



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

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REG. II  
2009 MAR 26 AM 8:26  
REGIONAL HEARING  
CLERK

March 25, 2009

**VIA CERTIFIED MAIL/RETURN RECEIPT REQUESTED**

Michael C. Whittington, Esq.  
Office of General Counsel  
Army and Air Force Exchange Service  
P.O. Box 650060  
Dallas, Texas 75265-0060

Re: In the Matter of the Municipality of Puerto Rico Army National Guard, et al.  
Docket No. RCRA-02-2008-7502

Dear Mr. Whittington:

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

Please assure that your client, the Army and Air Force Exchange Service, makes arrangement for payment of the civil penalty in accordance with the timeframe specified in the CA/FO. Please also assure that the deadlines for compliance are met in accordance with the time frames specified in the CA/FO.

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

Sincerely yours,

Bruce H. Aber  
Assistant Regional Counsel

Enclosure

cc: Karen Maples, Region 2 Regional Hearing Clerk  
Administrative Law Judge Barbara Gunning  
Wanda Garcia Ayala, Director (PREQB)

U.S. ENVIRONMENTAL  
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**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2**

-----X	:	
In the Matter of	:	
	:	
Puerto Rico Army National Guard,	:	CONSENT AGREEMENT AND FINAL ORDER
Camp Santiago; and the Army and	:	(with Respondent Army and Air Force Exchange
Air Force Exchange Service, Camp	:	Service, Camp Santiago)
Santiago, Salinas, Puerto Rico	:	
	:	
Respondents.	:	Docket No. RCRA-02-2008-7502
	:	
Proceeding Under Section 9006	:	
of the Solid Waste Disposal Act,	:	
as amended	:	
-----X		

**PRELIMINARY STATEMENT**

This administrative proceeding was instituted pursuant to Section 9006 of the Solid Waste Disposal Act, as amended by 42 U.S.C. §6901 et seq. (hereinafter referred to as the “Act”). The Complainant in this proceeding, the Director of the Division of Enforcement and Compliance Assistance, Region 2, United States Environmental Protection Agency (“EPA” or “Complainant”), issued a “Complaint, Compliance Order, and Notice of Opportunity for Hearing” on March 31, 2008 to the following two Respondents: the Puerto Rico Army National Guard (“PRARNG”), Camp Santiago; and the Army and Air Force Exchange Service (“AAFES”), Camp Santiago.

The Complaint alleged violations of the Act and the Commonwealth of Puerto Rico’s approved regulations, called the “Puerto Rico Underground Storage Tank Regulations” (hereinafter “PRUSTR”) promulgated by the Commonwealth of Puerto Rico Environmental Quality Board pursuant to the Puerto Rico Public Policy Environmental Act of 1970 (The Commonwealth of Puerto Rico received Program Approval on January 30, 1998.)

Specifically, the Complaint alleged several violations of the PRUSTR by the Respondents, PRARNG and AAFES. However, only the violations against Respondent AAFES are being resolved under this CA/FO. The violations that EPA alleged against PRARNG will be resolved separately.

The Complainant and Respondent, AAFES, have reached an amicable resolution of this matter and agree, by entering into this Consent Agreement and Final Order ("CA/FO") pursuant to 40 C.F.R. Subsections 22.18(b)(2) and (3), that settlement of this matter upon the terms set forth in this CA/FO is an appropriate means of resolving this case without further litigation.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. Respondent is the Army and Air Force Exchange Service, Camp Santiago (hereinafter "the Respondent" or "the Respondent AAFES" or "AAFES").
2. Respondent is a department, agency or instrumentality of the executive branch of the federal government.
3. Respondent is a "person" as that term is defined in Section 9001(5) of the Act, 42 U.S.C. § 6991(5), and in 40 C.F.R. § 280.12.
4. Respondent was until 2008 the owner and operator of two "underground storage tanks" or "USTs," as those terms are defined in Sections 9001(1) and 9001(3) of the Act, 42 U.S.C. §§ 6991(1) and 6991(3), and in 40 C.F.R. § 280.12, located at State Road #1, Intersection Road #154, Salinas, Puerto Rico 00751 (the "Facility").
5. On or about April 17 and 19, 2007, pursuant to Section 9005 of the Act, 42 U.S.C. Section 6991d, an authorized representative of EPA inspected the Facility, in order to determine

the Respondent's compliance with Subtitle I of the Act and the Rules in Parts 1 through 13 of the PRUSTR.

6. EPA sent to Respondent an Information Request Letter ("IRL") and Notice of Violation ("NOV") on July 10, 2007, to determine the status of Respondent's compliance with the Act.

7. Respondent PRARNG submitted a response to EPA's IRL and NOV on behalf of it and Respondent AAFES on August 23, 2007. In addition, Respondent PRARNG submitted a response on September 23, 2007 to a request to AAFES for follow-up information concerning release detection, cathodic protection and spill and overfill prevention equipment.

8. Based on the inspection by EPA and the August 23, 2007 and September 23, 2007 responses to EPA's IRL and NOV, the Complaint alleged that Respondent AAFES committed violations of the following regulations:

(i) Rules 305(B)(4), 402(B)(1)(b) and 406(B) of PRUSTR (failure to monitor for releases from the pressurized piping of AAFES UST Systems 1 and 2 and failure to maintain results of at least one year of monitoring for releases from pressurized piping on AAFES UST Systems 1 and 2);

(ii) Rules 305(B)(4) and rule 406(B) of PRUSTR (failure to conduct an annual test of the operation of the automatic line leak detector and failure to maintain records of such test on the pressurized piping on AAFES UST Systems 1 and 2); and

(iii) Rules 501(C) and 503 of PRUSTR (failure to report to the implementing agency any monitoring results from a release detection method that indicated a release may have occurred for AAFES UST Systems 1 and 2, and failure to follow procedures in Rule 503).

9. On June 6, 2008, Respondent AAFES filed an Answer to the Complaint.
10. Respondent has provided documentation that it has emptied AAFES UST Systems 1 and 2.
11. Respondent has temporarily closed AAFES UST Systems 1 and 2 and has informed EPA that it is no longer an owner and operator of the UST systems at the Facility.
12. To avoid the occurrence of a similar violation at another site in Puerto Rico where the Respondent still owns and/or operates USTs, the Respondent has informed EPA that it will provide to EPA a Gasoline Facility Monitoring and Response Plan for a new two-tank UST systems containing an electronic release detection method (automatic tank gauging) at the Fort Buchanan facility in Fort Buchanan, Puerto Rico. The Gasoline Facility Monitoring and Response Plan will provide written guidance for AAFES personnel at the Fort Buchanan facility regarding what must be monitored, frequency of monitoring, report requirements, actions to be taken in response to an alarm on the interstitial leak detection monitors, prescribed maintenance for monitoring equipment, points of contact for reports and maintenance, and training necessary for facility personnel. The purpose of the Plan is to ensure that a violation similar to the violation (i.e., failure to report monitoring results from a release detection method that indicates a release may have occurred) alleged in the Complaint does not occur.

### **CONSENT AGREEMENT**

Based upon the foregoing, and pursuant to Section 9006 of the Act, 42 U.S.C. §6991e, and Section 22.18 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40

C.F.R. §22.18, it is hereby agreed by and between the Complainant and the Respondent, AAFES, that:

1. Within thirty (30) calendar days of the EPA Regional Administrator's signature of the Final Order in this settlement, Respondent shall provide a written certification to EPA that the AAFES UST Systems 1 and 2 were emptied and temporarily closed, and shall provide documentation of the temporary closure.
2. For all UST systems that Respondent continues to own and/or operate in the Commonwealth of Puerto Rico, it shall hereafter maintain compliance with all applicable provisions of the approved Commonwealth UST regulations (PRUSTR).
3. If within one (1) year of the EPA Regional Administrator's signature of the Final Order of this settlement, Respondent resumes ownership and/or operation of any UST system(s) at the Facility, Respondent shall provide a written certification to EPA. The written certification shall be submitted to EPA within thirty (30) days of resuming ownership and/or operation of any UST system(s) at the Facility. The certification shall: (i) inform EPA as to the date upon which the Respondent has resumed ownership and/or operation of the UST system(s) at the Facility; (ii) provide information as to the owner and operator; (iii) type/gallonage of tank; (iv) location of UST system at the Facility; and (v) indicate if the Respondent is in compliance with all applicable provisions of the approved Commonwealth UST regulations (PRUSTR). Failure to provide this written certification within thirty (30) days of resuming ownership and/or operation within this one (1) year period

from the date of the EPA Regional Administrator's signature of the Final Order shall subject Respondent to stipulated penalties pursuant to paragraph 7, below.

4. The certifications in paragraphs 1 and 3, above, shall include the following language:

I certify that, to the best of my knowledge and belief, the information contained in this written certification and in any documents accompanying this certification is true, accurate and complete. In making this statement, I have not made an independent review of all statements contained therein and have relied in good-faith on information, statements, and representations furnished to me by employees or contractors of AAFES. Based on my inquiry of the person or persons (or the supervisors of such persons) directly responsible for gathering the information contained in this written certification and in any documents accompanying this certification, this document is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant potential penalties for submitting materially false information, including the possibility of fines and imprisonment for knowing violations.

5. If in the future EPA believes that any of the information, including records demonstrating compliance, certified to, pursuant to Paragraphs 1 and 3 is inaccurate, EPA will advise Respondent of its belief and its basis for such, and will afford Respondent an opportunity to respond to EPA. If EPA still believes that the certification is materially inaccurate, EPA shall have such remedies as are available to it by law.

6. If Respondent within one (1) year of the EPA Regional Administrator's signature of the Final Order in this settlement owns or operates any UST system(s) at the Facility, then Respondent shall also provide to EPA, within thirty (30) days of resuming ownership and/or operation of any UST system(s) at the Facility, a Gasoline Facility Monitoring and Response Plan, similar to the one described in Paragraph 12 of the Findings of Fact section above, for its UST system(s) at the Facility, and a certification that operations resumed in accordance with the Gasoline Facility Monitoring and Response Plan. Failure to provide this written certification

within thirty (30) days of resuming ownership and/or operation of the UST system(s) within this one (1) year period from the date of the EPA Regional Administrator's signature of the Final Order, shall subject Respondent to stipulated penalties pursuant to paragraph 7, below.

7. If the Respondent fails to provide, in a timely manner, the certifications and documentation required by paragraphs 1 and 3, above, and the Gasoline Facility Monitoring and Response Plan required by paragraph 6, above, then Respondent shall be liable to EPA for a stipulated penalty in accordance with the following schedule, commencing on the first day of noncompliance and continuing through the date upon which compliance is achieved:

<u>Period of Failure to Comply</u>	<u>Penalty Per Day Per UST System</u>
1 <sup>st</sup> to 10 <sup>th</sup> day	\$500
11 <sup>th</sup> to 30 <sup>th</sup> day	\$1,000
31 <sup>st</sup> to 60 <sup>th</sup> day	\$2,000
Each day in excess of 60 days	\$3,000

8. The Director of the Division of Enforcement and Compliance Assistance, EPA Region 2, or the Director's representative, may grant an extension of the dates of performance established in paragraphs 1, 3 and 6 of this Consent Agreement with regard to the certifications, documentation and/or Gasoline Facility Monitoring and Response Plan required by those paragraphs, if good cause exists for such extension, including, but not limited to, failures arising from causes beyond the reasonable contemplation of the parties and beyond the reasonable control and without fault or negligence of the Respondent. If Respondent submits a request for extension, such request shall be accompanied by supporting documentation and submitted to EPA no later than fourteen (14) calendar days prior to any due date (or later date if the grounds for such extension were not reasonably known to AAFES at such time) set forth in this Consent



Agreement, or other deadline established pursuant to this Consent Agreement. Such extension, if any, shall be approved in writing and shall not be unreasonably withheld or delayed.

9. Unless Respondent provides EPA with a written explanation pursuant to Paragraph 10, below, all stipulated penalties are due and payable within thirty (30) calendar days of the Respondent's receipt from EPA of a written demand for payment of the penalties. All stipulated penalty payments shall be made in accordance with the delivery instructions (i.e., regular mail or overnight delivery) and to the addresses specified in Paragraph 13 of this Consent Agreement. Penalties shall accrue as provided above regardless of whether EPA has notified the Respondent of the violation or made a demand for payment, but need only be paid upon demand.

10. After receipt of a demand from EPA for stipulated penalties pursuant to the preceding paragraph, Respondent shall have twenty (20) calendar days in which to provide Complainant with a written explanation of why it believes that a stipulated penalty is not appropriate for the cited violation(s) of this Consent Agreement.

11. The Director of the Division of Enforcement and Compliance Assistance may, at the Director's sole discretion, reduce or eliminate any stipulated penalty due if Respondent has, in writing, demonstrated to EPA's satisfaction good cause for such action by EPA or if the Director independently in her own discretion decides to take such action. If, after review of Respondent's submission pursuant to the preceding paragraph, Complainant determines that Respondent has failed to comply with the provisions of this Consent Agreement, and Complainant does not, at the Complainant's sole discretion, eliminate the stipulated penalties demanded by EPA, Complainant will notify Respondent, in writing, that either the full stipulated penalty or a reduced stipulated penalty must be paid by the Respondent. Respondent shall pay

the stipulated penalty amount indicated in EPA's notice within thirty (30) calendar days of its receipt of such written notice from EPA. Failure of Respondent to pay any stipulated penalty required to be paid by Respondent pursuant to this Consent Agreement may result in further action for collection or appropriate action without prejudice to the right of Respondent to oppose, contest, or challenge such action so long as Respondent does not contest the terms of this Consent Agreement.

12. For purposes of this proceeding, Respondent (a) admits the jurisdictional allegations of this proceeding, as specified in this Consent Agreement and Final Order, (b) neither admits nor denies the above Findings of Fact and Conclusions of Law and (c) consents to the terms of this Consent Agreement.

13. Respondent shall pay, by cashiers or certified check, a civil penalty in the amount of Thirty Thousand Dollars (\$30,000), payable to the "Treasurer, United States of America." The check shall be identified with a notation of the name and docket number of this case as follows: In the Matter of Puerto Rico Army National Guard, Camp Santiago; and the Army and Air Force Exchange Service, Camp Santiago, Docket No. RCRA-02-2008-7502 and shall indicate the payment is only being made on behalf of the Army and Air Force Exchange Service. The check shall be mailed to:

United States Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO. 63197-9000

If overnight delivery is preferred, Respondent may mail the check to the following address:

U.S. Bank  
1005 Convention Plaza  
Mail Station SL-MO-C2GL  
Attn: USEPA Box #979077  
St. Louis, MO. 63101

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

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

and

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

The payment must be received at the above address on or before forty-five (45) calendar days after the date of signature of the Final Order, which is located at the end of this CA/FO (the date by which payment must be received shall hereafter be referred to as the “due date”).

- a. Failure of Respondent to pay the penalty in full pursuant to this Consent Agreement will result in further action for collection or appropriate action without prejudice to the right of Respondent to oppose, contest, or challenge such action or any determination upon which such action is made so long as Respondent does not contest the terms of this Consent Agreement; and
- b. A late payment handling charge of fifteen dollars (\$15.00) will be assessed for each thirty (30)-day period (or any portion thereof) following the due date in which the balance remains unpaid.

14. This Consent Agreement and Final Order shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, Commonwealth of Puerto Rico or local law concerning USTs, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, commonwealth, or local permit.

15. Nothing in this Consent Agreement shall be interpreted to require obligation or payment of funds in violation of the Anti-Deficiency Act, 31 U.S.C. Section 1341, or other applicable law.

16. This Consent Agreement is being voluntarily and knowingly entered into by the Complainant and Respondent, AAFES, to resolve the civil and administrative claims alleged in the Complaint against Respondent AAFES (upon full payment of the penalty and any stipulated penalty that comes due and performance of the obligations (i.e., the written certifications, documentation and Gasoline Facility Monitoring and Response Plan set forth in paragraphs 1, 3 and 6 above). Nothing herein shall be read to preclude EPA or the United States, however, from pursuing the remedies mentioned in 40 C.F.R. Section 22.18(c) for any violation(s) of law. This CA/FO does not resolve Respondent PRARNG's potential liability for the claims asserted against it (in the Complaint issued in this case) by Complainant.

17. Respondent has read the Consent Agreement, understands its terms, finds it to be reasonable and consents to the issuance and its terms. Respondent consents to the issuance of the accompanying Final Order. Respondent agrees that all terms of settlement are set forth herein.

18. Respondent explicitly and knowingly consents to the assessment of the civil penalty and stipulated penalties as set forth in this Consent Agreement and agrees to pay these penalties in accordance with the terms of this Consent Agreement.

19. Respondent explicitly waives its right to request or to seek any Hearing on the Complaint or on any of the allegations therein asserted, on this Consent Agreement or on the Findings of Fact and Conclusions of Law herein, or on the accompanying Final Order.

20. Respondent waives its right to appeal the proposed Final Order accompanying the Consent Agreement.

21. This Consent Agreement and Final Order and any provision herein shall not be construed as an admission of liability in any criminal or civil action or other administrative or legal proceeding except one to enforce or seek compliance with this Consent Agreement and its accompanying Final Order.

22. Each undersigned signatory to this Consent Agreement certifies that he or she is duly and fully authorized to enter into and ratify this Consent Agreement and all the terms and conditions set forth in this Consent Agreement.

23. The provisions of this CA/FO shall be binding upon both EPA and Respondent, and their officials, officers, directors, agents, servants, authorized representatives and successors or assigns.

24. Respondent explicitly waives any right it may have pursuant to 40 C.F.R. §22.8 to be present during discussions with or to be served with and to reply to any memorandum or communication addressed to the EPA Regional Administrator, Deputy Regional Administrator, or Regional Judicial Officer for Region 2, where the purpose of such discussion, memorandum,

or communication is to discuss a proposed settlement of this matter or to recommend that such official accept this Consent Agreement and issue the attached Final Order.

25. Each party hereto agrees to bear its own costs and fees in this matter.

26. Respondent consents to service upon Respondent of a copy of this Consent Agreement and Final Order by an EPA employee other than the Regional Hearing Clerk.

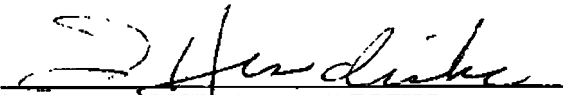
27. Pursuant to 40 C.F.R. §22.13(b), the effective date of the Final Order herein shall be the date when filed with the Regional Hearing Clerk of the United States Environmental Protection Agency, Region 2.

In the Matter of the Puerto Rico Army National Guard, Camp Santiago; and the Army  
and Air Force Exchange Service, Camp Santiago, Salinas, Puerto, Docket No. RCRA-02-  
2008-7502

RESPONDENT:

Army and Air Force Exchange Service

11 MAR 09  
Date

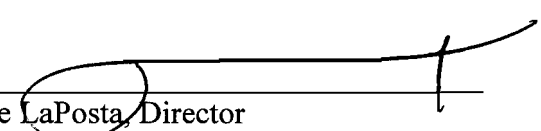
  
by: FRANCIS L. HENDRICKS  
Brigadier General, USAF  
Deputy Commanding General

In the Matter of Puerto Rico Army National Guard, Camp Santiago; and the Army and Air Force

Exchange Service, Camp Santiago, Salinas, Puerto Rico, Docket No. RCRA-02-2008-7502

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

BY: \_\_\_\_\_

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

DATE: March 16, 2009



In the Matter of Puerto Rico Army National Guard, Camp Santiago; and the Army and Air Force Exchange Service, Camp Santiago, Salinas, Puerto Rico, Docket No. RCRA-02-2008-7502

**FINAL ORDER**

The Regional Administrator of the U.S. Environmental Protection Agency, Region 2, ratifies the foregoing Consent Agreement. The Consent Agreement, entered into by the Complainant and Respondent AAFES, is hereby approved, incorporated herein, and issued as an Order pursuant to Section 9006 of the Act and 40 C.F.R. Section 22.18(b)(3). The effective date of this Order shall be the date of filing with the Regional Hearing Clerk, U.S. EPA, Region 2, New York, New York.



George Pavlou  
Acting Regional Administrator  
U.S. Environmental Protection  
Agency – Region 2  
290 Broadway  
New York, New York 10007-1866

DATE: 3/18/09

In the Matter of Puerto Rico Army National Guard, Camp Santiago, and the Army and Air Force Exchange Service, Camp Santiago, Salinas, Puerto Rico, Docket No.RCRA- 2-2008-7502  
(Settlement with Army and Air Force Exchange Service)

CERTIFICATE OF SERVICE

I certify that I have this day caused to be sent the foregoing fully executed CONSENT AGREEMENT and FINAL ORDER (Settlement with Army and Air Force Exchange Service), bearing the above-referenced docket number, in the following manner to the respective addressees below:

Original and One Copy  
by Hand:

Office of the Regional Hearing Clerk  
U.S. Environmental Protection Agency-Region 2  
290 Broadway, 16<sup>th</sup> Floor  
New York, N.Y. 10007-1866

Copy by Certified Mail,  
Return Receipt Requested:

Administrative Law Judge Barbara A. Gunning  
Office of Administrative Law Judges  
U.S. Environmental Protection Agency  
Mail Code 1900 L  
1200 Pennsylvania Ave., N.W.  
Washington, D.C. 20460-2001

Michael C. Whittington, Esq.  
Office of General Counsel  
Army and Air Force Exchange Service  
P.O. Box 650060  
Dallas, Texas 75265-0060

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

Dated: MAR 25 2009  
New York, N.Y.

Smidreel N. Baez