

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REG. 2  
2010 JUN 29 PM 2:03  
REGIONAL HEARING  
CLERK

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In the Matter of

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

CONSENT AGREEMENT  
AND FINAL ORDER

West Point Garrison

Respondents

Docket No. RCRA-02-2009-7507

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

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**PRELIMINARY STATEMENT**

This administrative proceeding was instituted pursuant to Section 9006 of the Solid Waste Disposal Act, as amended, 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 September 30, 2009 to U.S. Department of the Army and the Army and Air Force Exchange Service ("Respondents").

The Complaint alleges Respondents violated regulations promulgated pursuant to Sections 9002 and 9003 of the Act, 42 U.S.C. §§ 6991a and 6991b, and set forth at 40 Code of Federal Regulations (C.F.R.) Part 280, for underground storage tanks ("USTs") owned and operated at the West Point Garrison in New York State.

EPA and Respondents agree that settling this matter by entering into this consent agreement and final order ("CA/FO") pursuant to Section 22.18(b)(2) and (3) is an appropriate means of resolving this case without further litigation.

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. 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."
2. Each Respondent is a department, agency or instrumentality of the executive branch of the Federal government.
3. Each Respondent is a "person" within the meaning of Section 9001(5) of the Act, 42 U.S.C. § 6991(5) and 40 C.F.R. § 280.12.
4. At all times relevant to this CA/FO, Respondent Army has "owned" and "operated," as those terms are defined in Section 9001 of the Act, 42 U.S.C. § 6991, and in 40 C.F.R. § 280.12, 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.
5. At all times relevant to this CA/FO, Respondent Army has "owned," as that term is defined in Section 9001 of the Act, 42 U.S.C. § 6991, and in 40 C.F.R. § 280.12, three additional USTs located at the Facility and identified by Respondent Army as: #1202A, #1202B and #1202C.
6. At all times relevant to this CA/FO, Respondent AAFES has "operated," as that term is defined in Section 9001 of the Act, 42 U.S.C. § 6991, and in 40 C.F.R. § 280.12, the three USTs located at the Facility and identified by Respondent Army as #1202A, #1202B and #1202C.
7. On or about April 14 and 15, 2009, pursuant to Section 9005 of the Act, 42 U.S.C. § 6991d, an authorized representative of EPA inspected the Facility to determine the Respondents' compliance with the Act ("Inspection").
8. On or about May 1, 2009, a Notice of Violation ("NOV") and an Information Request Letter ("IRL") were issued to representatives of both Respondents.
9. EPA's NOV listed UST violations that were identified by the EPA representative during the Inspection.
10. 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.
11. On July 20, 2009, Respondents provided separate certified responses to the NOV/IRL.

12. Based on the EPA Inspection and Respondents' respective responses to EPA's NOV and IRL, EPA alleged in the Complaint that Respondent Army failed to: (1) triennially test cathodic protection; (2) perform and retain records of release detection; (3) respond appropriately to indications of a release; (4) provide adequate spill protection; and (5) test automatic line leak detectors for USTs owned by Respondent Army at the Facility in violation of the Act and its implementing regulations.

13. Based on the EPA Inspection and Respondents' responses to EPA's NOV and IRL, EPA alleged in the Complaint that Respondent AAFES failed to test automatic line leak detectors for USTs operated by Respondent AAFES at the Facility in violation of the Act and its implementing regulations.

### **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 Respondents that:

1. For purposes of this proceeding, Respondents (a) admit the jurisdictional allegations of the Complaint; (b) neither admit nor deny specific factual allegations contained in the Complaint; and (c) consent to the terms of this Consent Agreement.

2. Respondents each certify that the subject USTs (*see paragraphs 4-6 in the above Findings of Fact and Conclusions of Law*) are, as of the date(s) of their signatures to this Consent Agreement, in compliance with the applicable requirements found in 40 C.F.R. Part 280, including, but not limited to, rules concerning corrosion protection, release detection, release investigation, spill protection, and testing requirements.

3. Respondent Army shall pay, by either a cashier's or certified check, or by Electronic Funds Transfer ("EFT"), a civil penalty in the amount of Thirty-Six Thousand, Two Hundred and Fifty Dollars (\$36,250), payable to the "Treasurer, United States of America.

4. Respondent AAFES shall pay, by either a cashier's or certified check, or by Electronic Funds Transfer ("EFT"), a civil penalty in the amount of Fifty-Five Thousand Dollars (\$55,000), payable to the "Treasurer, United States of America."

5. The payments specified in Paragraphs 3 and 4, above, shall be made according to the methods specified in this paragraph.

a. If by check, the check shall be identified with a notation of the name and docket number of this case as follows: In the Matter of U.S. Department of the Army and

AAFES, Docket No. RCRA-02-2009-7507. 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(s) 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

b. If a Respondent chooses to make payment by EFT, then that Respondent shall provide the following information to its remitter bank:

- 1) Amount of Payment
- 2) SWIFT address: FRNYUS33, 33 Liberty Street, New York, NY 10045.
- 3) Account Code for Federal Reserve Bank of New York receiving payment:  
**68010727**
- 4) Federal Reserve Bank of New York ABA routing number: 021030004.
- 5) Field Tag 4200 of the Fedwire message should read  
**"D 68010727 Environmental Protection Agency."**
- 6) Name of Respondent making the payment and of the case: In the Matter of U.S. Department of the Army and Army and Air Force Exchange Service
- 7) Docket No. RCRA-02-2009-7507

Each Respondent shall also send documentation of payment to the following

Naomi P. Shapiro, Esq.  
 Assistant Regional Counsel  
 Office of Regional Counsel

and

Karen Maples  
 Regional Hearing Clerk

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

6. Respondents' payments must be received 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 either Respondent to pay the penalty for which it is responsible in full pursuant to this Consent Agreement will result in further action for collection or appropriate action; 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.

7. This CA/FO is being voluntarily and knowingly entered into by the Complainant and Respondents to resolve upon full payment of the penalty the civil and administrative claims specifically alleged in the Complaint against Respondents. Nothing herein shall be read to preclude EPA, or the United States on behalf of EPA, from pursuing the remedies mentioned in 40 C.F.R. Section 22.18(c) for any violations of law.

8. Each Respondent has read the CA/FO, understands its terms, finds it to be reasonable and consents to the issuance and its terms. Respondents each consent to the issuance of the accompanying Final Order. Respondents each agree that all terms of settlement are set forth herein.

9. Respondents each explicitly and knowingly consent to the assessment of the civil penalty as set forth in this CA/FO and agree to pay these penalties in accordance with the terms of this CA/FO.

10. Respondents each explicitly waive their right to request or to seek any Hearing on the Complaint or 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.

11. Respondents each waive their right to appeal the proposed Final Order accompanying this Consent Agreement.

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

13. Respondents each explicitly waive any right they 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 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.

14. Nothing in this CA/FO shall be interpreted to require obligation or payment of

funds in violation of the Anti-Deficiency Act, 31 U.S.C. Section 1341; the Non-Appropriated Fund Anti-Deficiency Act, 10 USC 2783; or other applicable law.

15. This CA/FO does not waive, extinguish, or otherwise affect Respondents' obligation to comply with all applicable provisions of Federal, state, or local law concerning USTs, nor shall it be construed to be a ruling on or determination of any issue related to a federal, state, or local permit.

16. EPA reserves the right to commence action against any person, including Respondents, in response to any condition which EPA determines may present a potential for an imminent and substantial endangerment to the public health, public welfare, or the environment. Further, EPA reserves any rights and remedies available to it under RCRA, the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this CA/FO, following its filing with the Regional Hearing Clerk. Respondents reserve all available rights and defenses they may have, consistent with the terms of this CAFO, to defend themselves in any such action.

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

18. Respondents each consent to service upon itself of a copy of this CA/FO by an EPA employee other than the Regional Hearing Clerk.

19. Pursuant to 40 C.F.R. § 22.31(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.

20. 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.

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

RESPONDENT: **U.S Department of the Army**

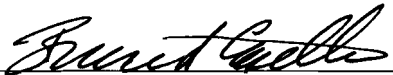
BY: *Daniel V. Bruno*  
(signature)

NAME DANIEL V. BRUNO  
(Please Print)

TITLE: Garrison Cdr, West Point, NY

DATE: 7 June 2010

RESPONDENT: **Army and Air Force Exchange Service**

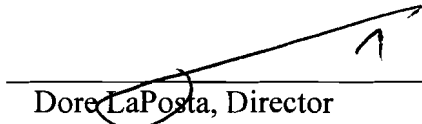
BY:   
BRUCE A. CASELLA  
MG, U.S. Army  
Commander

DATE: 11 JUNE 2010



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

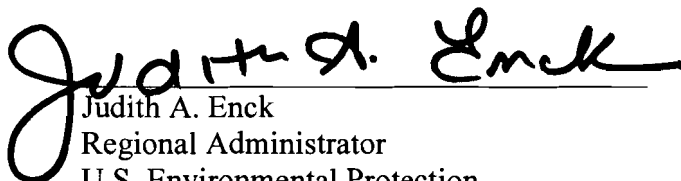
DATE: \_\_\_\_\_

JUNE 16, 2010

In the Matter of U. S. Department of the Army and the Army and Air Force Exchange Service,  
Docket No. RCRA-02-2009-7507

**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 to this matter, 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.



Judith A. Enck  
Regional Administrator  
U.S. Environmental Protection  
Agency – Region 2  
290 Broadway  
New York, New York 10007-1866

DATE: 6/18/10

CERTIFICATE OF SERVICE

I certify that I have this day caused to be sent the foregoing MOTION, bearing the below-referenced docket number, in the following manner to the respective addressees below:

Original and One Copy

by Hand:

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

Copy by Pouch Mail

and FAX:

Chief Administrative Law Judge Susan L. Biro  
Office of Administrative Law Judges  
U.S. Environmental Protection Agency  
*Mail Code 1900 L*  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460  
**Fax: 202-565-0044**

Copy by Mail:

Michael C. Whittington, Esq.  
Senior Associate General Counsel  
Commercial and Financial Law Division  
Army and Air Force Exchange Service  
3911 S. Walton Walker Boulevard  
Dallas, Texas 75236-1598

Captain Kyle C. VanDeWater  
Office of the Staff Judge Advocate  
and  
Frank A. Bloomer, Acting Chief  
Department of Public Works  
U.S. Army Garrison, West Point  
West Point, New York 10996-1514

Dated: June 29, 2010  
New York, New York

  
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