

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REG. II  
2009 MAY 15 PM 3:33

REGIONAL HEARING  
CLERK

In the Matter of:

U.S. Department of Veterans Affairs

RCRA Docket No.  
02-2008-7507

Proceedings under Section 9006 of the  
Solid Waste Disposal Act, as amended

**ANSWER and REQUEST FOR HEARING**

The United States Department of Veterans Affairs , VA Caribbean Healthcare System, San Juan VA Medical Center (hereinafter VA or VA), Respondent, through its undersigned attorney, VA Office of Regional Counsel, answers the Complaint in this case as follows:

**General Denial**

The Respondent denies all allegations set forth in the Complaint, Compliance Order and Notice of Opportunity for Hearing not otherwise admitted below.

**Specific Responses**

1. The allegations of Paragraph 1 of the Complaint are admitted.
2. Paragraph 2 is admitted.
3. Paragraph 3 is admitted.
4. Paragraph 4 of the Complaint purports to quote from and characterize the implementation regulations of the Solid Waste Disposal Act or the Act itself. The law and regulations speak for themselves and are the best evidence of their contents, for which reason no response is required. To the extent that a response is required the allegations of the paragraph are denied.

5. Paragraph 5 is admitted.

6. Paragraph 6 is admitted.

7. Paragraph 7 is admitted.

8. Paragraph 8 purports to quote from and characterize the implementation regulations of the Solid Waste Disposal Act or the Act itself. The law and regulations speak for themselves and are the best evidence of their contents, for which reason no response is required. To the extent that a response is required the allegations of the paragraph are denied.

9. Paragraph 9 purports to quote from and characterize the implementation regulations of the Solid Waste Disposal Act or the Act itself. The law and regulations speak for themselves and are the best evidence of their contents, for which reason no response is required. To the extent that a response is required the allegations of the paragraph are denied.

10. Paragraph 10 purports to quote from and characterize the implementation regulations of the Solid Waste Disposal Act or the Act itself. The law and regulations speak for themselves and are the best evidence of their contents, for which reason no response is required. To the extent that a response is required the allegations of the paragraph are denied.

11. Paragraph 11 purports to quote from and characterize the implementation regulations of the Solid Waste Disposal Act or the Act itself. The law and regulations speak for themselves and are the best evidence of their contents, for which reason no response is required. To the extent that a response is required the allegations of the paragraph are denied.

12. Paragraph 12 is **denied** since the Respondent lacks sufficient information as to the actions of the USEPA to either admit or deny that the Commonwealth of Puerto Rico government was notified by the USEPA prior to issuing the complaint.

13. Paragraph 13 is admitted.

14. Paragraph 14 is admitted.

15. Paragraph 15 is admitted.

16. Paragraph 16 is admitted.

17. Paragraph 17 is admitted.

18. Paragraph 18 is admitted.

19. Paragraph 19 is admitted.

20. Paragraph 20 purports to quote from and characterize the implementation regulations of the Solid Waste Disposal Act or the Act itself. The law and regulations speak for themselves and are the best evidence of their contents, for which reason no response is required. To the extent that a response is required the allegations of the paragraph are denied.

21. With regard to Paragraph 21, for its response to the allegations, Respondent repeats its responses to Paragraphs 1 through 20 above.

22. Paragraph 22 purports to quote from and characterize the implementation regulations of the Solid Waste Disposal Act or the Act itself. The regulations speak for themselves and are the best evidence of their contents, for which reason no response is required. To the extent that a response is required the allegations of the paragraph are denied.

23. Paragraph 23 is denied as stated. It is affirmatively stated that the records for January 2008 were provided.

24. Paragraph 24 is denied as stated. It is affirmatively stated that the records for January 2008 were provided.

25. Paragraph 25 is denied as stated, except it is admitted that some of the required records could not be presented by Respondent.

26. Paragraph 26 purports to quote from and characterize the implementation regulations of the Solid Waste Disposal Act or the Act itself. The law and regulations speak for themselves and are the best evidence of their contents, for which reason no response is required. To the extent that a response is required the allegations of the paragraph are denied.

27. Paragraph 27 purports to quote from and characterize the implementation regulations of the Solid Waste Disposal Act or the Act itself. The law and regulations speak for themselves and are the best evidence of their contents, for which reason no response is required. To the extent that a response is required the allegations of the paragraph are denied.

28. Paragraph 28 is denied as stated. It is affirmatively stated that the record for January 2008 was presented.

29. Paragraph 29 is admitted.

30. Paragraph 30 is denied as stated. It is admitted that records of an inspection within six months of installation of the UST systems 1 and 2 could not be found or presented by the current employees of the VA.

31. Paragraph 31 is denied as stated. It is admitted that records of an inspection at least every three years by a qualified cathodic protection inspector for UST systems 1 and 2

for the time period between March 23, 1994 and January 16, 2008 could not be found or presented by the current employees of the VA.

32. Paragraph 32 is admitted.

33. Paragraph 33 sets forth a conclusion of law to which no response is required. To the extent that a response is required, the paragraph is denied.

34. Paragraph 34 sets forth a legal conclusion to which no response is required. To the extent that a response is required, the allegations of the paragraph are denied.

## **COUNT 2**

35. With regard to Paragraph 35, for its response to the allegations, Respondent repeats its responses to Paragraphs 1 through 34 above.

36. Paragraph 36 purports to quote from and characterize the implementation regulations of the Solid Waste Disposal Act or the Act itself. The law and regulations speak for themselves and are the best evidence of their contents, for which reason no response is required. To the extent that a response is required the allegations of the paragraph are denied. It is affirmatively alleged that even though Count 2 "Respondent's Failure to Have Overfill Prevention Equipment on UST 1 and 2" states that the inspectors found no overfill protection, in reality the USEPA Inspector was unable to observe and inspect or in the alternative failed to observe and inspect the ball float valve devices which were actually installed for the USTs. These devices were in place since the original tank installation in 1993 and on October 13, 2009, Las Americas Petroleum Services (LAPS) certified that indeed the VA UST 1 and 2 have overfill protection equipment (Overfill Protection Valve, Universal Model #39) and that the overfill protection had been in place for both USTs since their original installation.

37. Paragraph 37 is denied.

38. Paragraph 38 is denied.

39. Paragraph 39 is denied.

40. Paragraph 40 is denied.

41. Paragraph 41 is denied.

42. Paragraph 42 is denied.

### **COUNT 3**

43. For its response to the allegations of Paragraph 43, Respondent repeats its responses to Paragraphs 1 through 42 above.

44. Paragraph 44 purports to quote from and characterize the implementation regulations of the Solid Waste Disposal Act or the Act itself. The law and regulations speak for themselves and are the best evidence of their contents, for which reason no response is required. To the extent that a response is required the allegations of the paragraph are denied.

45. Paragraph 45 purports to quote from and characterize the implementation regulations of the Solid Waste Disposal Act or the Act itself. The law and regulations speak for themselves and are the best evidence of their contents, for which reason no response is required. To the extent that a response is required the allegations of the paragraph are denied.

46. Paragraph 46 purports to quote from and characterize the implementation regulations of the Solid Waste Disposal Act or the Act itself. The regulations speak for themselves and are the best evidence of their contents, for which reason no response is required. To the extent that a response is required the allegations of the paragraph are denied.

47. Paragraph 47 is admitted.

48. Paragraph 48 is admitted.

49. Paragraph 49 is denied.

50. Paragraph 50 purports to quote from and characterize the implementation regulations of the Solid Waste Disposal Act or the Act itself. The law and regulations speak for themselves and are the best evidence of their contents, for which reason no response is required. To the extent that a response is required the allegations of the paragraph are denied.

51. Paragraph 51 purports to quote from and characterize the implementation regulations of the Solid Waste Disposal Act or the Act itself. The law and regulations speak for themselves and are the best evidence of their contents, for which reason no response is required. To the extent that a response is required the allegations of the paragraph are denied.

52. Paragraph 52 is admitted.

53. Paragraph 53 sets forth conclusions of law to which no response is required. To the extent that a response is required, the allegations of Paragraph 53 are denied.

54. Paragraph 54 sets forth conclusions of law to which no response is required. To the extent that a response is required, Paragraph 54 of the Complaint is denied.

#### COUNT 4

55. For its response to the allegations of Paragraph 55, Respondent repeats its responses to Paragraphs 1 through 54 above.

56. Paragraph 56 purports to quote from and characterize the implementation regulations of the Solid Waste Disposal Act or the Act itself. The law and regulations speak for themselves and are the best evidence of their contents, for which reason no response is required. To the extent that a response is required the allegations of the paragraph are denied.

57. Paragraph 57 of the Complaint is admitted.

58. Paragraph 58 is admitted.

59. Paragraph 59 of the Complaint is admitted.

60. Paragraph 60 of the Complaint is admitted.

61. Paragraph 61 sets forth conclusions of law to which no response is required. To the extent that a response is required, Paragraph 61 of the Complaint is denied.

### **Hearing Request**

**The Respondent requests a hearing. VA has entered into discussions with USEPA Region II for an informal settlement** as per UST/LUST Guidance Enforcement procedures Guidance Manual OSWER Directive 9610.11 May 1999.

The negotiations appear to be leading to a settlement agreement but as of today they have not yet concluded. For this reason, since the answer to this Complaint is now due, the Respondent is obligated to request a hearing.

### **General Defenses**

1. The Administrator lacks jurisdiction over the subject matter of claims contained in the Complaint.
2. The United States Environmental Protection Agency (EPA) should recover nothing, or less than their demand, for equitable reasons including but not limited to the doctrines of estoppel, waiver, or laches.
3. The EPA's Complaint is barred in whole or in part by the applicable statutes of limitations.
4. Some of the penalties proposed by the EPA are not properly recoverable under the

applicable regulations.

5. The EPA's penalties, if any, should be diminished under applicable laws and regulations as there is no evidence of any cost avoidance behavior on the part of the Respondent, the Respondent has cooperated to the maximum of its capacity with the USEPA and the Respondent has made efforts above and beyond those required by law to avoid any future violations.

### **Specific Defenses**

#### **1. Respondent asserts that the Potential for Harm was not "major" as categorized in the complaint (Count 1)**

The extent of deviation was determined to be "major"; Respondent **did not** exhibit a total lack of compliance with this requirement for the time period in which the penalty is being sought.

#### **Count 1 Failure to Inspect Cathodic Protection System of UST Systems 1 and 2 and Failure to Maintain Testing**

The Cathodic Protection (CP) certification inspections conducted in January 2008 confirmed the integrity of the steel piping system and verified that the CP is performing as designed, and is effectively preventing corrosion and consequently, reduces significantly the risk and effects of harm.

Furthermore, the continuous operation of the galvanized steel fuel distribution lines and the lack of petroleum based releases (Gasoline and Diesel) USTs 1, and 2 since their installation on 1993, evidence that the operation of these USTs have not caused contamination to the soil, and to the groundwater at the facility.

As for the Extent of Deviation, Respondent asserts that the Extent of Deviation was less than "major" on the part of the VA.

**2. Respondent's penalty should also be reduced by and to the extent of its proactive behavior in the discovery and correction of the following stated violations PRIOR TO the inspection visit of 13 February 2008. Respondent did not try to avoid costs related to its UST program.**

**Addressing and upgrading the UST system prior to the USEPA inspection on 13 February 2008:**

1. In March 2007, Puerto Rico Environmental Quality Board UST Inspectors conducted a site visit to VA and did not issue a non-compliance report. A Certification of Compliance for the 1998 UST requirements was issued by Puerto Rico Environmental Quality Board for all VA' USTs.
  2. In the summer of 2007, Environmental Regulatory Section (ERS) was established as part of Facilities Management Services. A total of four (4) full-time positions were filled at a total annual cost of approximately \$600,000.00. These positions were dedicated to ensure VA full compliance with Federal and State Environmental Laws and Regulations.
  3. VA's UST program was established in October 2007 at which time deficiencies were identified. An action plan was developed to address UST deficiencies.
  4. **On Dec 29, 2007**, VA purchased emergency spill kits/ spill control equipment to be installed at various locations throughout the Tank Farm area USTs 1 - 5.
  5. **On Dec 30, 2007**, VA began to process a Service Contract (POC80276) for Installation and Maintenance of Spill Prevention Equipment that includes Overfill alarms, Automated Shutoff Devices and Automated Tank Gauging System (Veeder Root Consoles).
  6. **In January 2008**, VA conducted inspection and testing of the UST system. VA conducted the three (3) year Cathodic Protection (CP) certification inspections on January 17, 2008. These inspections confirmed the integrity of the steel piping system and verified that the CP is performing as designed, and is effectively preventing corrosion. Consequently, this confirmed previous CP operating conditions as required by the Federal and State USTs regulations.
  7. In January 2008, VA conducted a Cathodic Protection Test for the galvanized steel distribution pipelines for both UST 1 and 2 tanks.
  8. On January 14, VA submitted to Puerto Rico Environmental Quality Board (PREQB) the annual UST Notification Form 2008 as per PREQB UST regulation.
  9. In January 2008, VA conducted a Line Tightness Test (LTT) for the USTs 1, 2 and 3.
  10. In January 2008, VA conducted a Tank Tightness Test (TTT) for USTs 1, 2 and 3.
- 3. Respondent Performed actions above and beyond USEPA information requests:**
1. VA responded to EPA with the intent of to advise that VA Caribbean Healthcare System (VA) was taking immediate action to rectify **ALL** deficiencies identified in the outbriefing meeting held on 13 February 2008 resulting from the

multimedia inspection. VA demonstrated commitment to environmental stewardship and compliance to the full extent and spirit of the law.

4. VA materially corrected all the deficiencies cited in the NOV within approximately thirty days of the citations and implemented policies and procedures to address recordkeeping requirements for the UST systems bringing VA fully into compliance. VA identified most of the deficiencies cited prior to the USEPA inspection and was putting a contract in place to effect corrective action. This contract was subsequently “fast tracked” after the USEPA inspection.

VA cooperated fully with the EPA and demonstrated our willingness to comply with applicable regulations.

**V. Respondent’s culpable conduct should also be reduced by and to the extent of its cooperation with the EPA. In fact, favorable comments as to the cooperation of the facility and acknowledgment of the facilities commitment to an environmental program were noted in the out-brief report as made by EPA inspectors Charles Zafonte, Michael Prescott, and Francisco Claudio.**

VA materially corrected all the deficiencies cited in the NOV within approximately thirty days of the citations and implemented policies and procedures to address recordkeeping requirements for the UST systems bringing VA fully into compliance.

With respect to other potential reductions in penalty not granted to the facility, Respondent **did not exhibit a “total lack of compliance with the requirement”**, as Respondent properly provided the EPA with release detection records for the following tests request for which was made 13 February of 2008:

### **1. Cathodic Protection**

- a. VA conducted the three (3) year Cathodic Protection (CP) certification inspections on January 17, 2008. These inspections confirmed the integrity of the steel piping system and verified that the CP is performing as designed, and is effectively preventing corrosion. Consequently, this confirmed previous CP operating conditions as required by the Federal and State USTs regulations.

### **2. Release Detection**

- a. Tank Tightness Test - On January 2008, VA conducted Tank Tightness Test (TTT) for USTs 1, 2 and 3. The **PASS** results confirmed the integrity of the tank and proper system operability. VA has scheduled yearly TTT for the tank systems

- b. Line Tightness Test – VA conducted a Line Tightness Test for the USTs 1, 2 and 3 as a method of release detection for suction piping. The PASS results confirmed that the fuel distribution piping system is operational and no releases had occurred).

**VI. Respondent's culpable conduct should also be reduced by and to the extent of its efforts to mitigate future violations.**

**1. Improvements to Software/Hardware Monitoring Operations at VA:**

Installation of Veeder Root® Inform Software Systems

Veeder Root® Inform Site Management Software Version 4.0 was installed to manage remote communications telemetry from the ATG consoles for the USTs 1, 2, 3, 4 and 5. The software provides VA automatic data collection and report generation while increasing control over the USTs, providing a centralized and accurate inventory, alarms, leak detection monitoring and diagnostic information. The ATG Veeder Root® console for UST 3 was upgraded with Inform Site Management Software on 16 April 2009. In addition, three (3) Inform Software Ethernet modules were installed to the ATG TLS 350 system which provides through three (3) remote WAN Network locations readily access information. Furthermore, VA has installed and configured the system to communicate critical site information (active alarms or malfunctions) to key personnel such as Chief of Facilities Management Services and Chief of Environmental Regulatory Section to implement immediate corrective actions. :

VA installed three (3) dual monitor computers connected to three (3) 42" monitors LCD/TV with the capability to project simultaneously more than two screens from UST sites.

Installation and Implementation of UST Training Inform Software

On July 2008, Mr. Kenneth Leirger, Veeder Root Trained Technician from Solares and Co. Inc. provided training to a total of six (6) VA FMS personnel: VA Graphic Control Operators (4) and Boiler Operators (2). Training scope included In-Tank warning and alarm levels, float sensors, printed reports and troubleshooting, etc.

**2. Establishment of a UST Maintenance and Repair Service Contract**

The VA UST Maintenance and Repair services contract include all required services necessary to conduct an inspection and testing program to insure that all VA USTs are in compliance with State and Federal UST Regulations.

The contract includes conducting the following required services:

- Cathodic Protection Tests (every six months and three year Cathodic Protection Certification)

- Line and Tank Tightness Tests (annual) and as required after any repair to the system
- Tank and Piping Cleaning
- UST Monthly Inspections
- Routine Maintenance
- Emergency Repair

The final phase is in process of completion, for the implementation of a multi-year service contract for the maintenance and repairs of the VA underground storage tank system.

TOTAL ESTIMATED ANNUAL COST OF CONTRACT \$94,000

### **3. Development and Implementation of Recordkeeping Program**

VA purchased a FUJITSU high capacity industrial scanner with main purpose of convert hard copy documents such as UST records into digital /electronic format capable to store into an electronic centralized file system. This tool provides to VA an opportunity to build up an electronic library from historical data, operation and maintenance records, daily inventory data, and future information.

To comply with UST recordkeeping requirements, all following data is printed (daily) and digitalized to include but not limited to:

- Leak Test (0.1 g/h):
  - All ATG systems are calibrated to obtain a monthly In Tank Leak Test set at 0.1g/h.
- Continuous Statistical Leak Detection (CSLD) (0.2g/h):
  - All ATG systems are calibrated to obtain a daily CSLD test.
- Product Delivery History
  - All ATG system provides a report for Increase of product every product delivery event.
- Inventory Reports (Daily):
  - All ATG printers are calibrated to printout inventory reports at 0600 and 1400 for all VA USTs.
- Sensor alarms Liquid /phase:
  - Sump risers (UST1):
    - T1, (UST2): T2, UST 3: (T1), UST 4 (T1), (T2)
  - Transition Boxes at fuel distribution lines from USTs 4 and 5:
    - L1, L2, L3, L4, L5
  - All ATG systems are set to printout a report when the alarm.
- Interstitial Monitoring sensors
  - UST 1 (L2/Dry Sensor) and UST 2 (L1/Dry Sensor)
  - UST 3 (Brine/Hydrostatic)
  - All ATG systems are set to printout a report when the sensor / interstitial alarms are activated.

- All ATG systems are set to indicate the daily amount of water in the tanks in gallons and in inches.
- Sudden Loss of Product alarm
  - All ATG systems are calibrated to indicate and trigger alarms audible and visible at Graphic Control and Boiler Room for immediate action.
- Tank and Line Tightness Tests Results
- Cathodic Protection Test Results
- Repairs conducted to the UST system
- Operation and Maintenance Records

TOTAL COST SOFTWARE/HARDWARE UPGRADES	\$31,944.60
VA MANHOURS (140)	<u>\$ 4,400.00</u>
TOTAL	\$34,344.60

#### **4. Establishment and Maintenance of UST Operations Budget**

VA has allocated fiscal year annual requirements for expense and capital projects for compliance activities related to tank replacements, closures, and clean-ups. Tank and Line tightness testing, required cathodic protection testing and ATG monitoring conducted as part of ongoing operations under UST Maintenance and Repair are the budgetary responsibilities of the VA FMS. In addition, VA ERS budget compliance costs include, but are not limited to, maintaining required operating permit conditions, operating records, securing permit renewals, monitoring tank management procedures, and ensuring long-term compliance.

#### **TOTAL COST OF UST SYSTEM IMPROVEMENTS**

Fiscal Year	Total Cost of Complying Actions	New Construction Project	Impact on VA FMS Operating Budget	Preventative Environmental Cost to Date
2008	\$ 160,000*	---	\$160,117	
2009	\$ 48,288**	\$ 646,000	\$ 53,437	
<b>Total Investment UST Upgrade to Date:</b>				<b>\$210,288</b>
2010	\$ 94,000***	\$ 415,000		
2011	\$ 94,000***			
2012	\$ 94,000***			

\* Until Sep 30, 2008      \*\*Until April 22, 2009      \*\*\*UST M&R Proposed Cost

#### **VII. Actions taken for Release Detection System (ATG) for USTs 1, 2, 3, 4 and 5: (Count 3 and 4).**

1. Release Detection Monitoring System has been replaced from Magnetrol® volumetric monitoring system for USTs 1 and 2, utilized since the tanks' installation on 23 September 1993, by an ATG Veeder Root Model TLS 350R

console with integrated printer and a remote electronic signal to Graphic Control Office installed on March 2008. The ATG system conducts and generates fuel volume daily inventory reports. These reports are maintain and kept in the Graphic Control Office to have readily available information such as fuel volume information, and product delivery reports, etc.

2. The existing Release Detection Monitoring System ATG Veeder Root® TLS 350R Consoles from UST 3, 4 and 5 were upgraded to conduct and print daily fuel volume inventory records. These records are maintained and kept in the Graphic Control and Boiler Offices to have readily available fuel volume information such as fuel volume information, and product delivery reports, etc.
3. The ATG systems conduct Continual Statistical Leak Detection (CSLD) for UST 1, 2, 3, 4 and 5 which performs a continuous tank leak detection tests. VA has set the CSLD to perform a 0.2 gallons per hour (gph) leak rate test, per tank, per week, and 0.1 gph leak rate test, per tank, per month.
4. An Interstitial Monitoring Program has been established for USTs 1, 2, and 3 as a secondary release detection monitoring system for VA UST systems. A Veeder Root® hydrostatic liquid sensor Interstitial Monitoring System Model # 794390-420 was installed for 24 hour/7 days/ week monitoring of the interstitial space between the double walls of USTs 1 and 2. For UST 3, hydrostatic dual float sensor interstitial brine sensor which monitors continuously for 24 hrs/7 days/week was installed in the interstitial space between the double wall of UST 3.
5. The ATG triggers an alarm to immediately alert to the Graphic Control Office and generates a print report if a release is suspected and/or a failure in the tanks occurs. Printouts of the interstitial sensor status and alarm history reports are kept in an Interstitial Monitoring Log.
6. All Interstitial Monitoring records of maintenance, calibration, and testing for USTs 1, 2, and 3 are maintained at the VA ERS central files.

**VIII. Actions Taken for Overfill and Spill Prevention for USTs 1,2, 3, 4 and 5:  
(Count 2)**

1. Since March 2008, ball float valves are no longer used by VA as the primary method for preventing overfills. On March 28 2008, VA installed additional measures for overfill and spill prevention requirements such as automatic shutoff devices, audible and visible high level overfill alarms for all USTs systems as primary methods. These systems used to meet PRUSTR requirements for overfill prevention.

2. On March 27, 2008, overfill alarms were installed on all USTs with the high level alarms set to meet PRUSTR 201(C) requirements. The overfill alarms are both visual and audible, and alert the fuel delivery operator and the Graphic Control personnel that fuel product has reached the maximum volume and fuel delivery must be discontinued immediately. A certified technician from Solares and Co. Inc installed the overfill alarms and prevention devices as per Contract No. 672 C80276. Audible overfill alarms for USTs 4 and 5 were properly repaired.
3. An automatic shutoff device (flapper valve) was installed in each UST's drop tubes fill pipes which mechanically prevents the occurrence of overfill episodes. These devices were set to slow down and then stop the delivery when the product has reached the 90% tank capacity.
4. An overfill alarm was calibrated to the ATG Veeder Root Systems for USTs 1, 2, 3, 4 and 5 which informs and triggers an alarm to VA Graphic Control and to Boiler Room (for UST 3) in the event of a spill, overfill, product/liquid presence at the spill/tank sump containment, or when there is a product delivery (change in volume). The ATG is programmed to automatically print a report which details: date, time, type, and location of an alarm condition.
5. Liquid sensors were installed in the spill containment sumps for all USTs. These sensors will alert Graphic Control personnel if a liquid phase, either water or fuel, has accumulated in the spill containment manhole. An alarm signal will be sent through the ATG and generate a printed report that a liquid alarm has been triggered.
6. Additionally, Veeder Root® Inform Site Management Software was installed to manage remote communications telemetry from the ATG consoles for the USTs 1, 2, 4 and 5. The software provides VA automatic data collection and report generation while increasing control over the USTs by providing centralized and accurate inventory, alarms, leak detection monitoring and diagnostic information. The ATG Veeder Root® console for UST 3 has been upgraded with Inform Site Management Software on 16 April 2009.

#### **IX. Implementation of Facility Management Practices for Overfill and Spill Prevention (Count 2).**

USEPA Inspector was unable to observe and inspect or in the alternative failed to observe and inspect the ball float valve devices located at all five (5) USTs. These devices were in place since the original tank installation on 1993. Ball float valves are considered by USEPA as an overfill prevention device in *accordance with USEPA Musts for USTs: A summary of Federal Regulations (July 1995)*.

On 27 October 2008, USEPA charged VA with Count 2 which stated "Respondent's Failure to Have Overfill Prevention Equipment on UST 1 and 2" that alleged that an

overflow equipment. On 13 October 2009, Las Americas Petroleum Services (LAPS) certified that indeed the VA UST 1 and 2 has overflow protection equipment (Overflow Protection Valve, Universal Model #39) and there were in place since their installation.

**Therefore, Count 2 is DENIED IN ITS ENTIRETY and VA respectfully requests USEPA to eliminate this count and all related penalties.**

Furthermore, VA has developed and implemented the following facility management practices above and beyond the requirement of overflow prevention regulations to insure regulatory compliance:

1. Since February 2008, VA has implemented a periodic inspection program of the spill containment basins and overflow maintenance operations. This procedure provides VA daily verification of the overall conditions of the overflow prevention devices, spill containments as well as the identification of water/product/sediment accumulation.
2. VA had implemented a standard fuel transferring operating procedure which includes emergency procedures for spill events, fuel dispensing process, and fuel delivery checklist.
3. In addition, the VA Spill Prevention Control and Countermeasures Plan (SPCCP) dated June 9 2008 (162 pages) was prepared and updated by Enviro-Safety Compliance Alternative on behalf of VA. This document is a comprehensive description of a VA' containment and countermeasures to prevent an oil/petroleum based substance spill, such as diesel or gasoline from occurring, as well as procedures to respond and clean an oil/petroleum based substance spill should one occur. The SPCC Plan addresses the following three areas:
  - a. **Preventive** operating procedures that prevent oil/petroleum based substances spill and releases.
  - b. **Control** measures to prevent any spill from reaching the environment or the waters of the United States.
  - c. **Countermeasures** to contain, clean up, and mitigate the effects of any petroleum based substances spill that reaches the environment or the waters of the United States.
4. Service Contract (PO C80276) for Installation and Maintenance of Spill Prevention Equipment such as Overflow alarms and Automated Shutoff Devices.
5. Purchasing and installation of emergency spill kits / equipment.

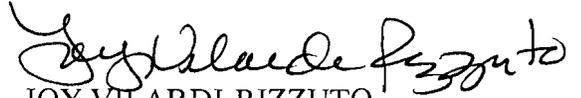
**Overfill Prevention Devices for VA UST System**

<b>PRUSTR Compliance with Rule 201</b>	<b>Underground Storage Tank Component</b>	<b>UST 1</b>	<b>UST 2</b>	<b>UST 3</b>	<b>UST 4</b>	<b>UST 5</b>
201(C)(1) (B)(i)	Overfill /Auto -shut off (flapper) valve device	Veeder Root® STK# 0486- 794380302 Set at 90% tank capacity	Veeder Root® STK# 0486- 794380302 Set at 90% tank capacity			
201(C)(1) (B)(iii)	Veeder Root® Overfill High Alarm	Set at 90% tank capacity	Set at 85% tank capacity	Set at 90% tank capacity	Set at 90% tank capacity	Set at 90% tank capacity
201(C)(1) (B)(iii)	Ball float valve	Set at 95% tank capacity	Set at 95% tank capacity			

WHEREFORE, the Respondent requests an order **denying the EPA's proposed penalties as stated in the Complaint and granting the Respondent its request for a hearing** relative to allegations set forth in the Complaint and as to the proper calculation of the proposed penalties and such further relief as the Administrator deems just and proper.

Respectfully submitted,

San Juan, Puerto Rico this 11<sup>th</sup> day of May, 2009.



JOY VILARDI-RIZZUTO  
Agency Representative  
Office of Regional Counsel  
(672/02)  
VA Caribbean Healthcare  
System  
10 Casia Street  
San Juan, Puerto Rico  
Telephone: (787) 641-4350  
Fax: (787) 641-4573

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that I have copy sent of this document

Via certified mail to:

Complainant, through its legal representative of record:

**Carl Howard, Esq.**

Office of Regional Counsel

U.S. Environmental Protection Agency, Region 2

290 Broadway, 16th Floor

New York, New York 10007-1866

May 11, 2009  
Date

Joseph V. Rizzuto  
JOSEPH VILARDI RIZZUTO, Esq.  
Agency Representative