

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Region 2

In The Matter of:

U.S. Department of the Army
West Point Garrison, Respondent

Proceeding Under Sections 3008 and 9006
of the Solid Waste Disposal Act,
as amended.

**COMPLAINT, COMPLIANCE ORDER
AND NOTICE OF OPPORTUNITY
FOR HEARING**

Docket No. RCRA-02-2017-7109

COMPLAINT

This is a civil administrative proceeding instituted pursuant to Sections 3008 and 9006 of the Solid Waste Disposal Act, as amended by various laws, including the Resource Conservation and Recovery Act, the Hazardous and Solid Waste Amendments of 1984 ("HSWA"), and the Federal Facilities Compliance Act of 1992, 42 U.S.C. §§ 6901-6991 (hereafter collectively referred to as the "Act" or "RCRA"), for injunctive relief and the assessment of civil penalties. The United States Environmental Protection Agency ("EPA") has promulgated regulations governing the handling and management of hazardous waste at 40 C.F.R. Parts 260 – 273 and 279 and governing the operation of underground storage tanks ("USTs") at 40 C.F.R. Parts 280-282.

This COMPLAINT, COMPLIANCE ORDER AND NOTICE OF OPPORTUNITY FOR HEARING ("Complaint") serves notice of EPA's preliminary determination that the U.S. Department of the Army: West Point Garrison has violated requirements of the authorized New York State hazardous waste program and of the Federal UST program.

Section 3006(b) of the Act, 42 U.S.C. § 6926(b), provides that EPA's Administrator may, if certain criteria are met, authorize a state to operate a hazardous waste program (within the meaning of Section 3006 of the Act, 42 U.S.C. § 6926) in lieu of the regulations comprising the federal hazardous waste program (the Federal Program). The State of New York received final authorization to administer its base hazardous waste program on May 29, 1986. Since 1986, New York State has been authorized for many other hazardous waste requirements promulgated by EPA pursuant to RCRA. See 67 Fed. Reg. 49864 (August 1, 2002), 70 Fed. Reg. 1825 (January 11, 2005) 74 Fed. Reg. 31380 (July 1, 2009) and 78 Fed. Reg. 15299 (March 11, 2013).

New York is authorized for most hazardous waste regulations issued by EPA as of January 22, 2002 and the Uniform Hazardous Waste Manifest Amendments issued by EPA on March 4, 2005 and June 16, 2005.

Section 3008(a) of the Act, 42 U.S.C. § 6928(a), authorizes EPA to enforce the regulations constituting the authorized state program, and EPA retains primary responsibility for the enforcement of certain requirements promulgated pursuant to HSWA.

New York State has not received State program approval for the UST regulations. As a result, EPA remains responsible for enforcing the UST requirements of the Act and the UST regulations promulgated pursuant thereto which are the subject of Counts 6 and 7 of this Complaint.

The Complainant in this proceeding, the Director of the Division of Enforcement and Compliance Assistance, EPA Region 2, who has been duly delegated the authority to institute this action, hereby alleges upon information and belief:

General Allegations

Jurisdiction

This Tribunal has jurisdiction over the subject matter of this action pursuant to Section 3008(a) of RCRA, 42 U.S.C. 6928(a), and 40 C.F.R. § 22.1(a)(4), and 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").

Notice

1. In accordance with Section 3008(a)(2) of RCRA, 42 U.S.C § 6928(a)(2), EPA has given the State of New York prior notice of this action.

Respondent's Background

2. The U.S. Department of the Army: West Point Garrison (West Point or Respondent) is a department, agency or instrumentality of the executive branch of the Federal government.
3. Respondent is a "person" within the meaning of Section 9001(5) of the Act, 42 U.S.C. § 6991(5) and 40 C.F.R. § 280.12, and as that term is defined in Section 1004(15) of the Act, 42 U.S.C § 6903(15), and in Title 6 of the New York Codes, Rules and Regulations at 6 NYCRR § 370.2(b).¹
4. The location of the West Point Garrison, with headquarters at 681 Hardee Place, West Point, New York 10996, constitutes Respondent's "Facility," as that term is defined at 6 NYCRR § 370.2(b).

¹ All words or phrases that have been defined in reference to statutory and/or regulatory provisions are used throughout the Complaint as so defined.

5. At all times relevant to this action, Respondent has “owned” and/or “operated” the Facility, as those terms are used in Section 9001 of the Act, 42 U.S.C. § 6991, and in 40 C.F.R. § 280.12, including two USTs at the Facility: #616 A and #1950 B.
6. Pursuant to Section 9001(10), 42 U.S.C. § 6991(10) and 40 C.F.R. Section 280.12, an “UST” is “any one or combination of tanks (including underground pipes connected thereto) that is used to contain an accumulation of regulated substances...”
7. The Facility’s UST #616 A is a 500-gallon tank storing diesel fuel for an emergency generator, and UST #1950 B is a 10,000-gallon tank storing gasoline for vehicles, thus making the two tanks subject to 40 C.F.R. Part 280.

Respondent’s Generation of Waste

8. West Point Garrison has been generating, and continues to generate, “solid waste” as defined in 6 NYCRR § 371.1(c) at its Facility.
9. In carrying out its activities, West Point Garrison has been generating, and continues to generate, hazardous waste, as defined in 6 NYCRR § 371.1(d), at the Facility.
10. As of August 18, 1980, and subsequent thereto, Respondent has been a generator of hazardous waste at the Facility.
11. At the time of EPA’s Inspection described in paragraph 20 below, and at various times since then, Respondent generated at its Facility at least 1000 kilograms (“kg”) of hazardous waste each calendar month.
12. At the time of EPA’s Inspection described in paragraph 20 below, and at various times since then, Respondent was a small quantity handler of universal waste (SQHUW), as that phrase is defined in 6 NYCRR § 374-3.1(i)(9).
13. The requirements for hazardous waste generators are set forth in 6 NYCRR § 372.2.
14. The requirements for a SQHUW are set forth in 6 NYCRR § 374-3.2.
15. Respondent’s Facility is an “existing facility” within the meaning of 6 NYCRR § 370.2(b).
16. Respondent’s Facility has been a “storage” facility as that term is defined in 6 NYCRR § 370.2(b).
17. Respondent stored hazardous waste at its Facility for a finite period, at the end of which the hazardous waste is treated, disposed of or stored elsewhere. This storage occurred in

various locations, including one designated and two undesignated hazardous waste container storage areas and in satellite accumulation areas located at its Facility.

Regulatory Filings

18. Pursuant to Section 3010 of RCRA, 42 U.S.C. § 6930, West Point Garrison informed EPA that West Point Garrison generated hazardous waste through a notification (EPA Form 8700-12) on August 18, 1980.
19. In response to the Notification, EPA provided West Point Garrison with EPA Identification Number NY8210020915.

EPA Inspection

20. On or about June 6 - 10, 2016, duly designated representatives of EPA conducted a Compliance Evaluation Inspection (“Inspection” or “June 2016 inspection”) of Respondent’s Facility, pursuant to Section 3007 of the Act, 42 U.S.C. § 6927, and Section 9005 of the Act, 42 U.S.C. § 6991(d). The purpose of the inspection was in part to determine the Respondent’s compliance with the Act (“June 2016 Inspection”).

EPA Notice of Violations and Request for Information

21. On or about January 18, 2017, EPA issued to West Point Garrison a combined Notice of Violation (“NOV”) and Information Request Letter (“IRL”) regarding its Facility.
22. The NOV, which was issued pursuant to Sections 3008 and 9006 of the Act, 42 U.S.C. §§ 6928 and 6991e, respectively, informed West Point Garrison that EPA had identified a number of potential RCRA hazardous waste and UST violations at Respondent’s Facility and required West Point Garrison to provide EPA with detailed descriptions and documentation of any subsequent actions it had taken to correct such violations.
23. The IRL, which was issued pursuant to Sections 3007 and 9005(a) of RCRA, 42 U.S.C. §§ 6927 and 6991d(a), and 40 C.F.R. § 280.34 sought information and documentation relating to hazardous waste activities and UST operation at the Facility and required that Respondent submit specific types of documentation relating to hazardous waste activities and UST operations at its Facility.
24. On or about February 21, 2017, a duly authorized representative of West Point Garrison submitted its certified Response to the combined NOV and IRL, attesting that the information provided in the Response was true and accurate.

COUNT 1 – Respondent’s Failure to Properly Manage Universal Waste Bulbs

25. Complainant repeats and re-alleges each allegation contained in paragraphs 1 through 24, inclusive, with the same force and effect as if fully set forth below.
26. Pursuant to 6 NYCRR § 374-3.2(f)(3), a SQHUW must be able to demonstrate the length of time that the universal waste (UW) has been accumulated from the date it becomes a waste.
27. Pursuant to 6 NYCRR § 374-3.2(d)(4)(i), a SQHUW must contain any universal waste lamp in containers or packages that are adequate to prevent breakage and remain closed.
28. During EPA's June 2016 Inspection, the EPA representatives observed that the Facility's central hazardous waste storage area (CHWSA), which is located in "Mag-9," was storing at least thirty cardboard cylinders of universal waste fluorescent bulbs, not all of which were dated and closed. Also, some loose bulbs were placed on top of a yellow cabinet in the back.
29. During EPA's June 2016 Inspection, Facility representatives stated that the Facility maintains no record of the initial date of accumulation of its universal waste bulbs, independent of the dates on the containers or boxes.
30. The EPA's NOV/IRL identified the observations summarized in paragraph 28 and 29, above, as potential violations of 6 NYCRR § 374-3.2(f)(3) and (d)(4)(i).
31. In Respondent's response to the NOV/IRL, it addressed the observations summarized in paragraph 28 and 29, above, by stating that, after the inspection, the Facility sealed, labeled and dated all boxes, and disposed of them properly and will continue this practice for all incoming containers.
32. At the time of the Inspection and times prior thereto, the Facility, a SQHUW, was unable to demonstrate the length of time that its universal waste bulbs had been accumulated from the dates they became a waste, and had not contained all universal waste lamps in containers or packages that were adequate to prevent breakage and that remained closed.
33. Respondent's failure to demonstrate the length of time that its UW bulbs had been accumulated from the dates they became a waste, and Respondent's failure to contain all UW lamps in containers or packages that were adequate to prevent breakage and that remained closed are violations of 6 NYCRR § 374-3.2(f)(3) and (d)(4)(i).
34. Respondent's failure to comply with 6 NYCRR § 374-3.2(f)(3) and (d)(4)(i) subjects it to injunctive relief and penalties pursuant to Section 3008 of the Act, 42 U.S.C. § 6928.

COUNT 2 – Respondent’s Failure to Make Hazardous Waste Determinations

35. Complainant repeats and re-alleges each allegation contained in paragraphs 1 through 24, inclusive, with the same force and effect as if fully set forth below.
36. Pursuant to 6 NYCRR § 372.2(a)(2), a person who generates a solid waste must determine if that waste is a hazardous waste using the procedures specified in that provision.
37. Pursuant to 6 NYCRR Part 372.2(c)(1)(iii), a generator must keep records of any test results, waste analyses, or other determinations related to hazardous waste determinations for at least three years from the date the waste was last sent to on-site or off-site treatment, storage, or disposal.
38. Pursuant to 6 NYCRR § 371.1(c), subject to certain inapplicable exclusions, a solid waste is any discarded material that includes abandoned, recycled or inherently waste-like materials, as those terms are further defined therein.
39. Pursuant to 6 NYCRR § 371.1(c)(3), materials are solid wastes if they are abandoned by being: disposed of; burned or incinerated; or accumulated, stored, or treated before or in lieu of being abandoned by being disposed of, burned or incinerated.
40. During EPA’s June 2016 Inspection, the EPA representatives observed that the Facility’s central hazardous waste storage area (CHWSA), which is located in “Mag-9,” was storing many containers of solid wastes that had not been characterized as hazardous or non-hazardous wastes, and the Facility’s representatives stated that the Facility maintains no other documentation characterizing these wastes.
41. During EPA’s June 2016 Inspection, the EPA representatives observed that outside the solid and hazardous waste office (Building # 1236), none of the wastes in a paint waste locker was characterized. Some paint waste containers had labels warning of extreme flammability.
42. Facility representatives stated that no one used this locker to store usable paints, that these paints were all wastes, and that Respondent had no record of their characterization.
43. The EPA’s NOV/IRL identified the observations summarized in paragraphs 40 – 42, above, as potential violations of 6 NYCRR §§ 372.2(a)(2) and 372.2(c)(1)(iii).
44. In its response to the NOV/IRL, West Point Garrison stated that it addressed the potential violation by inspecting each unknown container for labels or other markings to identify the contents or activity on post that generated the material and then based on labels or interviews with generators, either located the applicable Safety Data Sheet, or if one could not be found, took samples that were sent for analysis. The NOV response

included an inventory, analytical results and hazardous waste manifests for the uncharacterized wastes.

45. At the time of the Inspection and times prior thereto, the hazardous wastes listed in paragraphs 40 - 42, above, were not marked with the words "hazardous waste."
46. Respondent's failure to determine whether each solid waste generated at its Facility constitutes a hazardous waste is a violation of 6 NYCRR § 372.2(a)(2).
47. Respondent's failure to comply with 6 NYCRR § 372.2(a)(2) subjects it to injunctive relief and penalties pursuant to Section 3008 of the Act, 42 U.S.C. § 6928.

COUNT 3 – Respondent's Failure to Minimize the Possibility of a Release

48. Complainant repeats and re-alleges each allegation contained in paragraphs 1 through 24, inclusive, with the same force and effect as if fully set forth below.
49. Pursuant to 6 NYCRR Part 373-3.3(b), facilities must be maintained and operated to minimize the possibility of fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil or surface water that could threaten human health or the environment.
50. At the time of the Inspection, EPA representatives observed that a 55-gallon drum of hazardous waste, labeled as containing isopropyl alcohol and toluene and located in the Facility's CHWSA in Mag-9, was bulged on the drum top, indicating a possible internal pressure above atmospheric. It was stored next to dozens of other containers of hazardous waste.
51. At the time of the Inspection, EPA representatives observed that in Mag-9, no containers of flammable waste liquids were grounded, or stored in a cabinet designed for flammable liquids.
52. At the time of the Inspection, EPA representatives observed that in Mag-9 and in the waste paint locker, unknown and possibly incompatible, hazardous wastes were stored next to other unknown wastes and next to flammable wastes.
53. The EPA's NOV/IRL identified the observations summarized in paragraphs 50-52, above, as potential violations of 6 NYCRR Part 373-3.3(b).
54. In its response to the NOV/IRL, the Facility stated that it addressed the potential violations by shipping all wastes present during the inspection for disposal (where necessary, containers were over-packed); by grounding containers storing flammable materials when adding or removing material; and by storing hazardous wastes in four new hazardous materials storage lockers where wastes are segregated by hazard class and

each locker has fire suppression built-in, with individual alarms that are remotely monitored by the West Point Fire Department.

55. Respondent's failure, at the time of the Inspection, to maintain and operate its Facility to minimize the possibility of fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil or surface water that could threaten human health or the environment is a violation of 6 NYCRR Part 373-3.3(b).
56. Respondent's failure at the time of the Inspection, and at times prior to the Inspection, to comply with 6 NYCRR Part 373-3.3(b) subjects it to injunctive relief and penalties pursuant to Section 3008 of the Act, 42 U.S.C. § 6928.

COUNT 4 – Respondent's Failure to Keep a Copy of Each Complete Manifest for at Least Three Years

57. Complainant repeats and re-alleges each allegation contained in paragraphs 1 through 24, inclusive, with the same force and effect as if fully set forth below.
58. Pursuant to 6 NYCRR § 372.2(c)(1)(i), a generator must keep a copy of each complete manifest document as a record for at least three years from the date the waste was accepted by the initial transporter.
59. At the time of the Inspection and for some time prior thereto, five of the Facility's hazardous waste manifests had no signed and dated return copies from the designated facility.
60. At the time of the Inspection, Facility representatives stated that the Facility does not have the return copies and would have to request them from the transporter.
61. The Facility's June 8, 2016 email provided EPA with copies of missing return manifests for the three manifest numbers with SKS (Safety Kleen) suffixes.
62. In response to the NOV/IRL, West Point Garrison stated that the potential violations were addressed after the Inspection with the institution of improved procedures. Copies of all the missing manifests were received by West Point Garrison and were provided to EPA. The improved procedures include mailing copies of all initial manifests to the New York State Department of Environmental Conservation Return Receipt Requested. The date will be noted by the primary and alternate Hazardous Waste Managers. If a final manifest does not arrive within 35 days of the date of the initial manifest the Hazardous Waste Managers will contact the disposal company in order to obtain the final manifest. Manifests will be stored in binders sorted by year and will also be scanned and stored electronically.

- 63. Respondent's failure to keep a copy of each complete manifest document for each hazardous waste shipment that was accepted by the initial transporter for three years of that acceptance constitutes a violation of 6 NYCRR § 372.2(c)(1)(i).
- 64. Respondent's failure to comply with 6 NYCRR Parts 372.2(c)(1)(i) subjects it to injunctive relief and penalties pursuant to Section 3008 of the Act, 42 U.S.C. § 6928.

COUNT 5 – Respondent's Storage of Hazardous Waste Without a Permit at the Facility

- 65. Complainant repeats and re-alleges each allegation contained in paragraphs 1 through 24, inclusive, with the same force and effect as if fully set forth below.

Legal Requirements for Permit and Exemptions

- 66. Pursuant to each of the following provisions, the owner or operator of any facility used for the treatment, storage or disposal of hazardous waste must first obtain a permit or qualify for interim status in order to treat, store or dispose of such waste:
 - a. Section 3005 of the Act, 42 U.S.C. § 6925 provides that owners and operators of existing facilities for the treatment, storage, or disposal of hazardous waste must have a permit issued pursuant to this section and prohibits the treatment, storage, and disposal of hazardous waste except in accordance with such a permit; and
 - b. 6 NYCRR § 373-1.2(a), provides that no person shall operate an existing hazardous waste management facility without a permit issued pursuant to this Part or without interim status pursuant to this Part.
- 67. Six NYCRR § 372.2(a)(8)(i)('a') provides that a generator of hazardous waste can be exempt from the permit requirements and still accumulate up to 55 gallons of hazardous waste or one quart of acutely hazardous waste in containers at or near any point of generation where wastes initially accumulate that is under the control of the operator of the process generating the waste, provided that the generator complies with the use and management standards set forth in 6 NYCRR §373-3.9(b)-(d) and marks the containers with the words "Hazardous Waste" and with other words that identify the contents of the containers.
- 68. Pursuant to 6 NYCRR § 372.2(a)(8)(ii), a generator who generates more than 1,000 kilograms of hazardous waste in any calendar month may accumulate non-acute hazardous waste on-site for 90 days or less without being subject to the permitting requirements of 6 NYCRR Part 373 [*i.e.* without having obtained a permit or without having interim status], provided such generator complies with the requirements of, *inter alia* 373-1.1(d)(1)(iii), (iv), (xix), and (xx) and clearly marks and makes visible for

inspection on all containers, tanks, or storage areas the date upon which each period of accumulation begins.

69. Pursuant to 6 NYCRR § 373-1.1(d)(1)(iii)(‘c’)(‘1’)(‘i’), a large quantity generator that stores hazardous waste that is generated on-site in containers, for a period not exceeding 90 days, must, subject to certain inapplicable exclusions, comply with sections 373-3.9 and 373-3.27 through 373-3.29.
70. Pursuant to 6 NYCRR § 373-1.1(d)(1)(iii)(‘c’)(‘5’), a generator of hazardous waste may accumulate non-acute hazardous waste on-site, for a period not exceeding 90 days, provided that the generator, subject to certain inapplicable exclusions, complies with the requirements for personnel training in section 373-3.2, for preparedness and prevention in section 373-3.3, and contingency plans and emergency procedures in sections 373-3.4 and 376.1(g)(1)(v).

Facility’s Storage of Hazardous Waste and Failures to Qualify for Exemption from Permit

71. At the times of the Inspection, and for some time prior thereto, West Point Garrison stored containers of waste at its Facility.
72. Some of the aforementioned containers held hazardous waste.
73. Respondent does not have interim status or a permit authorizing the storage of hazardous waste at its Facility.

Failure to maintain containers of hazardous waste in good condition

74. Pursuant to 6 NYCRR Part 373-3.9(b), if a container holding hazardous waste is not in good condition, the owner or operator must transfer the hazardous waste from this container to a container that is in good condition or manage the waste in some other way that complies with the requirements of this Subpart.
75. Outside the solid and hazardous waste office (Building # 1236), a locker was storing waste paints in at least: two 5-gallon plastic containers, one ~2-gallon plastic container, twenty-six 1-gallon metal cans, assorted smaller containers and seven aerosol cans. Some of the containers were rusted on all surfaces.
76. Based on the conditions described in paragraph 75, the NOV/IRL noted that there had been a failure to maintain containers of hazardous waste in good condition.
77. In response to the NOV/IRL, West Point Garrison stated that the potential violations were addressed after the Inspection by replacing all hazardous waste containers not in good condition with new appropriate containers.

Failure of a Large Quantity Generator to limit hazardous waste accumulation to 90 days

78. Pursuant to 6 NYCRR Part 372.2(a)8(ii), a large quantity generator may accumulate hazardous waste on-site for a period up to and including 90 days.
79. In the Facility's CHWSA in Mag-9, on the day of the Inspection there were twelve containers marked with accumulation start dates more than 90 days prior to the date of the Inspection.

Failure to label with words identifying the hazardous waste

80. Pursuant to 6 NYCRR § 373-3.9(d)(3), a large quantity generator storing containers holding hazardous waste must mark such containers with the words "Hazardous Waste" and with other words identifying their contents.
81. On at least one of the days of the Inspection of West Point Garrison and for some time prior to, West Point Garrison was storing in an area designated for hazardous wastes in the Facility's CHWSA in Mag-9 nineteen containers that were not labeled as "hazardous waste."
82. In addition, south of and on the same side of the yard as Mag-9, a white locker was storing a 55-gallon steel drum and an ~30-gallon blue plastic drum, labeled only as flammable. The former drum held a gas/diesel hazardous waste mixture, and the latter held hazardous paint wastes. Spent solvent was also being stored in an ~15-gallon yellow plastic container without markings of any kind, which Facility representatives stated was holding spent hazardous waste solvent.
83. In addition, a waste paint locker outside the solid and hazardous waste office (Building #1236) was storing old paints in at least: two 5-gallon plastic containers, one ~2-gallon plastic container, twenty-six 1-gallon metal cans, assorted smaller containers and seven aerosol cans. Some had labels warning of flammability. Facility representatives stated that no one uses this locker to store usable paints. No containers in the locker were labeled as hazardous wastes.
84. Based on the conditions described in paragraphs 81-83, the NOV/IRL cited a failure to mark containers holding hazardous waste in a hazardous waste storage area (HWSA) with the words 'hazardous waste' and with other words identifying their contents.
85. In response to the NOV/IRL, West Point Garrison stated that the potential violations were addressed after the Inspection by properly labeling all containers. All new materials were to be characterized and labeled as they were received.

Failure to clearly mark containers with the accumulation start date

86. Pursuant to 6 NYCRR § 372.2(a)(8)(ii), a large quantity generator may store hazardous waste in a HWSA provided the date upon which each period of accumulation begins is clearly marked and visible for inspection on each container.
87. At the time of the Inspection and for some time prior thereto, in the CHWSA in Mag-9 there were thirty-five containers of hazardous wastes without accumulation dates.
88. In addition, in a white locker, located south of and on the same side of the yard as Mag-9 were the following undated containers: two 55-gallon steel drums of a hazardous gas/diesel waste, an ~30-gallon blue plastic drum of hazardous paint wastes and an ~15-gallon yellow plastic container of spent solvent. Nine of them could be seen to be labeled as hazardous waste and dated July 2015. The others had no date markings visible for inspection.
89. In addition, a locker located outside the solid and hazardous waste office (Building # 1236) was storing at least the following undated containers of paint wastes: two 5-gallon plastic containers, one ~2-gallon plastic container, twenty-six 1-gallon metal cans, assorted smaller containers and seven aerosol cans. Some of the containers had labels warning of flammability. None of the containers was dated.
90. Based on the conditions described in paragraphs 87-89, the NOV/IRL stated that the Respondent had failed to clearly mark and make visible for inspection on each hazardous waste container in a HWSA the date upon which each period of accumulation began.
91. In response to the NOV/IRL, West Point Garrison stated that the potential violations were addressed after the Inspection by labeling all containers and dating them. All new containers were to be labeled and dated when received in accordance with regulation.

Failure to ensure that hazardous wastes are stored either at HWSAs or at satellite accumulation areas.

92. Pursuant to 6 NYCRR Part 372.2(a)(8)(i)(a'), a generator may accumulate up to 55 gallons of hazardous waste or one quart of acutely hazardous waste in containers at or near any point of generation where wastes initially accumulate, which is under the control of the operator of the process generating the waste.
93. At the time of the Inspection and for some time prior thereto, hazardous wastes from the Facility's dry cleaning plant were stored for "a few months," according to the plant operator, in an area that was not at or near the dry cleaning machines (i.e., the point of generation). Although the area was labeled as a Hazardous Waste Satellite Accumulation Area (SAA), it was not located at or near the point of generation, and it was not under the control of an operator. No operator had a line of sight to the area from the workspace,

and the area was not secured. According to the plant operator, the plant had been doing this for more than twenty years.

94. Based upon the conditions described and statement by a Facility representative described in paragraph 93, the EPA's NOV/IRL stated that the Respondent stored hazardous waste in an area that was neither a HWSA nor a SAA.
95. In response to the NOV/IRL, West Point Garrison stated that the potential violation was addressed after the Inspection by placing a 15-gallon drum (labeled 'Hazardous Waste Lint' and managed as an SAA) to collect lint from the dry cleaning machines in the same room as the dry cleaning machines. The filters and sludge are removed from the machines, labeled hazardous waste filters or hazardous waste sludge, stored outside the dry cleaner room over night before being shipped for disposal as hazardous waste (~3 months). The dry cleaning site is now managed as a 90-day site.
96. At the time of the Inspection and for some time prior thereto, hazardous wastes were being stored in a white locker near Mag-9 and/or in a waste paint locker near Building #1236. Facility representatives stated that these wastes were not generated at these locations. These wastes were neither being stored at the point of generation nor managed in a HWSA.
97. Based upon the conditions described and observations and statements by Facility representatives described in paragraph 96, the EPA's NOV/IRL stated that Respondent stored hazardous waste in areas that were neither a HWSA nor a SAA.
98. In response to the NOV/IRL, West Point Garrison stated that a policy was implemented after the Inspection whereby no materials will be accepted at Building #1236, and all external storage lockers were removed. All excess lockers containing hazardous wastes were emptied and are no longer used to store hazardous wastes. Signs have been installed warning potential generators not to abandon materials at the Facility.

Failure to have an adequate hazardous wastes contingency plan

99. Pursuant to 6 NYCRR § 373-3.4, each owner or operator must have a contingency plan for the facility that describes the actions facility personnel must take to minimize hazards to human health or the environment from fires, explosions, or any unplanned release of hazardous waste or hazardous waste constituents to the environment.
100. When the EPA inspector asked to see a RCRA Contingency Plan, Facility representatives referred to the Facility's SPCC Plan and to the West Point Emergency Management Plan - Incident Annex E: Installation Spill Contingency Plan. Neither plan identified the location of hazardous wastes in the white locker located south of Mag 9, nor the location of hazardous wastes in the waste paint locker near Building #1236, and so did not evaluate the adequacy of response materials, personnel and plans to deal with emergencies in those areas.

101. Based on the finding in paragraph 100, the EPA's NOV/IRL stated that the Respondent did not have a contingency plan that met all the requirements under 6 NYCRR § 373-3.4.
102. In its response to the NOV/IRL, West Point Garrison stated that after the Inspection it removed all external storage lockers near Mag-9 and near Building #1236 and the hazardous wastes they contained, thereby eliminating the need to update the Facility's Contingency Plans.

Failure to conduct weekly inspections

103. Pursuant to 6 NYCRR § 373-3.9(e), a generator must inspect areas where hazardous waste containers are stored at least weekly, and must look for leaking containers, deterioration of containers and problems in the containment system caused by corrosion or other factors.
104. At the time of the inspection, weekly inspection records did not include the hazardous waste stored near Mag-9, or in the waste paint locker near Building #1236; and did not identify storage deficiencies in Mag-9, such as insufficient aisle space to allow inspection of containers located against back walls, or in the interior of the storage area.
105. Based on the record review by Facility representatives noted in paragraph 104, the NOV/IRL stated that the Respondent did not adequately inspect areas where hazardous waste containers are stored at least weekly.
106. In response to the NOV/IRL, West Point Garrison made four points. First, after the Inspection it removed all of the hazardous waste stored near Mag-9 and near building #1236. Second, there was now adequate aisle space to enable inspections of chemical cabinets for hazardous waste in MAG 9. Third, the inspection checklist was modified to emphasize doing a complete check of each area. Fourth, additional training was conducted for personnel conducting inspections.

Failure to train facility personnel handling hazardous wastes

107. Pursuant to 6 NYCRR § 373-3.2(g), facility personnel must successfully complete a program of classroom instruction or on-the-job training that teaches them to perform their duties in a way that ensures the facility's compliance with applicable hazardous waste requirements. This program must be directed by a person trained in hazardous waste management procedures, and must include instruction which teaches facility personnel hazardous waste management procedures (including contingency plan implementation) relevant to the positions in which they are employed. At a minimum, the training program must be designed to ensure that facility personnel are able to respond effectively to emergencies by familiarizing them with emergency procedures, equipment, and systems. Facility personnel must successfully complete this program within six months after the date of their employment or assignment to a facility or to a new position at a facility, whichever is later and must take part in annual refreshers.

108. Based on EPA's findings while inspecting the Facility's CHWSA and other hazardous waste storage areas, Respondent did not provide the appropriate Facility personnel with classroom instruction or on-the-job training that enabled them to perform their duties in a manner that allowed the Facility to maintain compliance with applicable hazardous waste requirements.
109. Located in the Motor Pool, is equipment to puncture drained aerosol cans with a filter on it. But there was no color or other indicator for when filter was no longer functional. No Facility representative knew when to replace the filter. Such lack of knowledge was indicative of insufficient training.
110. The NOV/IRL stated that Respondent provided inadequate training based on the findings summarized in paragraphs 108 and 109.
111. In response to the NOV/IRL, West Point Garrison stated that after the Inspection, new training was provided that addresses EPA's inspection findings at the Facility's CHWSA and other hazardous waste storage areas. West Point Garrison also noted that the air filter on the drum at the Motor Pool now had an inspection window that changes color so users can tell if the filter needs replacing and annual training will be updated to include the requirement that personnel inspect the filter and change it at the required interval.

Failure to maintain training records

112. Pursuant to 6 NYCRR Part 373-3.2(g), the owner or operator must maintain the following training records on-site: (1) the job title and written description for each position at the facility related to hazardous waste management and the name of the employee filling each job; (2) a written description of the type and amount of both introductory and continuing training that will be given to each person filling these positions; and (3) records documenting that the required training has been completed by facility personnel. Such records on current personnel must be kept until closure of the facility. Records for former employees must be kept for three years after departure. Personnel training records may accompany personnel transferred within the same company.
113. During the Inspection, Respondent could not produce the required training records for its employees at the time of the Inspection and for some time prior thereto.
114. The NOV/IRL stated that Respondent did not have the records required for RCRA training as detailed in paragraph 112, above.
115. In response to the NOV/IRL, West Point Garrison stated that after the Inspection it addressed the potential violations and specified the improvements made by providing new job titles and descriptions for all personnel responsible for hazardous waste management.

Respondent's Violations of Hazardous Waste Permitting Rules at U.S. Military Academy: West Point Garrison

116. The aforementioned (paragraphs 66 - 115, above) instances of storage at West Point Garrison constitute "storage" within the meaning of:
 - a. Section 1004(33) of RCRA, 42 U.S.C. § 6903(33); and
 - b. Six NYCRR § 370.2(b).
117. Respondent's Facility never obtained a RCRA hazardous waste permit, or qualified for interim status.
118. Up through the completion of the Inspection (although not necessarily limited to that time period), Respondent was required to obtain a permit for the storage of hazardous waste at the Facility.
119. Respondent's aforementioned operation of a hazardous waste management Facility without having obtained a permit, or qualifying for interim status constitutes a violation of each of the following:
 - a. Section 3005 of the Act, 42 U.S.C. § 6925; and
 - b. Six NYCRR § 373-1.2(a).
120. Respondent's failure to comply with Section 3005 of the Act, 42 U.S.C. § 6925 and 6 NYCRR § 373-1.2(a) subjects it to injunctive relief and penalties pursuant to Section 3008 of the Act, 42 U.S.C. § 6928.

COUNT 6 – Respondent's Failure to Test the Cathodic Protection of UST System # 616A in accordance with a Nationally Recognized Association

121. Pursuant to 40 CFR § 280.31(b)(2), the criteria that are used to determine that the cathodic protection of regulated UST systems is adequate must be in accordance with a code of practice developed by a nationally recognized association.
122. Tank # 616A at the Facility is a 500-gallon UST storing diesel fuel and composed of steel, thus requiring cathodic protection, which for this tank is met with sacrificial anodes, and triennial tests of the sacrificial anodes pursuant to 40 C.F.R. § 280.31(b).
123. During the June 2016 inspection, Facility representatives provided EPA with passing cathodic protection tests conducted in 2010 and on April 19, 2013, but the tester took readings only over the tank, none at a remote location, in accordance with a code of practice of the Steel Tank Institute (a nationally recognized association) for sacrificial anode testing.

124. EPA's NOV cited the findings (#124) as a potential violation of 40 CFR § 280.31(b)(2).
125. In its response to the NOV, West Point Garrison stated that after the Inspection the tank was retested on February 13, 2017 with remote readings and Respondent provided EPA with the results.
126. Respondent's failure to test the cathodic protection system of Tank #616A in accordance with a code of practice developed by a nationally recognized association is a violation from at least April 19, 2013 until February 13, 2017 of 40 CFR § 280.31(b)(2).
127. Respondent's failure to comply with 40 CFR § 280.31(b)(2) subjects it to injunctive relief and penalties pursuant to Section 9006 of the Act, 42 U.S.C. § 6991.

COUNT 7 – Respondent's Failure to Have Release Detection for Piping for UST System

128. Pursuant to 40 CFR § 280.41(b)(1)(ii), non-exempt underground piping that conveys regulated substances under suction must either have a line tightness test conducted at least every 3 years and in accordance with §280.44(b), or use a monthly monitoring method conducted in accordance with §280.44(c).
129. Pursuant to 40 C.F.R. § 280.45(b), "The results of any (release detection) sampling, testing or monitoring must be maintained for at least 1 year ..."
130. During the June 2016 Inspection, the EPA representative determined that the suction piping for UST #1950B was of the American variety and thus was not exempt from the release detection requirements of 40 C.F.R. §280.41(b)(1)(ii) and 280.45(b). The release detection method used by Respondent for the piping associated with the tank was monthly monitoring for releases using interstitial monitoring. However, the EPA representative observed that the float sensor in the tank-top sump for UST System # 1950B was not vertical. This deficiency would prevent the sensor from adequately detecting a release.
131. EPA's NOV cited these observations as a potential violation of 40 CFR § 280 for failing to conduct adequate release detection on a component of an UST system.
132. The Facility's response to the NOV/IRL did not address these observations.
133. Respondent's failure to install and maintain an acceptable method of piping release detection for UST System # 1950B during the June 6, 2016 inspection is a violation of 40 C.F.R. §280.41(b)(1)(ii) and 280.45(b).
134. Respondent's failure to comply with 40 C.F.R. §§ 280.41(b)(1)(ii) and 280.45(b) subjects it to injunctive relief and penalties pursuant to Section 9006 of the Act, 42 U.S.C. § 6991e.

II. PROPOSED CIVIL PENALTY

The proposed civil penalty for the alleged hazardous waste violations (Counts 1-5) has been determined in accordance with Section 3008(a)(3) of the Act, 42 U.S.C. § 6928(a)(3). For purposes of determining the amount of any penalty assessed, Section 3008(a)(3) requires EPA to “take into account the seriousness of the violation and any good faith efforts to comply with applicable requirements.” To develop the proposed penalty in this complaint, the Complainant has taken into account the particular facts and circumstances of this case and used EPA’s 2003 RCRA Civil Penalty Policy, a copy of which is available upon request or can be found on the Internet at the following address:

<https://www.epa.gov/sites/production/files/documents/rcpp2003-fnl.pdf>. This 2003 RCRA Civil Penalty Policy provides a rational, consistent and equitable calculation methodology for applying the statutory penalty factors to particular cases.

The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended through 2015 (“Inflation Adjustment Act”), 28 U.S.C. § 246, required EPA to adjust its penalties for inflation on a periodic basis. Consistent with this, the penalty amounts in the 2003 RCRA Civil Penalty Policy have been amended to reflect inflation adjustments. The adjustments were made pursuant to the July 27, 2016 document entitled “Amendments to the U.S. Environmental Protection Agency’s Civil Penalty Policies to Account for Inflation (applicable to violations that occurred after November 2, 2015).”

Pursuant to the Inflation Adjustment Act, the maximum statutory civil penalty under Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), is \$37,500 per day for each violation occurring after January 12, 2009 through November 2, 2015; and \$95,284 per day for each violation occurring after November 2, 2015 (where the penalty is assessed on or after January 15, 2017). *See* 40 C.F.R. Part 19 and 82 Fed. Reg. 3633 (January 12, 2017).

The proposed civil penalty for the UST violations (Counts 6-7) has been determined in accordance with Section 9006(d)(2)(A) of the Act, 42 U.S.C. § 6991e(d)(2)(A). For purposes of determining the amount of any penalty to be assessed, Section 9006(c) of the Act, 42 U.S.C. § 6991e(c)14, states that, “Any order issued under this section shall... assess a penalty, if any, which the Administrator [of EPA] determines is reasonable taking into account the seriousness of the violation and any good faith efforts to comply with the applicable requirements.” Additionally, Sections 9006(e)(1) and (2) of the Act, 42 U.S.C. § 6991e(e)(1) and (2), provide that EPA “may...take [] into account in determining the terms of a civil penalty [the] compliance history of an owner or operator” of underground storage tanks and “[a]ny other factor the Administrator [of EPA] considers appropriate [.]” respectively. To develop the proposed penalty for Counts 6 and 7 in this Complaint, Complainant has taken into account the particular facts and circumstances of this case, to the extent known at the time of its filing, and has used “US EPA Penalty Guidance for Violations of UST Requirements” (EPA’s “UST Penalty Policy”), dated November 14, 1990. EPA’s UST Penalty Policy is available upon request and also publicly available on the Internet at <http://www.epa.gov/swerust1/directiv/od961012.htm>. EPA’s UST

Penalty Policy provides guidance to effect a rational, consistent and equitable calculation methodologies for applying the statutory penalty criteria (enumerated above) to particular cases.

Section 9006(d)(2)(A) of the Act, 42 U.S.C. § 6991e(d)(2)(A), authorizes the assessment of a civil penalty up to \$10,000 for each tank for each day of violation of any requirement or standard promulgated by the Administrator of EPA. As noted above, the Inflation Adjustment Act 28 U.S.C. § 245, required EPA to adjust its penalties for inflation on a periodic basis. Consistent with this statutory mandate, EPA has amended the penalty amounts calculated under the November 1990 UST Penalty Policy to reflect inflation adjustments. The adjustments were made pursuant to the December 29, 2008 document entitled “Amendments to EPA’s Civil Penalty Policies to Implement the 2008 Civil Penalty Monetary Inflation Adjustment Rule (effective January 12, 2009)”; guidance entitled “Revision to Adjusted Penalty Policy Matrices on November 16, 2009” (issued on April 6, 2010); the December 6, 2013 document entitled “Amendments to the U.S. Environmental Protection Agency’s Civil Penalties Policies to Account for Inflation (applicable to violations that occurred between December 7, 2013 and November 2, 2015);” and the July 27, 2016 document entitled “Amendments to the U.S. Environmental Protection Agency’s Civil Penalty Policies to Account for Inflation (applicable to violations that occurred after November 2, 2015).”

Pursuant to the Inflation Adjustment Act, the maximum statutory civil penalty under Section 9006(d)(2) of the Act, 42 U.S.C. § 6991e(d)(2), is \$16,000 per day for each violation occurring after January 12, 2009 through November 2, 2015; and \$22,587 per day for each violation occurring after November 2, 2015. See 40 C.F.R. Part 19 and 92 *Fed. Reg.* 3633 (January 12, 2017).

A penalty calculation worksheet and narrative explanation to support the penalty figure for each violation cited in Counts 1- 5 of this Complaint are included in Attachment I, below. Matrices employed in the determination of individual and multiple/ multi-day penalties for the hazardous waste violations are also included in Attachment II. Spreadsheets for the penalty calculations for Counts 6-7 are also enclosed.

Count 1:	\$ 6,500
Count 2:	\$ 17,600
Count 3:	\$ 13,000
Count 4	\$ 9,800
Count 5:	\$ 40,800
Count 6:	\$ 15,000
Count 7:	\$ 6,000
TOTAL	\$ 108,700

The total gravity penalty for each count set forth in the Summary of Total Proposed Penalty table has been rounded to nearest unit of \$100 as required by the above described December 29, 2008, document.

III. COMPLIANCE ORDER

Based upon the foregoing, and pursuant to the authority of Section 3008 and Section 9006 of the Act, Complainant herewith issues the following Compliance Order to Respondent:

The Respondent shall, to the extent it has not already done so, immediately upon the effective date of this Order correct, to the extent possible, the past violations alleged in Counts 1 through 7 of this Complaint. Respondent shall thereafter maintain compliance at its Facility with the requirements cited in Counts 1 through 7.

This Compliance Order shall take effect with respect to the Respondent within thirty (30) days of date of service of the Order, unless by that date the Respondent has requested a hearing pursuant to 40 C.F.R. Section 22.15. See 42 U.S.C. §§ 6928(b) and 6991e(b), 40 C.F.R. §§ 22.37(b) and 22.7. Respondent shall, within thirty (30) calendar days of the effective date of this Compliance Order, submit to EPA written notice of its compliance (accompanied by a copy of all appropriate supporting documentation) or noncompliance for each of the requirements set forth herein. If the Respondent is in noncompliance with a particular requirement, the notice shall state the reasons for noncompliance and shall provide a schedule for achieving compliance with the requirement. Such written notice shall contain the following certification:

I certify that the information contained in this written notice and the accompanying documents is true, accurate and complete. As to the identified portions of this response for which I cannot personally verify their accuracy, I certify under penalty of law that this response and all attachments were prepared in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or person(s) 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 penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

Signature: _____
Name: _____
Title: _____

All responses, documentation, and evidence submitted in response to this Compliance Order should be sent to:

Charles Zafonte
Enforcement Officer
Compliance Assistance & Program Support Branch
Division of Enforcement and Compliance Assistance
U.S. Environmental Protection Agency, Region 2
290 Broadway, 21st floor
New York, New York 10007-1866

Compliance with the provisions of this Compliance Order does not waive, extinguish or otherwise affect Respondent's obligation to comply with all other applicable RCRA statutory or regulatory (federal and/or state) provisions, nor does such compliance release Respondent from liability for any violations at its Facilities. In addition, nothing herein waives, prejudices or otherwise affects EPA's right to enforce any applicable provision of law, and to seek and obtain any appropriate penalty or remedy under any such law, regarding Respondent's generation, handling and/or management of hazardous waste at its Facility or operation of USTs.

IV. NOTICE OF LIABILITY FOR ADDITIONAL CIVIL PENALTIES

Pursuant to the terms of Section 3008(c) of RCRA and the Inflation Adjustment Act, a violator failing to take corrective action for hazardous waste violations within the time specified in a **Compliance Order that has taken effect** is liable for a civil penalty of up to \$57,391 for each day of continued noncompliance *See* 82 Fed. Reg. 3633 (January 12, 2017) (codified at 40 C.F.R. Part 19).

Pursuant to Section 9006(a)(3) of the Act, 42 U.S.C. §6991e(a)(3), and the Inflation Adjustment Act, a violator failing to take corrective action for UST violations within the time specified in the **Compliance Order that has taken effect** is liable for a civil penalty of up to \$57,391 for each UST violation day of continued violation *See* 82 Fed. Reg. 3633 (January 12, 2017).

Such continued noncompliance may also result in suspension or revocation of any permits issued to the violator by EPA.

V. PROCEDURES GOVERNING THIS ADMINISTRATIVE LITIGATION

Upon receipt of a compliance order issued under RCRA Section 3008(a) and Section 9006(a), Respondent may seek administrative review in accordance with 40 C.F.R. Part 22.

The rules of procedure governing this civil administrative litigation were originally 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 COMPLIANCE ORDERS, AND THE REVOCATION, TERMINATION OR SUSPENSION OF PERMITS ("Consolidated Rules of Practice"), and which are codified at 40 C.F.R. Part 22. These rules were recently amended to simplify the administrative processing of cases by expanding the availability of electronic filing and service procedures and eliminating inconsistencies. 82 Fed. Reg. 2230, January 9, 2017. These amendments became effective on May 22, 2017 and apply to all new case filings after that date. A copy of the current Consolidated Rules of Practice, incorporating these amendments, accompanies this 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. 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**

B. Opportunity to Request a Hearing

If requested by Respondent, a hearing upon the issues raised by the Complaint and Answer may be held. 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 Answer raises issues appropriate for adjudication. 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 the Compliance Order is served, the Compliance Order shall automatically become final. 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 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.

(NOTE: Except for compliance information sent to EPA to satisfy the requirements of the compliance Order in Section III, any documents that are filed after the Answer has been filed should be filed as specified in "D" below.)

Respondent shall also then serve one copy of the Answer to the Complaint upon Complainant and any other party to the action. 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 and with regard to which Respondent has any knowledge. 40 C.F.R. §22.15(b). Where Respondent lacks knowledge of a particular factual allegation and so states in its Answer, the allegation is deemed denied. 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 intends to place at issue in the proceeding) and (3) whether Respondent requests a hearing. 40 C.F.R. § 22.15(b).

Respondent's failure affirmatively to 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.

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. 40 C.F.R. § 22.15(d). If Respondent fails to file a timely [*i.e.*, in accordance with the 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. 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. 40 C.F.R. § 22.17(a). Following a default by Respondent for a failure to timely file an Answer to the Complaint, any order issued therefore 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 30 days after the default order becomes final pursuant to 40 C.F.R. § 22.27(c). 40 C.F.R. § 22.17(d). If necessary, EPA may then seek to enforce such final order of default against Respondent, and to collect the assessed penalty amount. Any default order requiring compliance action shall be effective and enforceable against Respondent without further proceedings on the date the default order becomes final under 40 C.F.R. § 22.27(c). 40 C.F.R. § 22.17(d).

D. Filing of Documents Filed After the Answer

Unless otherwise ordered by the Presiding Officer for this proceeding, all documents filed after Respondent has filed an Answer should be filed with the Headquarters Hearing Clerk acting on behalf of the Regional Hearing Clerk, addressed as follows:

If filing by the United States Postal Service:

Sybil Anderson
Headquarters Hearing Clerk
Office of the Administrative Law Judges
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.

Mail Code 1900R
Washington, D.C. 20460

If filing by UPS, FedEx, DHL or other courier or personal delivery, address to:

Sybil Anderson
Headquarters Hearing Clerk
Office of the Administrative Law Judges
Ronald Reagan Building, Room M1200
U.S. Environmental Protection Agency
1300 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

E. Exhaustion of Administrative Remedies

Where Respondent fails to appeal an adverse initial decision to the Agency's Environmental Appeals Board (EAB) see 40 C.F.R. § 1.25(e) 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 right for further review. 40 C.F.R. § 22.27(d).

To appeal an initial decision to the EAB, Respondent must do so within thirty (30) days after the initial decision is served. 40 C.F.R. §22.30(a). Pursuant to 40 C.F.R. § 22.7(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 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.

VI. 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. 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 the 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:

Carl R. Howard, Esq.
Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 2
290 Broadway, Room 1635
New York, New York 10007-1866
212-637-3216

The parties may engage in settlement discussions irrespective of whether Respondent has requested a hearing. 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.

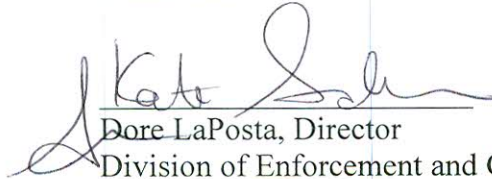
Any settlement that may be reached as a result of an informal settlement conference will be embodied in a written consent agreement. 40 C.F.R. § 22.18(b)(2). In accepting the consent agreement, Respondent waives its right to contest the allegations in the Complaint and waive its right to appeal the final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

VII. 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 thirty (30) days after receipt of the Complaint, Respondent should promptly contact the Assistant Regional Counsel identified on the previous page.

Complainant:



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

SEP 28 2017

Date _____

To: Colonel Jill M. Grant
Chief, Litigation Division
Office of Judge Advocate General
Department of the Army
901 North Stuart Street, USA Room 400
Arlington, VA 22203

Lt. Gen. Robert L. Caslen, Jr.
Superintendent
U.S. Military Academy: West Point Garrison
681 Hardee Place
West Point, NY 10996

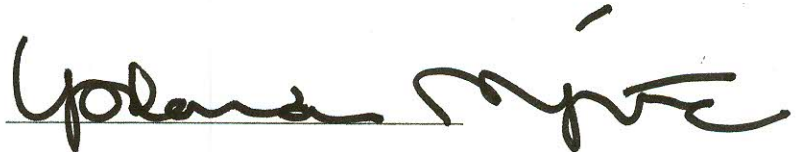
cc: Kelly Lewandowski, Chief
Site Control Section
Division of Environmental Remediation
New York State Department of Environmental Conservation
625 Broadway, 11th Floor
Albany, New York 12233-7250

Russ Brauksieck
Chief, Facility Compliance Section
Division of Environmental Remediation
New York State Department of Environmental Conservation
625 Broadway, 11th Floor
Albany, NY 12233-7020

CERTIFICATE OF SERVICE

This is to certify that on the day of October 3, 2017 I caused to be mailed a true and correct copy of the foregoing COMPLAINT, COMPLIANCE ORDER AND NOTICE OF OPPORTUNITY FOR HEARING, bearing Docket Number RCRA-02-2017-7109, together with Attachments I and II, and the spreadsheets for Counts 6 and 7 (collectively henceforth referred to as the Complaint), and with a copy of the CONSOLIDATED RULES OF PRACTICE GOVERNING THE ADMINISTRATIVE ASSESSMENTS OF CIVIL PENALTIES, ISSUANCE OF COMPLIANCE OR CORRECTIVE ACTION COMPLIANCE ORDERS, AND THE REVOCATION, TERMINATION OR SUSPENSION OF PERMITS, 40 C.F.R. Part 22, by certified mail, return receipt requested, to Colonel Jill M. Grant, Chief, Litigation Division, Office of Judge Advocate General, Department of the Army, 901 North Stuart Street, USA Room 400, Arlington, VA 22203, and, Lt. Gen. Robert L. Caslen, Jr., Superintendent, U.S. Military Academy: West Point Garrison, 681 Hardee Place, West Point, NY 10996. I hand carried the original and a copy of the Complaint to the Regional Hearing Clerk of the United States Environmental Protection Agency, Region 2, 290 Broadway, 16th floor, New York, New York 10007-1866.

Dated: 10/3/2017
New York, New York



ATTACHMENT 1

NARRATIVE EXPLANATION TO SUPPORT COMPLAINT AMOUNT
Penalty Computation Worksheet (Count 1)

Respondent: U.S. Military Academy: West Point Garrison

Facility Address: 681 Hardee Place, West Point, NY 10996

Requirement Violated: Failure to properly manage universal waste lamps

PENALTY AMOUNT FOR COMPLAINT

1. Gravity-based penalty from matrix	\$4,399.50
(a) Potential for harm.	Moderate
(b) Extent of Deviation.	Minor
2. Select an amount from the appropriate multi-day matrix cell.	N/A
3. Multiply line 2 by number of waste streams minus 1.	N/A
4. Add line 1 and line 3	\$4,399.50
5. Percent increase/decrease for good faith.	N/A
6. Percent increase for willfulness/negligence.	N/A
7. Percent increase for history of non-compliance.	N/A
8. Total lines 5 through 7.	N/A
9. Multiply line 4 by line 8.	N/A
10. Calculate economic benefit.	N/A
11. Add lines 4, 9 and 10 for penalty amount to be inserted into the complaint.	\$4,399.50
12. Apply Inflation Adjustment Multiplier (1.48287) to line 11	\$6,524

NARRATIVE EXPLANATION TO SUPPORT COMPLAINT AMOUNT
Penalty Computation Worksheet (Count 1)

1. Gravity Based Penalty

- a. Potential for Harm – The RCRA Civil Penalty Policy provides that the potential for harm should be based on two factors: the risk of human or environmental exposure and the adverse impact of the non-compliance on the regulatory scheme. The potential for harm associated with this violation was determined to be MODERATE: Where an owner/operator of a facility generating universal waste lamps fails to store them adequately to prevent breakage, the Facility increases the risk of releasing mercury into the atmosphere of the storage room. Where an owner/operator of a facility generating universal waste lamps fails to monitor the length of time during which the bulbs are stored, the practice may lengthen the storage time of the used bulbs and may increase the risk of harm. The practice thwarts the regulatory scheme by not documenting the UW storage time.
- b. Extent of Deviation - The extent of deviation present in this violation was determined to be MINOR: Most UW bulbs were stored in adequate containers, and no broken bulbs were observed.

The applicable cell ranges from \$3,300 to \$5,499. The mid-point (\$4,399.50) for the cell was selected, in consideration of the fact that although most UW bulbs were stored in adequate containers, and no broken bulbs were observed, the facility did not track accumulation time.

2. **Multiple Day/Violations** – EPA exercised its discretion and determined that multi-day and multiple violation penalties were not appropriate.

3. Adjustment Factors

- a. Good Faith - Based upon Facility-specific factors and available information, and considering that Respondent did not identify the violation and take corrective action prior to the EPA Inspection, no adjustment has been made at this time.
- b. Willfulness/Negligence - Not applicable
- c. History of Compliance - Not applicable
- d. Ability to Pay - Not applicable
- e. Environmental Project – Not applicable

- f. Other Unique Factors – Not applicable
- g. Economic Benefit – The cost of additional steps to improve UW bulb storage and to document accumulation time is considered to be de minimis when compared to what the Facility was already doing at the time of EPA's inspection.
- h. Recalculation of Penalty Based on New Information: - Not applicable

**NARRATIVE EXPLANATION TO SUPPORT COMPLAINT AMOUNT
Penalty Computation Worksheet (Count 2)**

Respondent: U.S. Military Academy: West Point Garrison

Facility Address: 681 Hardee Place, West Point, NY 10996

Requirement Violated: Failure to make hazardous waste determinations

PENALTY AMOUNT FOR COMPLAINT

1. Gravity-based penalty from matrix	\$10,449.50
(a) Potential for harm.	Moderate
(b) Extent of Deviation.	Major
2. Select an amount from the appropriate multi-day matrix cell.	1,430
3. Multiply line 2 by number of waste streams minus 1	1,430
4. Add line 1 and line 3	\$11,879.50
5. Percent increase/decrease for good faith.	N/A
6. Percent increase for willfulness/negligence.	N/A
7. Percent increase for history of non-compliance.	N/A
8. Total lines 5 through 7.	N/A
9. Multiply line 4 by line 8.	N/A
10. Calculate economic benefit.	N/A
11. Add lines 4, 9 and 10 for penalty amount to be inserted into the complaint.	\$11,879.50
12. Apply Inflation Adjustment Multiplier (1.48287) to line 11	\$17,616

NARRATIVE EXPLANATION TO SUPPORT COMPLAINT AMOUNT
Penalty Computation Worksheet (Count 2)

1. Gravity Based Penalty

- a. Potential for Harm – The RCRA Civil Penalty Policy provides that the potential for harm should be based on two factors: the risk of human or environmental exposure and the adverse impact of the non-compliance on the regulatory scheme. Where an owner/operator of a facility generating solid waste fails to perform the required hazardous waste determination, the adverse impact on the regulatory scheme is maximized. This follows because, if the owner/operator is unaware that the facility is generating hazardous waste, there is a much greater likelihood that the owner/operator will not comply with the applicable provisions of the regulatory scheme. In this case, the Potential for Harm was determined to be MODERATE. Although the amount of wastes involved was significant, the wastes were stored in the CHWSA or in a locker with some containment.
- b. Extent of Deviation - The extent of deviation present in this violation was determined to be MAJOR: The facility's CHWSA in Mag-9 was storing many containers of chemicals that had not been characterized as hazardous or non-hazardous wastes. In addition, a waste paint locker also contained uncharacterized hazardous wastes.

The applicable cell ranges from \$8,800 to \$12,099. The mid-point (\$10,449.50) for the cell was selected, in consideration of the fact that Respondent had characterized some of its solid wastes.

2. **Multiple Day/Violations** – Although the amount of wastes involved was significant, the wastes in question fell into two distinct hazardous waste streams: ignitability (D001) and corrosivity (D002). Thus, EPA used its discretion and used the multiday penalty matrix to assess the penalty for the Respondent's failure to make hazardous waste determinations for just two distinct waste types at its Facility not for all the wastes for which determinations were not made. The same moderate/major cell was used and the mid-point of the cell was used for the same reasons cited above. Thus, the penalty for not making a hazardous waste determination on the first waste stream is \$10,449.50 and for the second waste stream is \$1,430.

3. Adjustment Factors

- i. Good Faith - Based upon Facility-specific factors and available information, and considering that Respondent did not identify the violation and take corrective action prior to the EPA Inspection, no adjustment has been made at this time.
- j. Willfulness/Negligence - Not applicable

- k. History of Compliance - Not applicable
- l. Ability to Pay - Not applicable
- m. Environmental Project – Not applicable
- n. Other Unique Factors – Not applicable
- o. Economic Benefit – The cost of conducting the hazardous waste determinations is considered to be de minimis because it is a deferred cost. Respondent would eventually have called for the Defense Logistics Agency to characterize the wastes before shipping them off-site.
- p. Recalculation of Penalty Based on New Information: - Not applicable

**NARRATIVE EXPLANATION TO SUPPORT COMPLAINT AMOUNT
Penalty Computation Worksheet (Count 3)**

Respondent: U.S. Military Academy: West Point Garrison

Facility Address: 681 Hardee Place, West Point, NY 10996

Requirement Violated: Failure to Minimize the Possibility of a Release

PENALTY AMOUNT FOR COMPLAINT

1. Gravity-based penalty from matrix	\$ 8,799
(a) Potential for harm.	Moderate
(b) Extent of Deviation.	Moderate
2. Select an amount from the appropriate multi-day matrix cell.	N/A
3. Multiply line 2 by days of violation.	N/A
4. Add line 1 and line 3	\$ 8,799
5. Percent increase/decrease for good faith.	N/A
6. Percent increase for willfulness/negligence.	N/A
7. Percent increase for history of non-compliance.	N/A
8. Total lines 5 through 7.	N/A
9. Multiply line 4 by line 8.	N/A
10. Calculate economic benefit.	N/A
11. Add lines 4, 9 and 10 for penalty amount to be inserted into the complaint.	\$ 8,799
12. Apply Inflation Adjustment Multiplier (1.48287) to line 11	\$13,048

NARRATIVE EXPLANATION TO SUPPORT COMPLAINT AMOUNT
Penalty Computation Worksheet (Count 3)

1. Gravity Based Penalty

Potential for Harm – The RCRA Civil Penalty Policy provides that the potential for harm should be based on two factors: the risk of human or environmental exposure and the adverse impact of the non-compliance on the regulatory scheme. Where an owner/operator of a facility generating a hazardous waste fails to minimize the possibility of a release of hazardous waste, the risk of human or environmental exposure is maximized. In this case, the Potential for Harm was considered to be MODERATE. Although the wastes in Mag-9 and in the waste paint locker included possibly incompatible wastes and flammable alcohols and solvents with one container actually bulging, Mag-9 is located in a remote area and is a munitions bunker. Thus, if anything happened, the risk to public health and the environment would be mitigated but the risk to employee safety is tangible.

Extent of Deviation - The extent of deviation present in this violation was determined to be MODERATE. Only one drum in storage evidenced this “bulging” condition, and the degree of bulge did not indicate imminent risk of endangerment.

The applicable cell ranges from \$5,500 to \$8,799. The high-point (\$8,799) for the cell was selected given the bulging container and potential risk to employees.

2. Multiple Day/Violations – EPA exercised its discretion and determined that multi-day and multiple violation penalties were not appropriate.

3. Adjustment Factors

- a. Good Faith - No adjustment has been made at this time.
- b. Willfulness/Negligence - Not applicable
- c. History of Compliance - Not applicable
- d. Ability to Pay - Not applicable
- e. Environmental Project – Not applicable
- f. Other Unique Factors – Not applicable
- g. Economic Benefit – The cost of grounding a drum of waste paint thinner, or transferring wastes to a drum with integrity, is de minimis.

h. Recalculation of Penalty Based on New Information: - Not applicable

i.

**NARRATIVE EXPLANATION TO SUPPORT COMPLAINT AMOUNT
Penalty Computation Worksheet (Count 4)**

Respondent: U.S. Military Academy: West Point Garrison

Facility Address: 681 Hardee Place, West Point, NY 10996

Requirement Violated: Failure to Keep a Copy of Each Complete Manifest for at Least Three Years

PENALTY AMOUNT FOR COMPLAINT

1. Gravity-based penalty from matrix	\$5,500
(a) Potential for harm.	Moderate
(b) Extent of Deviation.	Moderate
2. Select an amount from the appropriate multi-day matrix cell.	\$ 275
3. Multiply line 2 by number of violations minus 1	\$ 1,100
4. Add line 1 and line 3	\$6,600
5. Percent increase/decrease for good faith.	N/A
6. Percent increase for willfulness/negligence.	N/A
7. Percent increase for history of non-compliance.	N/A
8. Total lines 5 through 7.	N/A
9. Multiply line 4 by line 8.	N/A
10. Calculate economic benefit.	N/A
11. Add lines 4, 9 and 10 for penalty amount to be inserted into the complaint.	\$6,600
12. Apply Inflation Adjustment Multiplier (1.48287) to line 11	\$9,787

NARRATIVE EXPLANATION TO SUPPORT COMPLAINT AMOUNT
Penalty Computation Worksheet (Count 4)

1. **Gravity Based Penalty**

- a. Potential for Harm – The RCRA Civil Penalty Policy provides that the potential for harm should be based on two factors: the risk of harm to humans or the environmental and the impact of non-compliance on the regulatory scheme. A generator of hazardous waste is obligated to ensure that the Treatment, Storage and Disposal (“TSD”) facility that its hazardous waste was sent to was authorized to handle and did, in fact, handle that hazardous waste correctly. This “cradle-to-grave” tracking of hazardous waste is a fundamental cornerstone of RCRA. West Point Garrison failed to maintain copies of five separate manifests indicating that the TSD facility it had sent its hazardous waste to had received that waste. The potential for harm was determined to be Moderate.
- b. Extent of Deviation - The extent of deviation present in this violation was determined to be Moderate. West Point Garrison had shipped hazardous waste off site approximately 11 times in 2015 and thus, was unable to locate TSD signed copies of five or 45% of the manifests for that year. However, the other two years were in order.

The applicable cell ranges from \$5,500 to \$8,799. The low-point for the cell matrix (\$5,500) was selected, in consideration of the fact that Respondent had return manifests for its other shipments of hazardous wastes and following the identification of the issue during the inspection, quickly obtained copies of these five missing manifests from the TSD.

2. **Multiple Violations** – EPA used its discretion and used the multiday penalty matrix to assess a penalty for the Respondent’s failure to keep a copy of these five missing manifests for at least three years. The same moderate/moderate cell was used, and the low-point of the cell was used for the same reasons cited above, resulting in a penalty of \$275. Thus, the penalty for the failure to keep the first manifest is \$5,500 and the remaining four is \$275.

3. **Adjustment Factors**

- a. Good Faith - Based upon Facility-specific factors and available information, and considering that Respondent did not identify the violation and take corrective action prior to the EPA Inspection, no adjustment has been made at this time.
- b. Willfulness/Negligence - Not applicable
- c. History of Compliance - Not applicable

- d. Ability to Pay - Not applicable
- e. Environmental Project – Not applicable
- f. Other Unique Factors – Not applicable
- g. Economic Benefit – The cost of contacting the designated facility to obtain a copy of these manifests was de minimis.
- h. Recalculation of Penalty Based on New Information: - Not applicable

**NARRATIVE EXPLANATION TO SUPPORT COMPLAINT AMOUNT
Penalty Computation Worksheet (Count 5)**

Respondent: U.S. Military Academy: West Point Garrison

Facility Address: 681 Hardee Place, West Point, NY 10996

Requirements Violated: Operating a Hazardous Waste Storage Facility Without a Permit

PENALTY AMOUNT FOR COMPLAINT

1. Gravity-based penalty from matrix	\$27,500
(a) Potential for harm.	MAJOR
(b) Extent of Deviation.	MAJOR
2. Select an amount from the appropriate multi-day matrix cell.	N/A
3. Multiply line 2 by number of days of violation	N/A
4. Add line 1 and line 3	\$27,500
5. Percent increase/decrease for good faith.	N/A
6. Percent increase for willfulness/negligence.	N/A
7. Percent increase for history of non-compliance.	N/A
8. Total lines 5 through 7.	N/A
9. Multiply line 4 by line 8.	\$27,500
10. Calculate economic benefit.	N/A
11. Add lines 4, 9 and 10 for penalty amount to be inserted into the complaint.	\$27,500
12. Apply Inflation Adjustment Multiplier (1.48287) to line 11	\$40,779

**NARRATIVE EXPLANATION TO SUPPORT COMPLAINT AMOUNT
Penalty Computation Worksheet (Count 5)**

1. Gravity Based Penalty

- a. Potential for Harm - The potential for harm present in these violations was determined to be MAJOR. Storage of hazardous waste without a permit is a serious violation and has substantial adverse effects on the program. The Respondent effectively did not comply with numerous storage, training and preparedness and prevention requirements resulting in the improper handling and management of hazardous waste, including: failure to label with words identifying the hazardous waste; failure to maintain aisle space for unobstructed movement during emergencies; failure to clearly mark containers with the accumulation start date; failure to ensure that hazardous wastes are stored either at a HWSA or at satellite accumulation areas; failure to have an adequate hazardous wastes contingency plan; failure to conduct weekly inspections; failure to train facility personnel handling hazardous wastes; storage of hazardous waste for more than 90 days; and failure to adequately train personnel and to maintain training records.
- b. Extent of Deviation -The extent of deviation present in this violation was determined to be MAJOR. Respondent did not have the required hazardous waste permit for its Facility, and was out of compliance with numerous regulations that must be met by large quantity generators (LQGs) to be exempt from RCRA permitting.

The applicable cell ranges from \$22,000 to \$27,500. The high-point for the cell matrix (\$27,500) was selected. Respondent violated many requirements that had to be complied with to be exempt from permitting at its Facility, some of which were being violated for more than one day. Since we are using our discretion to not add multi-day penalties, using the high-point in the cell was deemed appropriate.

2. **Multi-day Violations**-The storage of some waste had gone on for a lengthy period but after reviewing the over-all circumstances of the case EPA exercised its discretion and determined that multi-day penalties would not be sought.

3. Adjustment Factors

- a. Good Faith - Based upon facility-specific factors and available information, and considering that Respondent did not identify the violation and take corrective action prior to the EPA Inspection, no adjustment has been made at this time.
- b. Willfulness/Negligence - Not applicable.

- c. History of Compliance - Not applicable.
- d. Ability to Pay - Not applicable.
- e. Environmental Project - Not applicable.
- f. Other Unique Factors - Not applicable.
- g. Economic Benefit – The cost of complying with the violated requirements (e.g., marking and labeling containers, writing letters to make emergency arrangements, etc.) is believed to be de minimis.
- h. Recalculation of Penalty Based on New Information - Not applicable.

**NARRATIVE EXPLANATION TO SUPPORT COMPLAINT AMOUNT
Penalty Computation Worksheet (Count 6)**

**Failure to Test the Cathodic Protection System of UST # 616A in accordance with a
Nationally Recognized Association**

Part 1: Background

Violation:

Regulation

40 CFR § 280.31(b)(2)

Non-compliance

Cathodic protection testing of the STI-P3 tank did not include a remote reading.

See attached spreadsheet for penalty calculation that is based on EPA UST Penalty Guidance

**NARRATIVE EXPLANATION TO SUPPORT COMPLAINT AMOUNT
Penalty Computation Worksheet (Count 7)**

Failure to Monitor UST Systems for Release Detection

Part 1: Background

<u>Violation:</u>	<u>Regulation</u>	<u>Non-compliance</u>
	40 C.F.R. §§ 280.41(b)(1)(ii) and 280.45(b)	Adequate piping release detection for USTs #1950B

See attached spreadsheet for penalty calculation that is based on EPA UST Penalty Guidance.

ATTACHMENT II

2003 Gravity-Based Penalty Matrix

EXTENT OF DEVIATION FROM REQUIREMENT					
P O T E N T I A L F O R H A R M		MAJOR	MODERATE	MINOR	
	MAJOR		\$27,500 to \$22,000	\$21,999 to \$16,500	\$16,499 to \$12,100
	MODERATE		\$12,099 to \$8,800	\$8,799 to \$5,500	\$5,499 to \$3,300
	MINOR		\$3,299 to \$1,650	\$1,649 to \$550	\$549 to \$110

2003 Multi-Day Matrix of Minimum Daily Penalties

		EXTENT OF DEVIATION FROM REQUIREMENT		
P O T E N T I A L F O R H A R M		Major	Moderate	Minor
	Major	\$5,500 to \$1,100	\$4,400 to \$825	\$3,300 to \$605
	Moderate	\$2,420 to \$440	\$1,760 to \$275	\$1,100 to \$165
	Minor	\$660 to \$110	\$330 to \$110	\$110

Site: **U.S. Military Academy West Point, 667A Ruger Road, West Point, NY**
 Violation: **Count 6 - §280.31(b)(2) - Inspect in accordance with codes**

1. Days of noncompliance: **19-Apr-13 13-Feb-17**
2. Number of facilities, tanks or pipes: **1**
3. Total number of days: **1,397**

Part 2 - Economic Benefit Component (See BEN computer model v. 5.6):

4. One Time Capital & Time Costs: **\$ -**
5. Delay Capital & Avoided Costs: **\$ -**
6. Avoided Annually Recurring Costs: **\$ 370.00**
7. Initial Economic Benefit (4-5+6): **\$ 370.00**
8. Final Economic Benefit at Penalty Payment Date: **\$ 422.00**

Part 3 - Matrix Value For The Gravity-Based Component:

9. Matrix Value (MV): **750**

Inflation Adjustment Rules:

	Value	Start Date	End Date	Inflation	Value+Inflatio	Round To	Matrix	Total
10a.	750	4/19/2013	12/6/2013	1.4163	\$ 1,062.23	10 \$	1,060.00	\$ 1,060.00
10b.	750	12/7/2013	11/2/2015	1.4853	\$ 1,113.98	10 \$	1,110.00	\$ 1,110.00
10c.	750	11/3/2015	2/13/2017	1.7816	\$ 1,336.20	10 \$	1,340.00	\$ 1,340.00

Note: Inflation adjustments are defined as:

See Modifications to EPA Penalty Policies to Implement the Civil Monetary Penalty Inflation Adjustment Rule (Pursuant to the 2016 Civil Monetary Penalty Inflation Adjustment Rule, Effective August 1, 2016).

Potential for Harm: **Moderate** Extent of Deviation: **Major**

Justifications for Potential for Harm and Extent of Deviation: **See OSWER Directive 9610.12, Appendix A.**

Part 4 - Violator-Specific Adjustments To Matrix Value:

	% Change	Matrix Value	Total Dollar Adjustment
11a. Degree of cooperation or noncooperation:	0%	\$1,060.00	-
11b. Degree of cooperation or noncooperation:	0%	\$1,110.00	-
11c. Degree of cooperation or noncooperation:	0%	\$1,340.00	-
12a. Degree of willfulness or negligence:	0%	\$1,060.00	-
12b. Degree of willfulness or negligence:	0%	\$1,110.00	-
12c. Degree of willfulness or negligence:	0%	\$1,340.00	-
13a. History of noncompliance:	50%	\$1,060.00	530.00
13b. History of noncompliance:	50%	\$1,110.00	555.00
13c. History of noncompliance:	50%	\$1,340.00	670.00
14a. Unique factors:	0%	\$1,060.00	-
14b. Unique factors:	0%	\$1,110.00	-
14c. Unique factors:	0%	\$1,340.00	-

15a. Adjusted Matrix Value, (line 10a + Dollar Adjustments in lines 11.a to 14a) **\$1,590.00**
 15b. Adjusted Matrix Value, (line 10b + Dollar Adjustments in lines 11.b to 14b) **\$1,665.00**
 15c. Adjusted Matrix Value, (line 10c + Dollar Adjustments in lines 11.c to 14c) **\$2,010.00**

Justification for Degree of Cooperation/ Noncoope **no adjustment** \ No adjustment was made.
 Justification for Degree of Willfulness or Negligenc **no adjustment** \ No adjustment was made.
 Justification for History of Noncompliance: **no adjustment** \ A 2009 consent order with EPA included failure to test this tank for cathodic protection.
 Justification for Unique Factors: **no adjustment** \ No adjustment was made.

Calculations for Gravity Based Components (GBC) with Inflation Adjustments:

16. Environmental Sensitivity: **Moderate**
 17. Environmental Sensitivity Multiplier (ESM): **1.5**

Justification for Environmental Sensitivity Multiplier:

The facility lies just north of, and adjacent to, a source water protection area, and adjacent to the Hudson River.

18. Days of Noncompliance Multiplier (DNM): **5.5**

Calculations for Gravity Based Components:

	Start	End	Subset of Days	(AMV)	(ESM)	% of Overall Days	days x DNM	TOTAL
19a.	4/19/2013	12/6/2013	232	\$1,590.00	1.5	0.166070148	0.9134	2,178.46
19b.	12/7/2013	11/2/2015	696	\$1,665.00	1.5	0.49821046	2.7402	6,843.65
19c.	11/3/2015	2/13/2017	469	\$2,010.00	1.5	0.335719407	1.8465	5,567.20

20. Total Gravity-Based Component = **14,589.31**

21. Economic Benefit Component (from line 8): **422.00**

22. Gravity-Based Component (from line 20): **14,589.31**

23. Initial Penalty Target Figure: (line 21 plus line 22): **15,011.31**

Site: **U.S. Military Academy West Point, 667A Ruger Road, West Point, NY**
 Violation: **Count 7 - §280.41(b)(1)(i)(B) - TT or monitoring on piping**

- 1. Days of noncompliance: **6-Jun-16 6-Jun-16**
- 2. Number of facilities, tanks or pij **1 1**
- 3. Total number of days: **1 1**

Part 2 - Economic Benefit Component (See BEN computer model v. 5.6):

- 4. One Time Capital & Time Costs: **\$ -**
- 5. Delay Capital & Avoided Costs: **\$ -**
- 6. Avoided Annually Recurring Costs: **\$ 1.00**
- 7. Initial Economic Benefit (4-5+6): **\$ 1.00**
- 8. Final Economic Benefit at Penalty Payment Date: **\$ 1.00**

Part 3 - Matrix Value For The Gravity-Based Component:

9. Matrix Value (MV): **1,500**

Inflation Adjustment Rules:

Value	Start Date	End Date	Inflation	Value+Inflation	Round To	Matrix	Total
10a. 1,500	6/10/2016	6/10/2016	1.7816	\$ 2,672.40	10	\$ 2,670.00	\$ 2,670.00

Note: Inflation adjustments are defined as:

a. See 7/27/16 Amendments to EPA's Civil Penalty Policies for violations >11/2/15

Potential for Harm: **Extent of Deviation:**

Justifications for Potential for Harm and Extent of Deviation: **See OSWER Directive 9610.12, Appendix A.**

Part 4 - Violator-Specific Adjustments To Matrix Value:

	% Change	Matrix Value	Total Dollar Adjustment
11a. Degree of cooperation or noncooperation:	0%	\$2,670.00	-
12a. Degree of willfulness or negligence:	0%	\$2,670.00	-
13a. History of noncompliance:	50%	\$2,670.00	1,335.00

14a. Unique factors: 0% \$2,670.00 -

15a. Adjusted Matrix Value, (line 10a + Dollar Adjustments in lines 11.a to 14a) \$4,005.00

Justification for Degree of Cooperation/ Noncooper **no adjustment** No adjustment was made.
 Justification for Degree of Willfulness or Negligenc: **no adjustment** No adjustment was made.
 Justification for History of Noncompliance: **no adjustment** ENTER JUSTIFICATION HERE
 Justification for Unique Factors: **no adjustment** No adjustment was made.

Calculations for Gravity Based Components (GBC) with Inflation Adjustments:

16. Environmental Sensitivity: **Moderate**
 17. Environmental Sensitivity Multiplier (ESM): **1.5**

Justification for Environmental Sensitivity Multiplier:

18. Days of Noncompliance Multiplier (DNM): **1**

Calculations for Gravity Based Components:

	Start	End	Subset of Days	(AMV)	(ESM)	% of Overall Days	DNM% - (% of overall days x DNM)	TOTAL
19a.	6/10/2016	6/10/2016	1	\$4,005.00	1.5	1	1.5	6,007.50

- 20. Total Gravity-Based Component = 6,007.50
- 21. Economic Benefit Component (from line 8): 1.00
- 22. Gravity-Based Component (from line 20): 6,007.50
- 23. Initial Penalty Target Figure: (line 21 plus line 22): 6,008.50

Site: **U.S. Military Academy West Point, 667A Ruger Road, West Point, NY**
 Violation: **Count 7 - \$280.41(b)(1)(i)(B) - TT or monitoring on piping**

1. Days of noncompliance: 6-Jun-16 6-Jun-16
2. Number of facilities, tanks or pil 1 1
3. Total number of days: 1 1

Part 2 - Economic Benefit Component (See BEN computer model v. 5.6):

4. One Time Capital & Time Costs: \$ -
5. Delay Capital & Avoided Costs: \$ -
6. Avoided Annually Recurring Costs: \$ 1.00
7. Initial Economic Benefit (4-5+6): \$ 1.00
8. Final Economic Benefit at Penalty Payment Date: \$ 1.00

Part 3 - Matrix Value For The Gravity-Based Component:

9. Matrix Value (MV): 1,500

Inflation Adjustment Rules:

Value	Start Date	End Date	Inflation	Value+Inflation	Round To	Matrix	Total
10a. 1,500	6/10/2016	6/10/2016	1.7816	\$ 2,672.40	10	\$ 2,670.00	\$ 2,670.00

Note: Inflation adjustments are defined as:

a. See 7/27/16 Amendments to EPA's Civil Penalty Policies for violations >11/2/15

Potential for Harm: Extent of Deviation:

Justifications for Potential for Harm and Extent of Deviation: See OSWER Directive 9610.12, Appendix A.

Part 4 - Violator-Specific Adjustments To Matrix Value:

	% Change	Matrix Value	Total Dollar Adjustment
11a. Degree of cooperation or noncooperation:	0%	\$2,670.00	-
12a. Degree of willfulness or negligence:	0%	\$2,670.00	-
13a. History of noncompliance:	50%	\$2,670.00	1,335.00

