodied in a written consent agreement. See 40 C.F.R. § 22.18(b)(2). In accepting the consent agreement, Respondent waives its right to contest the allegations in the Complaint and waives its right to appeal the final order that is to accompany the consent agreement. See 40 C.F.R. § 22.18(b)(2). In order to conclude the proceeding, a final order ratifying the parties' agreement to settle will be executed. See 40 C.F.R. § 22.18(b)(3).

Respondent's entering into a settlement through the signing of such Consent Agreement and its complying with the terms and conditions set forth in the such Consent Agreement terminates this administrative litigation and the civil proceedings arising out of the allegations made in the Complaint. Respondent's entering into a settlement does not extinguish, waive, satisfy or otherwise affect its obligation and responsibility to comply with all applicable statutory and regulatory requirements, and to maintain such compliance.

**RESOLUTION OF THIS PROCEEDING WITHOUT HEARING OR CONFERENCE**

If, instead of filing an Answer, Respondent wishes not to contest the compliance order in the Complaint and wants to pay the total amount of the proposed penalty within 30 days after receipt of the Complaint, Respondent should promptly contact the Assistant Regional Counsel identified on the previous page.

Dated: September 24, 2009

  
Dore LaPosta, Director  
Division of Enforcement and Compliance Assistance  
U.S. Environmental Protection Agency - Region 2  
290 Broadway, 21<sup>st</sup> Floor  
New York, NY 10007-1866

TO: Chief, General Litigation Division  
Office of Judge Advocate General  
1420 Air Force Pentagon  
Washington, D.C. 20330-1420

Carlos A. Quinones, Colonel, PRANG  
156<sup>th</sup> Airlift Wing Commander  
Muniz Air National Guard Base  
200 Jose A. Santana Avenue  
Carolina, PR 00979-1502

Joint Force Headquarters  
National Guard, Puerto Rico  
Parada 3 ½ Puerta De Tierra  
San Juan, Puerto Rico 00902  
Attn: Benjamin Guzman

cc: Jose Soto, Senior Master Sgt.  
Puerto Rico Air National Guard  
Puntas Salinas Radar Site  
Carr. #868, Km. 9  
Toa Baja, Puerto Rico 00949

Wanda Garcia Ayala, Director  
Water Quality Area  
Puerto Rico Environmental Quality Board  
P.O. Box 11488  
Santurce, Puerto Rico 00910

Enclosure

bcc: John Senn, PAD-Public Outreach Branch  
Charles Zafonte, 2DECA-CAPS  
William Sawyer, 2ORC-WTSB  
Bruce Aber, 2ORC-WTSB  
Kathleen Malone, 2DECA-CAPS  
Carl-Axel P. Soderberg, 2 CEPD  
George Meyer, 2DECA-RCB

**CERTIFICATE OF SERVICE**

This is to certify that I have this day caused to be mailed a copy of the foregoing Complaint, Compliance Order, and Notice of Opportunity for Hearing, bearing Docket Number RCRA-02-2009-7506, and a copy of the Consolidated Rules of Practice, 40 C.F.R. Part 22, by certified mail, return receipt requested, to:

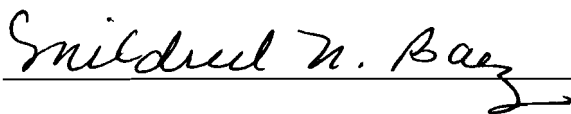
Chief, General Litigation Division  
Office of Judge Advocate General  
1420 Air Force Pentagon  
Washington, D.C. 20330-1420

Chief, General Litigation Division  
Office of Judge Advocate General  
1501 Wilson Boulevard  
Arlington, Virginia 22209-2403  
Attn: Executive Officer Christy Kisner

Chief, General Litigation Division  
Office of the Judge Advocate General  
c/o Col. Thomas Zimmerman  
112 Luke Avenue, Suite 343  
Bolling AFB, Washington, D.C. 20032

I hand-carried the original and a copy of the foregoing Complaint to the Office of Regional Hearing Clerk, United States Environmental Protection Agency, Region 2.

Dated:   OCT - 1  , 2009  
New York, New York

  
\_\_\_\_\_

Enclosure: Penalty Computation Worksheets for the proposed civil penalties

**Enclosure II**  
**PENALTY COMPUTATION WORKSHEET**

**Count 1: Failure to Notify PREQB of Required Information for UST Systems 1 and 2**

**Part 1: Background**

Facility in violation: Puerto Rico Air National Guard, Punta Salinas, Toa Baja, Puerto Rico

<u>Violation:</u>	<u>Regulation</u>	<u>Non-compliance</u>
	Rule 203 of PRUSTR	Failure to notify PREQB of required information for UST systems 1 and 2

Penalty Calculation Period:

Date Gravity-based Penalty Calculations Started: Since the USTs were installed in 1994, UST notification was due to EQB no later than July 31, 1994. EPA has, however, started calculating gravity penalty on October 1, 2004.

Date Gravity-based Penalty Calculations Ended: April 8, 2009, when the USTs were emptied.

1. Days of Noncompliance for Gravity-Based Penalty: 1,650 days  
2. Number of Tanks: 2

**Part 2: Economic Benefit Component / Cost Savings**

3. Capital Costs:	\$0	Basis: N/A
4. One-Time Non-depreciable Expenditure:	\$80	Basis: EQB filing fee.
5. Avoided Costs (Annual Expenditure):	\$0	Basis: N/A
6. Economic Benefit:	Not assessed at this time.	Basis: N/A

**Part 3: Matrix Value for the Gravity-Based Component**

7. Matrix Value (MV): \$500  
8. Total Facility MV (this is a facility violation) \$500

Inflation Adjustment Rule:

9.  $\$500 \times 1.2895$  (inflation adjustment for post March 15, 2004) = \$645  
See Modifications to EPA Penalty Policies to Implement the Civil Monetary Penalty Inflation Adjustment Rule (Pursuant to the Debt Collection Improvement Act of 1996, Effective October 1, 2004). The additional inflation adjustment for the January 13, 2009 through April 8, 2009 period is not assessed at this time.

Potential for Harm: Moderate

Extent of Deviation: Moderate

Justification for Potential for Harm: Respondent PRANG provided an incomplete notification form. As a result, PREQB did not have any information about the type of release detection on the two UST systems at the Facility and whether there were spill prevention equipment and overflow protection on the two UST systems at the Facility.



*Justification for Extent of Deviation:* Although Respondent had notified PREQB of its UST system, it failed to include all required information on its notification form.

**Part 4: Violator-Specific Adjustments to Matrix Value**

	% Change (+/-) MV	Matrix Value	Total Dollar Adjustment
10. Degree of cooperation or non-cooperation:	0	\$645	\$0.00
11. Degree of willfulness or negligence:	0	\$645	\$0.00
12. History of noncompliance:	0	\$645	\$0.00
13. Unique factors:	0	\$645	\$0.00

*Justification for Degree of Cooperation/ Non-cooperation:*  
Based on information currently available to EPA, no adjustment was made.

*Justification for Degree of Willfulness or Negligence:*  
No adjustment was made.

*Justification for History of Noncompliance:*  
No adjustment was made.

*Justification for Unique Factors:*  
No adjustment was made.

**Part 5: Gravity-Based Component**

14. Adjusted Matrix Value (AMV) for Post-March 15, 2004 period of violation: (line 9 plus Dollar Adjustment in lines 10 through 13):  $\$645 + 0 = \$645$

15. Level of Environmental Sensitivity: High  
Environmental Sensitivity Multiplier (ESM): 2.0

*Justification for Level of Environmental Sensitivity:*  
The Environmental Sensitivity Multiplier for this violation was determined to be “High”, corresponding to a sensitivity level of 2.0, because of the USTs’ location on the Punta Salinas peninsula within yards of the coastline, near a beach and park, and because of the general karst geology of the north coast of Puerto Rico. In the event of a release of regulated substance(s), there would have been little attenuation of the regulated substance(s), due to the Karst geology and the short distance to the ocean. Moreover, coastal resources, such as the ocean, bay, beach, and marine biota in the ecosystem could become contaminated from a release of regulated substance(s) from these UST systems. Special protection must be afforded to the coastal areas of Puerto Rico, in order to ensure protection of public health, safety, welfare and overall environment. Also, the coastal

areas must be protected in light of its use for recreation by humans.

16. Days of Non-compliance Multiplier (DNM): (1,825 days of violation) = 6.5

17. Gravity-based Component:

\$645 (AMV) x 2.0 (ESM) x 6.5 (DNM) = \$8385

AMV x ESM x DNM = Gravity-based component

**Part 6: Initial Penalty Target Figure**

18. Economic Benefit Component (from line 6):	\$ 0
19. Gravity-Based Component (from line 17):	\$8385
<b>20. Initial Penalty Target Figure (line 18 plus 19):</b>	<b>\$8385</b>

**Count 2: Failure to Provide Release Detection Monitoring of Tanks and to Maintain Tank Release Detection Records For Tanks 1 and 2**

**Part 1: Background**

Facility in violation: Puerto Rico Air National Guard, Punta Salinas, Toa Baja, Puerto Rico

<u>Violation:</u>	<u>Regulation</u> Rule 402 A of PRUSTR	<u>Non-compliance</u> Failure to provide required release detection monitoring of Tanks 1 and 2
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Penalty Calculation Period:  
Date Gravity-based Penalty Calculations Started: Per Respondent's May 15, 2009 letter, violation started on January 5, 2005, when the tank monitor system stopped functioning.

Date Gravity-based Penalty Calculations Ended: Violation ended on April 8, 2009, when the tanks were emptied.

1. Days of Noncompliance for Gravity-Based Penalty: 1,554 days (4 years, 3 months, 3 days, excluding the end date)

2. Number of Tanks: 2

**Part 2: Economic Benefit Component / Cost Savings**

3. Economic Benefit

a. Capital Costs:	\$ 23,350	Basis: Respondent's 6/9/09 e-mail
b. One-Time Non-depreciable Expenditure:	\$ 0	Basis: N/A
c. Avoided Costs (Annual Expenditure):	\$ 0	Basis: N/A
d. Economic Benefit:	\$ 6,256	Basis: BEN v. 4.5

The economic benefit component, calculated with the BEN computer model, is more accurately categorized as "cost savings" for Federal facilities. The \$23,350 figure excludes Respondent's estimate for installing monitoring wells, since they would not be required once the automatic tank gauge was operational. Respondent's cost estimate is dated June 12, 2006.

**Part 3: Matrix Value for the Gravity-Based Component**

4. Matrix Value (MV): \$1,500

5. All -Tank MV (lines 2 times line 4) \$3,000

**Inflation Adjustment Rule:**

6a. \$3,000 x 1.2895 (inflation adjustment for post March 15, 2004) x 1,468/1,554 days =	\$3,654
b. \$3,000 x 1.4163 (inflation adjustment for post-Jan. 12, 2009) x 86/1,554 days =	\$ 235
c. Total	\$3,889

See Modifications to EPA Penalty Policies to Implement the Civil Monetary Penalty Inflation Adjustment Rule (Pursuant to the Debt Collection Improvement Act of 1996), Effective October 1, 2004 and -

Effective January 12, 2009.

Potential for Harm: Major

Extent of Deviation: Major

*Justification for Potential for Harm:* The potential for harm resulting from this violation was determined to be "Major" inasmuch as the Respondent's failure to provide adequate release detection of Tanks 1 and 2 could have resulted in a release of product into the environment going unnoticed for a lengthy period of time.

*Justification for Extent of Deviation:* The extent of deviation was determined to be "Major." Although Respondent used an alternative form of release detection in the form of "manual tank gauging", such method is not allowed for Tanks 1 and 2, which were each greater than 2,000 gallons. Although Respondent took inventory readings of the tanks, the inventory records are not a permissible form of release detection for Tanks 1 and 2.

**Part 4: Violator-Specific Adjustments to Matrix Value**

	% Change	Matrix (+/-) MV	Total Dollar Value	Adjustment
7. Degree of cooperation or non-cooperation:		0	\$3,889	\$0.00
8. Degree of willfulness or negligence:		0	\$3,889	\$0.00
9. History of noncompliance:		0	\$3,889	\$0.00
10. Unique factors:		0	\$3,889	\$0.00

*Justification for Degree of Cooperation/ Non-cooperation:*

Based on information currently available to EPA, no adjustment was made.

*Justification for Degree of Willfulness or Negligence:*

No adjustment was made.

*Justification for History of Noncompliance:*

No adjustment was made.

*Justification for Unique Factors:*

No adjustment was made.

**Part 5: Gravity-Based Component**

11. Adjusted Matrix Value (AMV): (line 6. plus Dollar Adjustment in lines 7 through 10):  $\$3,889 + 0 = \$3,889$ .

12. Level of Environmental Sensitivity: High  
Environmental Sensitivity Multiplier (ESM): 2.0

*Justification for Level of Environmental Sensitivity:*

The Environmental Sensitivity Multiplier for this violation was determined to be "High", corresponding to a sensitivity level of 2.0, because of the USTs' location on the Punta Salinas peninsula within yards of the coastline, near a beach and park, and because of the general karst geology of the north coast of Puerto Rico. In the event of a release of regulated substance(s), there would have been little attenuation of the regulated substance(s), due to the Karst geology and the short distance to the ocean. Moreover, coastal resources, such as the ocean, bay, beach, and marine biota in the ecosystem could become contaminated from a release of regulated substance(s) from these UST systems. Special protection must be afforded to the coastal areas of Puerto Rico, in order to ensure protection of public health, safety, welfare and overall environment. Also, the coastal areas must be protected in light of its use for recreation by humans.

13. Days of Non-compliance Multiplier (DNM): (1,554 days of violation) = 6.0

14. Gravity-based Component:

$$\$3,889 \text{ (AMV)} \times 2.0 \text{ (ESM)} \times 6.0 \text{ (DNM)} = \$46,668$$

Total Gravity Based Penalty: \$46,668

**Part 6: Initial Penalty Target Figure**

- |   |                 |
|---|-----------------|
| 15. Economic Benefit Component (from line 3d):              | \$ 6,256        |
| 16. Gravity-Based Component (from line 14):                 | \$46,668        |
| <b>17. Initial Penalty Target Figure (line 15 plus 16):</b> | <b>\$52,924</b> |

**Count 3: Failure to Provide Required Annual Line Tightness Test or Release Detection Monitoring of Pressurized Piping and to Maintain Records of the Release Detection**

**Part 1: Background**

Facility in violation: Puerto Rico Air National Guard, Punta Salinas, Toa Baja, Puerto Rico

<u>Violation:</u>	<u>Regulation</u> Rule 402B of PRUSTR	<u>Non-compliance</u> Failure to Provide Required Release Detection Monitoring for the Pressurized Piping of UST Systems 1 and 2
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Penalty Calculation Period:

Date Gravity-based Penalty Calculations Started: Per Respondent's May 15, 2009 letter, violation started on January 5, 2005, when the tank monitor system stopped functioning, thereby resulting in Respondent being unable to conduct interstitial monitoring.

Date Gravity-based Penalty Calculations Ended: Violation ended on April 8, 2009, when the tanks were emptied.

1. Days of Noncompliance for Gravity-Based Penalty: 1,554 days (4 years, 3 months, 3 days excluding the end date)
2. Number of Tanks: 2

**Part 2: Economic Benefit Component / Cost Savings**

3. Economic Benefit: The penalty calculation for Count 2 considers the economic benefit of not maintaining functioning release detection for both tank and piping of the two UST systems.

**Part 3: Matrix Value for the Gravity-Based Component**

4. Matrix Value (MV): \$1,500
5. All -Tank MV (lines 2 times line 4) \$3,000

Inflation Adjustment Rule:

- 6a.  $\$3,000 \times 1.2895$  (inflation adjustment for post March 15, 2004)  $\times 1,468/1,554$  days = \$3,654
- b.  $\$3,000 \times 1.4163$  (inflation adjustment for post-Jan. 12, 2009)  $\times 86/1,554$  days = \$ 235
- c. Total \$3,889

See Modifications to EPA Penalty Policies to Implement the Civil Monetary Penalty Inflation Adjustment Rule (Pursuant to the Debt Collection Improvement Act of 1996), Effective October 1, 2004 and - Effective January 12, 2009.

Potential for Harm: Major Extent of Deviation: Major

*Justification for Potential for Harm:* The potential for harm resulting from this violation was determined to be "Major" inasmuch as the Respondent's failure to provide

adequate release detection of the pressurized piping could have resulted in a release of product into the environment going unnoticed for a lengthy period of time.

*Justification for Extent of Deviation:* The extent of deviation was determined to be "Major." Respondent did not conduct any annual line tightness or monthly monitoring for pressurized piping during this timeperiod.

**Part 4: Violator-Specific Adjustments to Matrix Value**

	% Change (+/-) MV	Matrix Value	Total Dollar Adjustment
7. Degree of cooperation or non-cooperation:	0	\$3,889	\$0.00
8. Degree of willfulness or negligence:	0	\$3,889	\$0.00
9. History of noncompliance:	0	\$3,889	\$0.00
10. Unique factors:	0	\$3,889	\$0.00

*Justification for Degree of Cooperation/ Non-cooperation:*  
Based on information currently available to EPA, no adjustment was made.

*Justification for Degree of Willfulness or Negligence:*  
No adjustment was made.

*Justification for History of Noncompliance:*  
No adjustment was made.

*Justification for Unique Factors:*  
No adjustment was made.

**Part 5: Gravity-Based Component**

11. Adjusted Matrix Value (AMV): (line 6. plus Dollar Adjustment in lines 7 through 10):  $\$3,889 + 0 = \$3,889$ .

12. Level of Environmental Sensitivity: High  
Environmental Sensitivity Multiplier (ESM): 2.0

*Justification for Level of Environmental Sensitivity:*  
The Environmental Sensitivity Multiplier for this violation was determined to be "High", corresponding to a sensitivity level of 2.0, because of the USTs' location on the Punta Salinas peninsula within yards of the coastline, near a beach and park, and because of the general karst geology of the north coast of Puerto Rico. In the event of a release of regulated substance(s), there would have been little attenuation of the regulated substance(s), due to the Karst geology and the short distance to the ocean. Moreover,

coastal resources, such as the ocean, bay, beach, and marine biota in the ecosystem could become contaminated from a release of regulated substance(s) from these UST systems. Special protection must be afforded to the coastal areas of Puerto Rico, in order to ensure protection of public health, safety, welfare and overall environment. Also, the coastal areas must be protected in light of its use for recreation by humans.

13. Days of Non-compliance Multiplier (DNM): (1,554 days of violation) = 6.0

14. Gravity-based Component:

$\$3,889 \text{ (AMV)} \times 2.0 \text{ (ESM)} \times 6.0 \text{ (DNM)} = \$46,668$

Total Gravity Based Penalty: \$46,668

**Part 6: Initial Penalty Target Figure**

15. Economic Benefit Component (from line 3): \$ 0

16. Gravity-Based Component (from line 14): \$46,668

**17. Initial Penalty Target Figure (line 15 plus 16): \$46,668**



**Count 4: Respondent's Failure to Conduct an Annual Test of the Operation of the Automatic Line Leak Detectors (ALLDs) for UST Systems 1 and 2 and to Maintain Test Records of Tests**

**Part 1: Background**

Facility in violation: Puerto Rico Air National Guard, Punta Salinas, Toa Baja, Puerto Rico

<u>Violation:</u>	<u>Regulation</u> Rule 405(A) of PRUSTR	<u>Non-compliance</u> Failure to conduct annual test of the operation of the ALLDs for pressurized piping for USTs 1 and 2
-------------------	--	---

Penalty Calculation Period:

Date Gravity-based Penalty Calculations Started: Penalty calculations start on February 25, 2006, three years before the inspection date.

Date Gravity-based Penalty Calculations Ended: Violation ended on April 8, 2009, when the tanks were emptied.

1. Days of Noncompliance for Gravity-Based Penalty: 1,138 days (3 years, 1 month, 14 days)  
2. Number of Tanks: 2

**Part 2:**

**3. Economic Benefit Component / Cost Savings**

a. Capital Costs:	\$0	Basis: N/A
b. One-Time Non-depreciable Expenditure:	\$0	Basis: N/A
c. Avoided Costs (Annual Expenditure):	\$2,000	Basis: Respondent's 6/9/09 e-mail
d. Economic Benefit:	\$7,406	Basis: BEN v. 4.5

*Justification of Economic Benefit Component / Cost Savings:*

The economic benefit component, calculated with the BEN computer model, is more accurately categorized as "cost savings" for Federal facilities. The period of non-compliance extends from February 25, 2006 through April 8, 2009, and Respondent's cost estimate is dated June 12, 2006.

**Part 3: Matrix Value for the Gravity-Based Component**

4. Matrix Value (MV): \$1,500  
5. All-Tanks MV (lines 2 times line 4) \$3,000

Inflation Adjustment Rule:

6a.	\$3,000 x 1.2895 (inflation adjustment for post March 15, 2004) x 1,052 /1,138 days =	\$3,576
b.	\$3,000 x 1.4163 (inflation adjustment for post-Jan. 12, 2009) x 86/1,138 days =	\$ 321
c.	Total	\$3,897

See Modifications to EPA Penalty Policies to Implement the Civil Monetary Penalty Inflation Adjustment Rule (Pursuant to the Debt Collection Improvement Act of 1996), Effective October 1, 2004 and -

Effective January 12, 2009.

Potential for Harm: Major

Extent of Deviation: Major

*Justification for Potential for Harm:* The potential for harm resulting from this violation was determined to be “Major” inasmuch as the Respondent’s failure to conduct annual test of operation of ALLDs could have resulted in a catastrophic releases of product under pressure into the environment.

*Justification for Extent of Deviation:* The extent of deviation was determined to be “Major” inasmuch as the Respondent exhibited a total lack of compliance with this requirement for the time period in which the penalty is being sought.

**Part 4: Violator-Specific Adjustments to Matrix Value**

	% Change (+/-) MV	Matrix Value	Total Dollar Adjustment
7. Degree of cooperation or non-cooperation:	0	\$3,897	\$0.00
8. Degree of willfulness or negligence:	0	\$3,897	\$0.00
9. History of noncompliance:	0	\$3,897	\$0.00
10. Unique factors:	0	\$3,897	\$0.00

*Justification for Degree of Cooperation/ Non-cooperation:*  
Based on information presently available to EPA, no adjustment was made.

*Justification for Degree of Willfulness or Negligence:*  
No adjustment was made.

*Justification for History of Noncompliance:*  
No adjustment was made.

*Justification for Unique Factors:*  
No adjustment was made.

**Part 5: Gravity-Based Component**

11. Adjusted Matrix Value (AMV):  $\$3,897 + 0 = \$3,897$

12. Level of Environmental Sensitivity: High  
Environmental Sensitivity Multiplier (ESM): 2.0

*Justification for Level of Environmental Sensitivity:*

The Environmental Sensitivity Multiplier for this violation was determined to be “High”, corresponding to a sensitivity level of 2.0, because of the USTs’ location on the Punta Salinas peninsula within yards of the coastline, near a beach and park, and because of the general karst geology of the north coast of Puerto Rico. In the event of a release of regulated substance(s), there would have been little attenuation of the regulated substance(s), due to the Karst geology and the short distance to the ocean. Moreover, coastal resources, such as the ocean, bay, beach, and marine biota in the ecosystem could become contaminated from a release of regulated substance(s) from these UST systems. Special protection must be afforded to the coastal areas of Puerto Rico, in order to ensure the protection of public health, safety, welfare and overall environment. Also, the coastal areas must be protected in light of its use for recreation by humans.

13. Days of Non-compliance Multiplier (DNM): (1,138 days of violation) = 5.0

14. Gravity-based Component:

\$3,897 (AMV) x 2.0 (ESM) x 5.0 (DNM) = \$38,970

Total Gravity Based Penalty: \$38,970

**Part 6: Initial Penalty Target Figure**

15. Economic Benefit Component (from line 6): \$ 7,406

16. Gravity-Based Component (from line 17): \$38,970

**17. Initial Penalty Target Figure (line 15 plus 16): \$46,376**