



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

SEP 30 2009

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. 2
2009 SEP 30 11 2:21
REGIONAL HEARING
CLERK

CERTIFIED MAIL- RETURN RECEIPT REQUESTED

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

Jeh Charles Johnson
General Counsel
Department of Defense
1600 Defense Pentagon, Room 3E833
Washington, DC 20301-1600

Re: **In the Matter of U.S. Department of the Army
and Army and Air Force Exchange Service, West Point Garrison
Docket No. RCRA-02-2009-7507**

Dear Ms. Grant and Mr. Johnson:

Enclosed is the Complaint, Compliance Order and Opportunity for Hearing in the above-referenced proceeding. The Complaint alleges violations of the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901 *et seq.* related to the United States Department of the Army Garrison, West Point, New York.

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

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

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

Whether or not you request a formal hearing, you may request an informal conference with EPA to discuss any issue relating to the alleged violations and the amount of the proposed penalty.

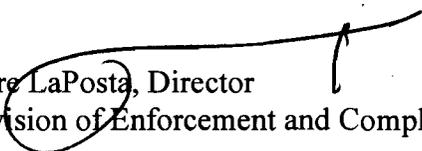
EPA encourages all parties against whom it files a Complaint to pursue the possibility of settlement and to have an informal conference with EPA. However, a request for an informal conference *does not* substitute for a written Answer, affect what you may choose to say in an Answer, or extend the thirty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

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

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

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

Sincerely,


Dore LaPosta, Director
Division of Enforcement and Compliance Assistance

Enclosures

cc: Colonel Daniel V. Bruno
Commander, U.S. Army Garrison, West Point
681 Hardee Place
West Point, NY 10996

Brigadier General Keith L. Thurgood
Commander
Army & Air Force Exchange Service
3911 S. Walton Walker Blvd
Dallas, TX 75222

Arnold DiPoala, AAFES Store Manager
West Point/Ft. Hamilton Exchange
Building 1204
West Point, NY 10996

Russ Brauksieck, Chief
Spill Prevention and Bulk Storage Section
NYSDEC
625 Broadway, 11th Floor
Albany, N.Y. 12233

Karen Maples, Regional Hearing Clerk (without enclosures)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG-11
2009 SEP 30 PM 3:22
REGIONAL HEARINGS
CLERK

In the Matter of

U.S. Department of the Army
and
Army and Air Force Exchange Service,

COMPLAINT, COMPLIANCE ORDER
AND NOTICE OF OPPORTUNITY
FOR HEARING

West Point Garrison

Respondents

Docket No. RCRA-02-2009-7507

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

COMPLAINT

1. This is a civil administrative proceeding instituted pursuant to Section 9006 of the Solid Waste Disposal Act, as amended, 42 U.S.C. § 6901 *et seq.* (collectively referred to as the "Act").
2. Complainant in this proceeding, Dore LaPosta, Director, Division of Enforcement and Compliance Assistance of the United States Environmental Protection Agency, Region 2 (EPA), has been duly delegated the authority to institute this action.
3. Respondents are the United States Department of the Army (hereinafter "Respondent Army"), and the Army and Air Force Exchange Service (hereinafter "Respondent AAFES"), and they are jointly referred to hereinafter as "Respondents."
4. Respondents are each a department, agency or instrumentality of the executive branch of the Federal government.
5. Respondents are each 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.
6. Pursuant to Section 9001(10), 42 U.S.C. § 6991(10) and 40 C.F.R. Section 280.12 an "underground storage tank" or "UST" is "any one or combination of tanks (including

underground pipes connected thereto) that is used to contain an accumulation of regulated substances....”

7. Respondent Army has owned and operated, and continues to own and operate, nine USTs located at the United States Department of the Army Garrison, West Point, New York (hereinafter “the Facility”) and identified by Respondent Army as: #616A, #845F, #900B, #648B, #716B, #719C, #719D, #719E, and #719F.
8. Respondent Army has owned, and continues to own, three additional USTs located at the Facility and identified by Respondent Army as: #1202A, #1202B and #1202C.
9. Respondent AAFES has operated, and continues to operate, the three USTs located at the Facility and identified by Respondent Army as #1202A, #1202B and #1202C.
10. Pursuant to §§ 2002, 9002, and 9003 of the Act, 42 U.S.C. §§ 6912, 6991a, and 6991b, EPA promulgated rules setting forth requirements for owners and operators of UST systems, set forth at 40 C.F.R. Part 280.
11. On or about April 14-15, 2009, pursuant to Section 9005 of the Act, 42 U.S.C. § 6991d, an authorized representative of EPA (“Representative”) inspected the Facility. The purpose of this inspection was in part to determine the Respondents’ compliance with the Act (“April 2009 Inspection”).
12. On or about May 1, 2009, EPA sent one letter addressed to representatives of both Respondents, and said letter contained the following two attachments: an Information Request Letter (“IRL”) and a Notice of Violation (“NOV”), which were issued pursuant to Sections 9005(a) and 9006 of the Act, 42 U.S.C. §6991d(a) and 42 U.S.C. §6991e, respectively.
13. EPA’s NOV listed UST violations that were identified by EPA representatives during the April 2009 Inspection.
14. EPA’s IRL sought general information about the USTs owned and/or operated by the Respondents at the Facility, as well as information about any actions taken to correct the violations, and to prevent recurrence of the violations, identified in the NOV.
15. On July 20, 2009, Respondents provided separate responses to the NOV/IRL.
16. An authorized representative of Respondent Army certified the accuracy of the responses provided and documents submitted in response to the May 1, 2009 IRL.
17. An authorized representative of Respondent AAFES certified the accuracy of the responses provided and documents submitted in response to the May 1, 2009 IRL.

Count 1
Respondent Army's Failure to Triennially Test the Cathodic Protection System
and to Maintain the Results of Testing

UST #616A

18. Paragraphs 1 through 17 are realleged and incorporated herein.
19. Pursuant to 40 C.F.R. § 280.31(b)(1), all UST systems equipped with cathodic protection must be inspected for proper operation by a qualified cathodic protection tester at least every 3 years.
20. Pursuant to 40 C.F.R. § 280.31(d), the results of the last two triennial cathodic protection tests must be maintained to demonstrate compliance with performance standards.
21. Respondent Army's UST #616A has been equipped with cathodic protection since January 1987.
22. The cathodic protection of Respondent Army's UST #616A should have been tested six months from installation and every three years thereafter: in 1991, 1994, 1997, 2000, 2003, 2006 and 2009.
23. During the April 2009 Inspection, Respondent Army's representative could not produce the results of any triennial cathodic protection tests for UST #616A.
24. During the April 2009 Inspection, Respondent Army's representative could not produce any evidence that the cathodic protection system for UST #616A had been inspected by a qualified cathodic protection tester at any time.
25. In its May 1, 2009 Information Request Letter, EPA requested the results of the two most recent cathodic protection tests preceding the April 2009 Inspection for UST # 616A.
26. In its July 20, 2009 Information Request Letter Response, Respondent Army provided the results of a single test of the cathodic protection system for UST # 616A, dated May 21, 2009.
27. In an August 12, 2009 phone call with EPA, the authorized representative of Respondent Army who prepared its July 20, 2009 Response stated that no other tests had been conducted of the cathodic protection system for UST # 616A.
28. Respondent Army did not test the cathodic protection system for UST #616A prior to May 21, 2009.
29. Respondent Army's failure to triennially test the cathodic protection system, and to maintain records of the results of testing, for UST # 616A constitutes a violation of 40

C.F.R. §§ 280.31(b)(1) and 280.31(d).

Count 2
Respondent Army's Failure to Monitor for Releases Every 30 Days
and to Maintain the Results for 12 Months
USTs #648B and #716B

30. Paragraphs 1 through 29 are realleged and incorporated herein.
31. Pursuant to 40 C.F.R. §§ 280.41 and 280.44, qualifying USTs must be monitored at least every 30 days for releases from tanks using one of the methods listed in § 280.43(d) through (h).
32. Pursuant to 40 C.F.R. §§ 280.34 and 280.45, all UST system owners and operators must maintain records demonstrating compliance with release detection requirements for at least one year.
33. At the Facility, USTs #648B and #716B store used oil.
34. USTs #648B and #716B are subject to the release detection requirements of 40 CFR §§ 280.41 and 280.44 and the record-keeping requirements of 40 C.F.R. §§ 280.34 and 280.45.
35. USTs #648B and #716B are each equipped with an automatic tank gauge using interstitial monitoring ("ATG") for release detection.
36. During the April 2009 Inspection, Respondent Army's representatives were unable to demonstrate that the ATGs on USTs #648B and #716B were functional and providing release detection.
37. During the April 2009 Inspection, Respondent Army's representatives were unable to produce records of release detection for UST #648B
38. During the April 2009 Inspection, Respondent Army's representatives were unable to produce records of release detection for UST #716B.
39. In its May 1, 2009 NOV/Information Request Letter, EPA requested records of release detection for USTs # 648B and #716B.
40. In its July 20, 2009 Response, Respondent Army provided hand-written records of product inventory for UST #648B.
41. In its July 20, 2009 Response, Respondent Army did not provide records of release

detection for UST #648B demonstrating compliance with 40 C.F.R. §§ 280.41 and 280.44.

42. In its July 20, 2009 Response, Respondent Army did not provide records of release detection for UST #716B demonstrating compliance with 40 C.F.R. §§ 280.41 and 280.44.
43. In its July 20, 2009 Response, Respondent Army stated that the ATG equipment on both USTs # 648B and #716B would be replaced under a contract to be awarded by September 30, 2009.
44. Respondent Army has not maintained a method of release detection for UST #648B, within the meaning of 40 C.F.R. §§ 280.41 and 280.44, for at least the period from April 14, 2008 through September 30, 2009.
45. Respondent Army has not maintained a method of release detection for UST #716B, within the meaning of 40 C.F.R. §§ 280.41 and 280.44, for at least the period from April 14, 2008 through September 30, 2009.
46. Respondent Army's failure to maintain release detection and records of release detection for USTs #648B and #716B is a violation of 40 C.F.R. §§ 280.34, 280.41, 280.44, and 280.45.

Count 3

Respondent Army's Failure to Respond Appropriately to Indications of Release from UST System

UST #716B

47. Paragraphs 1 through 46 are realleged and incorporated herein.
48. Pursuant to 40 C.F.R. § 280.50, owners and operators of UST systems must report unusual operating conditions to the implementing agency within 24 hours and follow the release investigation and confirmation steps of 40 C.F.R. § 280.52, unless system equipment is found to be defective, but not leaking, and is immediately repaired or replaced.
49. During the April 2009 Inspection, UST #716B was in alarm status.
50. During the April 2009 Inspection, the automatic tank gauge on UST #716B indicated that the tank contained 509 gallons of used oil.
51. UST #716B is a 500-gallon tank, with a working capacity of approximately 450 gallons.
52. In its May 1, 2009 NOV/Information Request Letter, EPA cited the operating conditions

described in paragraphs 49 through 51, above.

53. In its July 20, 2009 Response, Respondent Army stated that the volume of used oil in UST #716B was only 100 gallons as measured by “sticking” the tank the day after the April 2009 Inspection.
54. Upon information and belief, Respondent Army has yet to repair or replace system equipment on UST #716B.
55. Upon information and belief, Respondent Army has not conducted tests to determine whether a leak exists in UST #716B
56. Pursuant to 40 C.F.R. § 280.12, the New York State Department of Environmental Conservation (“NYSDEC”) is the implementing agency for the purposes of receiving reports under 40 C.F.R. § 280.50.
57. As of the end of September 2009, Respondent had not reported a suspected release or unusual operating condition for UST #716B to the NYSDEC.
58. In its July 20, 2009 Response, Respondent Army submitted tank gauge printouts for UST #716B which demonstrated that the ATG equipment for the UST began reporting a malfunction or alarm status on a continuing basis from February 16, 2009.
59. Respondent Army’s failure to report or investigate unusual operating conditions, as described in paragraphs 49-51 and 53-58 above, is a violation of 40 C.F.R. § 280.50.

Count 4
Respondent Army’s Failure to Provide Adequate Spill Prevention
UST #616A and UST# 845F

60. Paragraphs 1 through 59 are realleged and incorporated herein.
61. Pursuant to 40 CFR §§ 280.20(c) and 280.21(d), to prevent spilling associated with product transfer to the UST system, owners and operators must use spill prevention equipment that will prevent release of product to the environment when the transfer hose is detached from the fill pipe, such as a spill bucket.
62. During the April 2009 Inspection, the spill bucket for UST #616A was severely rusted and contained water and debris.
63. During the April 2009 Inspection, the spill bucket for UST #845F was severely rusted, contained water and debris, and the water level in the spill bucket for UST # 845F was above the top of the inlet pipe lid.

64. During the April 2009 Inspection, Respondent Army's representatives stated that the USTs # 616A and #845F are not inspected.
65. In its July 20, 2009 Response, Respondent Army indicated that corrosion in the spill buckets of both USTs # 616A and #845F would be addressed under a contract to be awarded by September 30, 2009.
66. As of at least the April 2009 Inspection, Respondent Army has not maintained the spill bucket for UST #616A in a condition adequate to prevent release of product to the environment when the transfer hose is detached from the fill pipe.
67. As of at least the April 2009 Inspection, Respondent Army has not maintained the spill bucket for UST #845F in a condition adequate to prevent release of product to the environment when a transfer hose is detached from the fill pipe.
68. Respondent Army's failure to maintain adequate spill buckets for UST s #616A and #845F constitutes a violation of 40 C.F.R. §§ 280.20(c) or 280.21(d).

Count 5

Respondents' Failure to Conduct an Annual Test of the Automatic Line Leak Detectors and to Maintain Records of the Test

UST #1202A, #1202B and #1202C

69. Paragraphs 1 through 68 are realleged and incorporated herein.
70. Pursuant to 40 CFR §§ 280.34, 280.41(b)(1)(i), 280.44(a), and 280.45, an annual test must be conducted of the operation of the automatic line leak detector ("ALLD") for a pressurized pumping system, and the results maintained for at least a year.
71. During the April 2009 Inspection of the Facility, the EPA Representative observed that USTs #1202A, #1202B, and #1202C employed pressurized pumping and automatic line leak detectors.
72. During the April 2009 Inspection, Respondents could not produce the results of a test of the operation of the ALLDs for USTs #1202A, #1202B, and #1202C.
73. In its Information Request Letter dated May 1, 2009, EPA requested records documenting an annual test of the ALLDs for the pressurized piping of USTs #1202A, #1202B, and #1202C.
74. In its Information Request Letter Response dated July 20, 2009, Respondent Army stated that Respondent AAFES performed line leak detector tests on April 20, 2009.

Respondent Army did not provide results of such tests.

75. In its Information Request Letter Response dated July 20, 2009, Respondent AAFES provided no test results and stated that its service contractor had advised it that the requirement to test ALLDs was not applicable to USTs #1202A, #1202B, and #1202C.
76. Subsequent to Respondents' Information Request Letter Responses, EPA contacted Respondent AAFES's service contractor who provided EPA with a copy of records documenting that on April 24, 2009, at Respondent AAFES's request, the service contractor tested the three automatic line leak detectors for USTs #1202A, #1202B, and #1202C.
77. During the April 24, 2009 tests, Respondent AAFES' service contractor found that two of the automatic line leak detectors for UST Systems 1202 A, B and C passed and one failed, and after replacing the leak detector, the third one also passed.
78. Respondents' failure to conduct annual automatic line leak detector tests on the pressurized piping of USTs #1202 A, #1202B, and #1202C prior to April 24, 2009, and to maintain records thereof, constitutes a violation of 40 C.F.R. §§ 280.34, 80.41(b)(1)(i), 280.44(a), and 280.45.

PROPOSED CIVIL PENALTY

Sections 9007 of the Act and 9006(d)(2)(A) of the Act, 42 U.S.C. § 6991e (d)(2)(A), authorizes the assessment of a civil penalty against a federal department or agency of up to \$10,000 for each tank for each day of violation of any requirement or standard promulgated by the Administrator. The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection and Improvement Act of 1996, Pub. L. No. 104-34, 110 Stat. 1321 (1996), required EPA to adjust its penalties for inflation on a periodic basis. EPA issued a Civil Monetary Penalty Inflation Adjustment Rule on December 31, 1996, see 61 Fed. Reg. 69360 (1996); on February 13, 2004, see 69 Fed. Reg. 7121 (2004); and on December 11, 2008, see 73 Fed. Reg. 239 (2008), codified at 40 C.F.R. Part 19.

Under Table I of the Civil Monetary Penalty Inflation Adjustment Rule, the maximum civil penalty under 42 U.S.C. Section 6991e(d)(2) for each tank for each day of violation occurring between January 30, 1997 and January 12, 2009, is \$11,000. The maximum civil penalty for violations occurring after January 12, 2009 was increased to \$16,000.

The penalties are proposed pursuant to the "U.S. EPA Penalty Guidance for Violations of UST Requirements," dated November 1990 ("UST guidance"). The penalty amounts in this UST guidance were amended by a September 21, 2004 document entitled, "Modifications to EPA Penalty Policies to implement the Civil Monetary Penalty Inflation Rule (pursuant to the Debt Collection Improvement Act of 1996, Effective October 1, 2004)," and a December 29, 2008

document entitled, "Amendments to EPA's Civil Penalty Policies to Implement the 2008 Civil Monetary Penalty Inflation Adjustment Rule (Effective January 12, 2009)." (These documents are available upon request.) This UST guidance provides a rational, consistent, and equitable calculation methodology for applying the statutory penalty factors to particular cases.

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

<u>Count 1:</u>	Failure to Triennially Test the Cathodic Protection System and to Maintain the Results of Testing	\$ 28,774
<u>Count 2:</u>	Failure to Monitor for Releases Every 30 Days and to Maintain the Results for 12 Months	\$ 27,369
<u>Count 3:</u>	Failure to Respond Appropriately to Indications of Release from UST System	\$ 9,558
<u>Count 4:</u>	Failure to Provide Adequate Spill Prevention	\$ 12,747
<u>Count 5:</u>	Failure to Conduct an Annual Test of the Automatic Line Leak Detectors and to Maintain Records of the Test	\$ 88,668
Total Proposed Penalty Amount for Respondent Army (Counts 1-4)		\$ 78,448
Total Proposed Penalty Amount for Respondents Army and AAFES (Count 5)		\$ 88,668

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

COMPLIANCE ORDER

Based on the foregoing, and pursuant to the authority of Sections 9006 and 9007 of the Act, 42 U.S.C. § 6991e and 6991f, Complainant issues the following Compliance Order against Respondent, which shall take effect thirty (30) days after service of this Order (i.e., the effective date), unless by that date, the Respondent has requested a hearing pursuant to 40 C.F.R. § 22.15. See 42 U.S.C. § 6991(e)(b) and 40 C.F.R. §§ 22.37(b) and 22.7(c):

1. Respondents shall, within thirty (30) days of the effective date of this Order, comply with all applicable UST system standards under 40 C.F.R. Section 280 for all the UST systems at the Facility in this Order, including but not limited to corrosion

protection, spill protection, and release detection, and release investigation and reporting requirements.

2. Respondent Army shall submit, within thirty (30) days of the effective date of this Order, records of release detection demonstrating compliance with 40 C.F.R. §§ 280.41 and 280.44 for USTs # 648B and #716B.
3. Respondent Army shall submit, within fifteen (15) days of the effective date of this Order, the results of a tank tightness test for UST #716B, in accordance with 40 C.F.R. § 280.52(a).

Respondent Army shall, within forty-five (45) calendar days after the effective date of this 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 expeditious compliance with the requirement. Furthermore, in all documents or reports submitted to EPA pursuant to this Compliance Order, the Respondents' written notice shall contain the following certification:

We/I certify that the information contained in this written notice and the accompanying documents is true, accurate and complete. As to the identified portions of this response for which I cannot personally verify their accuracy, I certify under penalty of law that this response and all attachments were prepared in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those person directly responsibility 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: _____

Respondent shall submit the documents specified above to:

Charles Zafonte
Enforcement Officer
U.S. EPA Region 2
Compliance and Program Support Branch
290 Broadway, 21st Floor
New York, NY 10007-1866

NOTICE OF LIABILITY FOR ADDITIONAL CIVIL PENALTIES

Pursuant to Sections 9006(a)(3) and 9007 of the Act, 42 U.S.C. §6991e(a)(3) and 6991(f), and in accordance with the Debt Collection and Improvement Act of 1996, Pub. L. No. 104-34, 110 Stat. 1321 (1996) and the regulations promulgated thereunder (see the Civil Monetary Inflation Rule, 61 Fed. Reg. 69630 (December 31, 1996), 69 Fed. Reg. 7121 (February 13, 2004) and 73 Fed. Reg. 75340-46 (December 11, 2008), codified at 40 C.F.R. Part 19), a violator failing to comply with a Compliance Order within the time specified in the Order is liable for a civil penalty up to \$37,500 for each day of continued noncompliance.

PROCEDURES GOVERNING THIS ADMINISTRATIVE LITIGATION

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

A. Answering the Complaint

Where Respondents intend 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 Respondents are entitled to judgment as a matter of law, Respondents must file with the Regional Hearing Clerk of EPA, Region 2, both an original and one copy of a written Answer or Answers to the Complaint, and such Answer(s) must be filed within 30 days after service of the Complaint. See 40 C.F.R. §§ 22.15(a) and 22.7(c). Respondents may file one Answer on behalf of all named Respondents or each Respondent may file a separate Answer. 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**

Respondents shall also then serve one copy of their Answer(s) to the Complaint upon Complainant and any other party to the action. 40 C.F.R. § 22.15(a).

Respondents' Answer(s) 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

Respondents have any knowledge. 40 C.F.R. § 22.15(b). Where Respondents lack knowledge of a particular factual allegation and so state in their Answer(s), the allegation is deemed denied. 40 C.F.R. § 22.15(b). The Answer(s) shall also set forth: (1) the circumstances or arguments that are alleged to constitute the grounds of defense; (2) the facts that Respondents dispute (and thus intend to place at issue in the proceeding); and (3) whether Respondents request a hearing. 40 C.F.R. § 22.15(b).

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

B. Opportunity to Request a Hearing

If requested by Respondents in their Answer(s), a hearing upon the issues raised by the Complaint and Answer may be held. 40 C.F.R. § 22.15(c). If, however, Respondents do not request a hearing, the Presiding Officer (as defined in 40 C.F.R. § 22.3) may hold a hearing if their Answer(s) raises issues appropriate for adjudication. 40 C.F.R. § 22.15(c). With regard to the Compliance Order in the Complaint, such Order shall automatically become final unless Respondents request a hearing pursuant to 40 C.F.R. § 22.15 within 30 days after such Order is served. 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.

C. Failure to Answer

If Respondents fail in their Answer(s) 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 Respondents fail 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, Respondents may be found in default upon motion. 40 C.F.R. § 22.17(a). Default by Respondents constitutes, for purposes of the pending proceeding only, an admission of all facts alleged in the Complaint and a waiver of Respondents' right to contest such factual allegations. 40 C.F.R. § 22.17(a). Following a default by Respondents 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 Respondents 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 Respondents, and to collect the assessed penalty amount. Any default order

requiring compliance action shall be effective and enforceable against Respondents 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. Exhaustion of Administrative Remedies

Where Respondents fail to appeal an adverse initial decision to the Environmental Appeals Board pursuant to 40 C.F.R. § 22.30, and that initial decision thereby becomes a final order pursuant to the terms of 40 C.F.R. § 22.27(c), Respondents waive their right to confer with the Administrator. 40 C.F.R. § 22.31(e).

In order to appeal an initial decision to the Agency's Environmental Appeals Board [EAB; see 40 C.F.R. § 1.25(e)], Respondents must do so "Within thirty (30) days after the initial decision is served" upon the parties. 40 C.F.R. § 22.30(a). Pursuant to 40 C.F.R. § 22.7(c), where service is effected by mail, "...5 days shall be added to the time allowed by these Consolidated Rules of Practice for the filing of a responsive 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.

INFORMAL SETTLEMENT CONFERENCE

Whether or not Respondents request 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, Respondents may comment on the charges made in this Complaint, and Respondents may also provide whatever additional information that it believes is relevant to the disposition of this matter, including: (1) actions Respondents have 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 Respondents' ability to continue in business; and/or (4) any other special facts or circumstances Respondents wish to raise.

Complainant has the authority to modify the amount of the proposed penalty, where appropriate, to reflect any settlement agreement reached with Respondents, to reflect any relevant information previously not known to Complainant, or to dismiss any or all of the charges, if Respondents can demonstrate that the relevant allegations are without merit and that no cause of action as herein alleged exists. Respondents are referred to 40 C.F.R. § 22.18.

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

Naomi P. Shapiro
Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th floor
New York, New York 10007-1866
(212) 637- 3221
(212) 637-3199 (fax)

The parties may engage in settlement discussions irrespective of whether Respondents have requested a hearing. 40 C.F.R. § 22.18(b)(1). Respondents' requesting a formal hearing does not prevent them 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 Respondents' obligation to file a timely Answer to the Complaint pursuant to 40 C.F.R. § 22.15. No penalty reduction, however, will be made simply because an informal settlement conference is held.

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

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

RESOLUTION OF THIS PROCEEDING WITHOUT HEARING OR CONFERENCE

If, instead of filing an Answer, Respondents wish not to contest the Compliance Order in the Complaint and want to pay the total amount of the proposed penalty within thirty (30) days after receipt of the Complaint, Respondents should promptly contact the Assistant Regional Counsel identified above.

Dated: SEPTEMBER 30, 2009


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

To:

For the Department of the Army
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

For Army and Air Force Exchange Service
Jeh Charles Johnson
General Counsel
Department of Defense
1600 Defense Pentagon, Room 3E833
Washington, DC 20301-1600

cc:

For the Department of the Army
Colonel Daniel V. Bruno
Commander, U.S. Army Garrison, West Point
681 Hardee Place
West Point, NY 10996

For Army and Air Force Exchange Service
Brigadier General Keith L. Thurgood
Commander
Army & Air Force Exchange Service
3911 S. Walton Walker Blvd
Dallas, TX 75222

Arnold DiPoala, AAFES Store Manager
West Point/Ft. Hamilton Exchange
Building 1204
West Point, NY 10996

Russ Brauksieck, Chief
Spill Prevention and Bulk Storage Section
NYSDEC
625 Broadway, 11th Floor
Albany, N.Y. 12233

CERTIFICATE OF SERVICE

This is to certify that I have this day caused to be mailed a copy of the foregoing Complaint, Compliance Order, and Notice of Opportunity for Hearing, bearing docket number RCRA-02-2009-7507, and a copy of the Consolidated Rules of Practice, 40 C.F.R. Part 22, by Certified Mail, Return Receipt Requested, to:

For the Department of the Army

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

For the Army and Air Force Exchange Service

Jeh Charles Johnson
General Counsel
Department of Defense
1600 Defense Pentagon, Room 3E833
Washington, DC 20301-1600

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

Dated: SEP 30 2009
New York, New York



Enclosure II
PENALTY COMPUTATION WORKSHEET

Count 1: Failure of Respondent Army to Triennially Test, and to Maintain the Results of Testing, of the Cathodic Protection System of UST # 616A

Part 1: Background

<u>Violation:</u>	<u>Regulation</u> 40 C.F.R. § 280.31(b)(1) & (d)	<u>Non-compliance</u> Failure of Respondent Army to Triennially Test, and to Maintain the Results of Testing, of the Cathodic Protection System of UST # 616A
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Penalty Calculation Period:

Date Gravity-based Penalty Calculations Started: September 30, 2004. Respondent Army's July 20, 2009 response states that the cathodic protection system for UST # 616A was installed in January 1987. The violation started at three years and six months after installation of the cathodic protection system, *i.e.*, three years and six months after January 1987, which is July 1991, but EPA has only calculated gravity penalties from September 30, 2004.

Date Gravity-based Penalty Calculations Ended: May 21, 2009. Respondent Army submitted a "sacrificial anode test" dated May 21, 2009.

1. Days of Noncompliance for Gravity-Based Penalty: 1,693 days: 4 yr, 7 mo, 20 days (Sept. 30, 2004 - May 20, 2009)

2. Number of Tanks: 1

Part 2: Economic Benefit Component /Cost Savings:

3. a. Capital Costs:	\$0	Basis: N/A
b. One-Time Non-depreciable Expenditure:	\$0	Basis: N/A
c. Avoided Costs (Annual Expenditure):	\$833	Basis: May 7, 2007 estimate from another Respondent
d. Economic Benefit:	\$19,277	Basis: BEN, v. 4.5

Justification of Economic Benefit Component /Cost Savings:

The economic benefit component, calculated with the BEN computer model, is more accurately categorized as "cost savings" for Federal facilities.

A Respondent in a similar recent case provided a \$2,500 cost estimate for inspection and certification of a cathodic protection system by Las Americas Petroleum Services Corp. The BEN computer model was used to calculate the cost savings realized from having avoided this expense for the period of non-compliance identified above. Since inspection is required triennially, the avoided annual cost was estimated by dividing this amount by three.

Part 3: Matrix Value for the Gravity-Based Component

4. Matrix Value (MV): \$750

The Environmental Sensitivity Multiplier for this violation was determined to be "moderate," corresponding to a sensitivity level of 1.5. The facility lies just north of, and adjacent to, a source water protection area, and adjacent to the Hudson River.

12. Days of Non-compliance Multiplier (DNM): (193 days of violation) = 6.5

13. Gravity-based Component:

$$\$974 \text{ (AMV)} \times 1.5 \text{ (ESM)} \times 6.5 \text{ (DNM)} = \$9,497$$

Total Gravity Based Penalty: \$9,497

Part 6: Initial Penalty Target Figure

14. Economic Benefit Component (from line 3d):	\$19,277
15. Gravity-Based Component (from line 13):	\$ 9,497
16. Initial Penalty Target Figure (line 14 plus 15):	\$28,774

Count 2: Failure of Respondent Army to Monitor USTs #648B and #716B for Releases Every 30 Days and to Maintain the Results for 12 Months

Part 1: Background

<u>Violation:</u>	<u>Regulation</u>	<u>Non-compliance</u>
	40 C.F.R. §§ 280.41 and 280.44	Failure of Respondent Army to monitor USTs # 648B and #716B for releases every 30 days and to maintain the results for 12 months.
	40 C.F.R. §§ 280.34 and 280.45	

Penalty Calculation Period:

Date Gravity-based Penalty Calculations Started:	April 15, 2008 or 12 months before the Inspection on April 15, 2009.
Date Gravity-based Penalty Calculations Ended:	September 30, 2009. Per Respondent Army's July 20, 2009 Response, the violations will end no sooner than September 30, 2009, by which date it is Respondent Army's intention to award a contract for the replacement of defective system equipment.

1. Days of Noncompliance for Gravity-Based Penalty: 533 days (1 yr, 5 mo, 15 da)
2. Number of Tanks: 2

Part 2: Economic Benefit Component / Cost Savings: Not assessed at this time.

Part 3: Matrix Value for the Gravity-Based Component

3. Matrix Value (MV):	\$1,500
4. MV for all tanks (line 2 times line 3)	\$3,000
5. Inflation Adjustment Rule:	
d. $\$3,000 \times 1.2895$ (inflation adjustment for post-March 15, 2004) $\times 272/533$	= \$1,974
e. $\$3,000 \times 1.4163$ (inflation adjustment for post-January 12, 2009) $\times 261/533$	= <u>\$2,081</u>
f. Total	\$4,055

See Modifications to EPA Penalty Policies to Implement the Civil Monetary Penalty Inflation Adjustment Rule (Pursuant to the Debt Collection Improvement Act of 2008, Effective January 12, 2009).

Potential for Harm: Major Extent of Deviation: Major

Justification for Potential for Harm: Failure to monitor for releases may allow a release to go undetected.

Justification for Extent of Deviation: Respondent Army has no release detection records of any kind for either UST. As of the filing of this Complaint, Respondent Army continues to provide no method of release detection for either tank.

Part 4: Violator-Specific Adjustments to Matrix Value		648B/716B	
	% Change (+/-) MV	Matrix Value	Total Dollar Adjustment
6. Degree of cooperation or non-cooperation:	0	\$4,055	\$0.00
7. Degree of willfulness or negligence:	+50%	\$4,055	\$2,027
8. History of noncompliance:	0	\$4,055	\$0.00
9. Unique factors:	0	\$4,055	\$0.00

Justification for Degree of Cooperation/ Non-cooperation:
No adjustment was made.

Justification for Degree of Willfulness or Negligence:
Respondent Army first had notice of the failure of UST #716B's monitoring equipment in February 2009 and EPA brought the failure of the ATGs on both USTs #648B and #716B to Respondent Army's attention at the April 2009 inspection and through the May 2009 IRL. Despite Respondent Army's awareness of the continuing nature of the violations, Respondent Army has failed to seek an alternate method of release detection for USTs #648B and #716B and further expresses – via Respondent Army's July 20, 2009 IRL Response -- an intention to allow current conditions to continue through at least September 30, 2009 by which date a contract to repair or replace the current monitoring systems is to be awarded.

Justification for History of Noncompliance:
No adjustment was made.

Justification for Unique Factors:
No adjustment was made.

Part 5: Gravity-Based Component

- 10. Adjusted Matrix Value (AMV): \$6,082
- 11. Level of Environmental Sensitivity: Moderate
Environmental Sensitivity Multiplier (ESM): 1.5

Justification for Level of Environmental Sensitivity:
The Environmental Sensitivity Multiplier for this violation was determined to be "moderate," corresponding to a sensitivity level of 1.5. The facility lies just north of, and adjacent to, a source water protection area, and adjacent to the Hudson River.

- 12. Days of Non-compliance Multiplier (DNM): (533 days of violation) = 3.0
- 13. Gravity-based Component: \$6,082 (AMV) x 1.5 (ESM) x 3.0 (DNM) = \$27,369

Total Gravity Based Penalty: \$27,369

Part 6: Initial Penalty Target Figure

14. Economic Benefit Component:	\$0
15. Gravity-Based Component (from line 13):	<u>\$27,369</u>
16. Initial Penalty Target Figure (line 14 plus 15):	\$27,369

Count 3: Failure of Respondent Army to Respond Appropriately to Indications of a Release from UST # 716B

Part 1: Background

Violation: Regulation
40 C.F.R. § 280.50

Non-compliance
Failure of Respondent Army to respond appropriately to indications of a release from UST #716B.

Penalty Calculation Period:

Date Gravity-based Penalty Calculations Started: February 16, 2009. Respondent Army's July 20, 2009 Response included a tank gauge printout for UST System 716B showing that the tank monitoring equipment began malfunctioning as of February 16, 2009.

Date Gravity-based Penalty Calculations Ended: September 30, 2009. Per Respondent Army's July 20, 2009 Response, the violations will end no sooner than September 30, 2009, by which date it is Respondent Army's intention to award a contract for the replacement of defective system equipment.

- 1. Days of Noncompliance for Gravity-Based Penalty: 226 days
- 2. Number of Tanks: 1

Part 2: Economic Benefit Component / Cost Savings: Not assessed at this time.

Part 3: Matrix Value for the Gravity-Based Component

- 3. Matrix Value (MV): \$1,500
- 4. MV for all tanks (line 2 times line 3) \$1,500

5. Inflation Adjustment Rule:

$\$1,500 \times 1.4163$ (inflation adjustment for post-January 12, 2009) = \$2,124

See Modifications to EPA Penalty Policies to Implement the Civil Monetary Penalty Inflation Adjustment Rule (Pursuant to the Debt Collection Improvement Act of 2008, Effective January 12, 2009).

Potential for Harm: Major Extent of Deviation: Major

Justification for Potential for Harm: Failure to respond to an alarm allows a potential release to go uncorrected with potentially severe consequences.

Justification for Extent of Deviation: Respondent Army ignored the potential for release and failed to notify the implementing agency or to begin the required investigation.

Part 4: Violator-Specific Adjustments to Matrix Value

	% Change (+/-) MV	Matrix Value	Total Dollar Adjustment
6. Degree of cooperation or non-cooperation:	0	\$2,124	\$0.00
7. Degree of willfulness or negligence:	+50%	\$2,124	\$1,062
8. History of noncompliance:	0	\$2,124	\$0.00
9. Unique factors:	0	\$2,124	\$0.00

Justification for Degree of Cooperation/ Non-cooperation:
No adjustment was made.

Justification for Degree of Willfulness or Negligence:
Respondent Army has had indications of unusual operating conditions since February 26, 2009 and has not notified the implementing agency or taken the required steps despite the UST being in alarm status.

Justification for History of Noncompliance:
No adjustment was made.

Justification for Unique Factors:
No adjustment was made.

Part 5: Gravity-Based Component

10. Adjusted Matrix Value (AMV): \$3,186

11. Level of Environmental Sensitivity: Moderate
Environmental Sensitivity Multiplier (ESM): 1.5

Justification for Level of Environmental Sensitivity:
The Environmental Sensitivity Multiplier for this violation was determined to be "moderate," corresponding to a sensitivity level of 1.5. The facility lies just north of, and adjacent to, a source water protection area, and adjacent to the Hudson River.

12. Days of Non-compliance Multiplier (DNM): (226 days of violation) = 2.0

13. Gravity-based Component:
\$3,186 (AMV) x 1.5 (ESM) x 2.0 (DNM) = \$9,558

Total Gravity Based Penalty: \$6,372

Part 6: Initial Penalty Target Figure

14. Economic Benefit Component: \$0

15. Gravity-Based Component (from line 13): \$9,558

16. Initial Penalty Target Figure (line 14 plus 15): \$9,558

Count 4: Failure of Respondent Army to Provide Adequate Spill Prevention for USTs # 616A and #845F

Part 1: Background

Violation: Regulation Non-compliance
40 C.F.R. § 280.20c Failure of Respondent Army to maintain adequate spill buckets for USTs #616A and #845F.

Penalty Calculation Period:

Date Gravity-based Penalty Calculations Started: April 15, 2009. EPA representatives observed the condition of the spill buckets at the April Inspection.

Date Gravity-based Penalty Calculations Ended: September 30, 2009. Per Respondent Army's July 20, 2009 Response, the violations will end no sooner than September 30, 2009, by which date it is Respondent Army's intention to award a contract for the repair or replacement of the spill buckets.

- 1. Days of Noncompliance for Gravity-Based Penalty: 227 days (7 mo, 15 days)
- 2. Number of Tanks: 2

Part 2: Economic Benefit Component / Cost Savings: Not assessed at this time.

Part 3: Matrix Value for the Gravity-Based Component

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

4. MV for all tanks (line 2 times line 3) \$3,000

5. Inflation Adjustment Rule:

\$3,000 x 1.4163 (inflation adjustment for post January 12, 2009) = \$4,249

See Modifications to EPA Penalty Policies to Implement the Civil Monetary Penalty Inflation Adjustment Rule (Pursuant to the Debt Collection Improvement Act of 2008, Effective January 12, 2009).

Potential for Harm: Major Extent of Deviation: Major

Justification for Potential for Harm: Failure to inspect and maintain UST system spill buckets potentially allows product to enter the environment, or to be contaminated with bucket rust and debris, in which case excess product should not be released into the tank.

Justification for Extent of Deviation: At the time of the Inspection, Respondent Army reported that the condition of the spill buckets had never been investigated. The condition of the buckets indicated the problem was not recent.

Part 4: Violator-Specific Adjustments to Matrix Value

% Change Matrix Total Dollar

	(+/-) MV	Value	Adjustment
6. Degree of cooperation or non-cooperation:	0	\$4,249	\$0.00
7. Degree of willfulness or negligence:	0	\$4,249	\$0.00
8. History of noncompliance:	0	\$4,249	\$0.00
9. Unique factors:	0	\$4,249	\$0.00

Justification for Degree of Cooperation/ Non-cooperation:
No adjustment was made.

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

Justification for History of Noncompliance:
No adjustment was made.

Justification for Unique Factors:
No adjustment was made.

Part 5: Gravity-Based Component

10. Adjusted Matrix Value (AMV): \$4,249

11. Level of Environmental Sensitivity: Moderate
Environmental Sensitivity Multiplier (ESM): 1.5

Justification for Level of Environmental Sensitivity:
The Environmental Sensitivity Multiplier for this violation was determined to be “moderate,” corresponding to a sensitivity level of 1.5. The facility lies just north of, and adjacent to, a source water protection area, and adjacent to the Hudson River.

12. Days of Non-compliance Multiplier (DNM): (227 days of violation) = 2.0

13. Gravity-based Component:
\$4,249 (AMV) x 1.5 (ESM) x 2.0 (DNM) = \$12,747

Total Gravity Based Penalty: \$12,747

Part 6: Initial Penalty Target Figure

14. Economic Benefit Component: \$0

15. Gravity-Based Component (from line 13): \$12,747

16. Initial Penalty Target Figure (line 14 plus 15): \$12,747

Count 5: Failure of Respondents to Conduct Annual Tests of the Automatic Line Leak Detectors for USTs #1202 A, #1202B and #1202C and to Maintain Records of the Tests

Part 1: Background

<u>Violation:</u>	<u>Regulation</u> 40 C.F.R. §§ 280.34, 280.41(b)(1)(i), 280.44a and 280.45	<u>Non-compliance</u> Failure to conduct an annual test of the operation of the automatic leak detector for a pressurized system, and to maintain the results for at least a year.
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Penalty Calculation Period:

Date Gravity-based Penalty Calculations Started: September 30, 2004. Respondent AAFES's July 20, 2009 response indicates its belief that this requirement is inapplicable to USTs #1202 A, #1202B and #1202C. The violation is therefore believed to have started one year after installation of the system, *i.e.*, one year after December 1, 1998.

Date Gravity-based Penalty Calculations Ended: April 24, 2009. Although Respondent AAFES claims that its contractor had advised that the testing requirement was not applicable to these ALLDs and Respondent AAFES submitted no test results as part of its July 20, 2009 submission, Respondent AAFES's contractor documented that the tests were conducted on April 24, 2009.

1. Days of Noncompliance for Gravity-Based Penalty: 1,666 days: 4 yr, 6 mo, 24 days (Sept. 30, 2004 – April 23, 2009)

2. Number of Tanks: 3

Part 2: Economic Benefit Component / Cost Savings:

3.a. Capital Costs:	\$0	Basis: N/A
b. One-Time Non-depreciable Expenditure:	\$0	Basis: N/A
c. Avoided Costs (Annual Expenditure):	\$275	Basis: 8/20/09 quote (Conklin Svc)
d. Economic Benefit:	\$2,468	Basis: BEN, v. 4.5

Part 3: Matrix Value for the Gravity-Based Component

Matrix Value (MV): \$1,500

4. MV for all tanks (line 2 times MV) \$4,500

Inflation Adjustment Rule:

- 5. a. \$4,500 x 1.2895 (inflation adjustment for post-March 15, 2004) x 1533/1825 = \$4,874
- b. \$4,500 x 1.4163 (inflation adjustment for post-January 12, 2009) x 292/1825 = \$1,020
- c. Total \$5,894

See Modifications to EPA Penalty Policies to Implement the Civil Monetary Penalty Inflation Adjustment

Rule (Pursuant to the Debt Collection Improvement Act of 2008, Effective January 12, 2009).

Potential for Harm: Major Extent of Deviation: Major

Justification for Potential for Harm: Properly functioning automatic line leak detectors (“ALLD”) shut down pumping operations when catastrophic leaks are detected. Failure to annually test an ALLD increases the risk of a sudden and significant release of regulated substance to the environment. The April 24, 2009 ALLD test conducted by Respondent AAFES’ contractor demonstrated that one of the ALLDs was not functioning.

Justification for Extent of Deviation: Over the ten-year life of the UST systems, Respondents did not perform the annual test of the ALLDs and maintain records of the test.

Part 4: Violator-Specific Adjustments to Matrix Value

	% Change (+/-) MV	Matrix Value	Total Dollar Adjustment
6. Degree of cooperation or non-cooperation:	0	\$5,894	\$0.00
7. Degree of willfulness or negligence:	0	\$5,894	\$0.00
8. History of noncompliance:	0	\$5,894	\$0.00
9. Unique factors:	+50%	\$5,894	+\$2,947

Justification for Degree of Cooperation/ Non-cooperation:
No adjustment was made.

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

Justification for History of Noncompliance:
No adjustment was made.

Justification for Unique Factors:
In its July 20, 2009, Respondent AAFES responded that it could not conduct the ALLD test because its contractor stated that the test was not applicable to the system. Upon inquiry, the contractor stated that the ALLD tests were conducted on April 24, 2009. Test results demonstrated that one of the ALLDs was indeed non-functional.

Part 5: Gravity-Based Component

10. Adjusted Matrix Value (AMV): \$8,841

11. Level of Environmental Sensitivity: Moderate

Environmental Sensitivity Multiplier (ESM): 1.5

Justification for Level of Environmental Sensitivity:

The Environmental Sensitivity Multiplier for this violation was determined to be “moderate,” corresponding to a sensitivity level of 1.5. The facility lies just north of, and adjacent to, a source water protection area, and adjacent to the Hudson River.

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

13. Gravity-based Component:

$$\$8,841 \text{ (AMV)} \times 1.5 \text{ (ESM)} \times 6.5 \text{ (DNM)} = \$86,200$$

Total Gravity Based Penalty: \$86,200

Part 6: Initial Penalty Target Figure

14. Economic Benefit Component (from line 3d): \$ 2,468

15. Gravity-Based Component (from line 13): \$86,200

16. Initial Penalty Target Figure (line 14 plus 15): \$88,668