

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II
2010 SEP 30 A 8:50
HEARING

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In the Matter of :
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U.S. Department of the Navy, :
Naval Activity Puerto Rico : CONSENT AGREEMENT AND
 : FINAL ORDER
 :
Respondent :
 :
 : Docket No. RCRA-02-2010-7502
 :
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 by various statutes including the Resource Conservation and Recovery Act (collectively referred to as "RCRA" or the "Act").

Section 9006 of RCRA, 42 U.S.C. § 6991e, authorizes the Administrator to enforce violations of the Act and the regulations promulgated pursuant to it. The Complainant in this proceeding is the Director of the Division of Enforcement and Compliance Assistance ("Complainant"), U.S. Environmental Protection Agency, Region 2 ("EPA").

This Consent Agreement and Final Order ("CA/FO") resolves alleged violations by the Respondent, the U.S. Department of the Navy, of RCRA Subtitle I, 42 U.S.C. Sections 6991-6991m, and the Commonwealth of Puerto Rico's federally approved underground storage tank ("UST") program requirements that were applicable to USTs it owned and/or operated at its facility located in Ceiba, Puerto Rico.

Pursuant to Section 9004 of RCRA, 42 U.S.C. Section 6991c, and 40 C.F.R. Part 281, Subpart A, and effective January 30, 1998, the Commonwealth of Puerto Rico was granted final approval to administer a state UST management program *in lieu* of the Federal underground storage tank management program established under Subtitle I of RCRA, 42 U.S.C. Sections 6991-6991i. The provisions of the Puerto Rico UST management program have become requirements of Subtitle I of RCRA, and are enforceable by EPA pursuant to Section 9006 of RCRA, 42 U.S.C. Section 6991e. Puerto Rico's authorized program regulations are set forth in the "Puerto Rico Underground Storage Tanks Control Regulation" ("PRUSTR"). These regulations were promulgated by the Commonwealth of Puerto Rico Environmental Quality Board pursuant to the Puerto Rico Public Policy Environmental Act of 1970.

Pursuant to Section 22.13 of the revised Consolidated Rules of Practice, 40 Code of Federal Regulations ("C.F.R.") § 22.13(b), where parties agree to settlement of one or more causes of action before the filing of a Complaint, a proceeding may simultaneously be commenced and concluded by the issuance of a Consent Agreement and Final Order pursuant to 40 C.F.R. §§ 22.18(b)(2) and (3).

It has been agreed by the parties that settling this matter by entering into this CA/FO pursuant to 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3) of the revised Consolidated Rules of Practice is an appropriate means of resolving the claims specified, below, against Respondent without further litigation.

EPA has given Puerto Rico notice of issuance of this CA/FO in accordance with Section 9006(a)(2) of RCRA, 42 U.S.C. § 6991e(a)(2).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Respondent is the U.S. Department of the Navy, a department of the United States.
2. Respondent is a "person" within the meaning of Section 9001(5) of the Act, 42 U.S.C. § 6991(5), and Rule 105 of PRUSTR.
3. Respondent has been and remains the "owner" and/or "operator" of three "Underground Storage Tanks" or "UST" systems, as those terms are defined in Section 9001 of the Act, 42 U.S.C. § 6991, and in Rule 105 of PRUSTR, that are located at the gas station (the "Gas Station UST systems") at U.S. Naval Activity Puerto Rico, State Rd. No. 3, Km 62.3, Int. 979, Ceiba, PR 00735 ("the Facility").
4. The tanks owned and operated by Respondent at the Facility Gas Station are referred to herein as USTs (or Tanks) 124A, 124B and 124C, or collectively as the Gas Station Tanks.
5. Respondent has also been the "owner" and/or "operator" of two UST systems, as those terms are defined in Section 9001 of the Act, 42 U.S.C. §6991, and in Rule 105 of PRUSTR, that are located on land that was formerly part of the Facility and that currently is part of hospital property (the "Hospital UST Systems") owned by Servicios de Salud Episcopales, Inc.
6. Respondent owned and/or operated the Hospital UST Systems from the date of their installation in 1996 until the property and the associated tanks were transferred to the Servicios de Salud Episcopales, Inc. on May 8, 2009.
7. The UST systems at the Facility Gas Station store either diesel fuel (UST System 124A, with a 2,500-gallon tank) or gasoline (UST Systems 124B and 124C, with 6,000-gallon tanks each) for use in security and maintenance vehicles and lawn

mowers.

8. The UST systems on the hospital property, referred to by numbers 1790A and 1790B, each include 6,000-gallon tanks. At least until Respondent's transfer of ownership of the property on May 8, 2009, UST System 1790A contained JP-5 fuel and UST System 1790B was reportedly empty.
9. UST Systems 124A, 124B and 124C and UST Systems 1790A and 1790B are subject to the UST requirements set forth in the Rules in Parts 1 through 13 of PRUSTR.
10. On or about February 26, 2009, EPA Representatives inspected the Facility (the "Inspection") to determine the Respondent's compliance with the Act and the Rules in Parts 1 through 13 of PRUSTR.
11. On or about March 13, 2009, EPA sent Respondent a Notice of Violation ("NOV") and Request for Information ("IRL").
12. On June 2, 2009, Respondent submitted a response to EPA's NOV and IRL. On July 13, July 20 and August 28, 2009, Respondent responded to EPA's request for follow-up information.
13. During the February 2009 Inspection, and for all times relevant to this matter, all the UST systems at the Facility were "Petroleum UST Systems" as that term is defined in Rule 105 of PRUSTR.
14. Between at least March 2008 and February 2009, Respondent did not conduct twelve months of release detection monitoring using a method allowed in Rules 404 and 405 of PRUSTR for the three Gas Station tanks and piping and for UST System 1790A, and did not comply with the recordkeeping requirements for

monitoring the USTs as required by Rules 402(A), 406 and 305(B)(4) of PRUSTR.

15. Between at least March 2008 and February 2009, Respondent did not maintain the results for at least one year of monitoring for releases from UST System 1790A, and for releases from the tanks and piping of the three Gas Station UST systems as required by Rules 305(B)(4), 305(C), and 406(B) of PRUSTR.
16. Between at least March 2008 and February 2009, Respondent did not conduct at least a year of monitoring using any method in Rule 405 of PRUSTR for releases from the piping of the three Gas Station UST systems, and did not maintain for at least one year the results of release detection monitoring for the piping.
17. Between at least June 2004 and May 2009, Respondent did not equip the three UST systems at the Gas Station with automatic line leak detectors as required by Rule 402(B)(1)(a) of PRUSTR.
18. Respondent failed to investigate, confirm and report indications of a release from Tanks 124A and B when a "Test Fail" alarm was recorded for Tank 124B on August 31, 2008, which is a violation of Rules 501 and 503 of PRUSTR.

CONSENT AGREEMENT

Based upon the foregoing, and pursuant to Section 9006 of RCRA and the "Consolidated Rules of Practice Governing the Administrative Assessment of Penalties and the Revocation or Suspension of Permits" (40 C.F.R. § 22.18), it is hereby agreed as follows:

1. For the purpose of this proceeding and in the interest of an expeditious resolution of this matter, pursuant to 40 C.F.R. § 22.18(b)(2), Respondent admits the

jurisdictional basis for this matter, neither admits nor denies the **FINDINGS OF FACT AND CONCLUSIONS of LAW** in this Consent Agreement, and waives its right to contest or appeal the attached Final Order.

2. Respondent consents to the payment of a civil penalty as set forth in this Consent Agreement and agrees to comply with the compliance provisions of this Consent Agreement and the issuance of the attached Final Order.
3. Respondent shall make payment through the Intra-governmental Payment and Collection (“IPAC”) systems of a civil penalty for settlement of the violations described above in the amount of one hundred and seven thousand and four hundred dollars (\$107,400.00). Respondent may use an alternative method of payment provided it ensures timely payment. If the payment is made by IPAC, Respondent shall note that the customer ALC for EPA is 68010727. The IPAC field “Transaction Description” shall include the name and docket number of this case as: In the Matter of the U.S. Department of the Navy, Naval Activity Puerto Rico, Ceiba Puerto Rico, Docket Number RCRA-02-2010-7502. The payment must be received at the above address on or before sixty (60) calendar days after the date of signature of the Final Order at the end of this document (the “due date”).
4. Whatever payment method is utilized, Respondent shall promptly furnish reasonable proof that the payment has been made to:

Beverly Kolenberg
Assistant Regional Counsel,
U.S. Environmental Protection Agency
290 Broadway, 17th Floor
New York, New York, 10007-1866

and

Karen Maples
Regional Hearing Clerk
U.S. Environmental Protection Agency
290 Broadway, 16th Floor
New York, New York, 10007-1866

- c. Failure to pay the amount in full within the time period set forth above will result in further action for collection or other appropriate action.
 - d. Further, if timely payment is not received on or before the due date, a late payment handling charge of \$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.
 - e. The effective date of this Consent Agreement and Final Order shall be the date of its filing with the Regional Hearing Clerk, Region 2, New York, New York.
 - f. The civil penalty constitutes a penalty within the meaning of 26 U.S.C. § 162(f).
5. Within fifteen days of the effective date of the Order, to the extent that it has not already done so, Respondent shall submit records documenting its current compliance with the following Rules in PRUSTR at the Facility: 201 (Performance Standards for Tanks, Piping and Spill and Overfill Prevention Equipment), 402 (Requirements for UST Systems), 404 (Methods of Release Detection for Tanks), 405 (Methods of Release Detection for Piping), and 802 (Notification Requirements) for the Gas Station UST systems at the Facility.

6. Respondent shall submit copies of any communications or reports with respect to the Compliance Provisions of this CA/FO to:

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

7. Respondent shall continue to conduct the required testing and monitoring of the tanks and piping of the Gas Station UST systems at the Facility in compliance with Rules 404 and 405 of PRUSTR and shall maintain records in accordance with Rules 305(B)(4), 305(C), and 406(B) of PRUSTR.
8. Respondent hereby certifies at the time of its signature to this document that to the best of its knowledge and belief, it is in compliance with all applicable requirements of the Rules in Parts 1 through 13 of PRUSTR. Respondent also certifies that it no longer owns or operates the Hospital UST Systems and has no control over them. In any documents and reports submitted to EPA pursuant to this CA/FO or related to technical work in this case, Respondent shall, by an authorized officer, certify under penalty of law that the information contained in such document or report is true, accurate and not misleading, by including and signing the following statement:

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 and contractors of the U.S. Department of the Navy. 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.

9. This Consent Agreement does not relieve Respondent of its obligation to comply with all applicable provisions of federal, Commonwealth and local environmental laws.
10. This Consent Agreement is being voluntarily and knowingly entered into by Respondent and EPA to resolve upon full payment of the civil penalty and certification of correction of the violations identified above, Respondent's liability pursuant to Section 9006 for the violations of federal UST requirements described in Paragraphs 14 through 18 of the **FINDINGS OF FACT AND CONCLUSIONS OF LAW**. Respondent has read the foregoing Consent Agreement, understands its terms, finds it to be reasonable and consents to the issuance of the accompanying Final Order. The parties agree that all terms of settlement are set forth herein. Nothing herein shall be read to preclude EPA or the United States, however, from pursuing appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

11. Respondent hereby waives its right to request or to seek any hearing on any of the terms of this Consent Agreement or the Findings of Fact and Conclusions of Law herein, or on the accompanying Final Order. In addition, Respondent waives its right to confer with the Administrator pursuant to RCRA Section 6001(b)(2), 42 U.S.C. §6961(b)(2).
12. Respondent waives any rights 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 Regional Administrator, the Deputy Regional Administrator or the Regional Judicial Officer 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.
13. Respondent 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.
14. Each party hereto agrees to bear its own costs and fees in this matter.
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. §1341, or other applicable law.
16. Respondent consents to service of a copy of this CA/FO by an EPA employee other than the Regional Hearing Clerk.

17. This Consent Agreement 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 the terms of this CA/FO.
18. Nothing in this document is intended or shall be construed to be a ruling on or determination of any issue related to a federal or Commonwealth permit.
19. EPA reserves the right to commence action against any person, including Respondent, 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. In addition, this settlement is subject to all limitations on the scope of resolution or settlement and to the reservation of rights set forth in 40 C.F.R. §22.18(c). 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. Respondent reserves all available rights and defenses it may have, consistent with the terms of this CA/FO, to defend itself in any such action.
20. The provisions of this Consent Agreement shall be binding upon Respondent, its officials, authorized representatives and successors or assigns and upon Complainant.

U.S. Department of the Navy, Naval Activity Puerto Rico

Docket Number RCRA-02-2010-7502

RESPONDENT: BY: James E. Anderson
James E. Anderson, Director
Base Realignment and Closure
Program Management Office Southeast
U.S. Department of the Navy
4130 Faber Place Drive, Suite 202
North Charleston, SC 29405

DATE: 24 SEPTEMBER, 2010

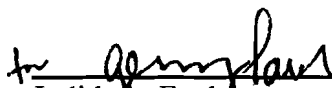
COMPLAINANT: BY: Dore LaPosta
Dore LaPosta, Director
Division of Enforcement and Compliance Assistance
U.S. Environmental Protection Agency - Region 2

DATE: SEPTEMBER 28, 2010

U.S. Department of the Navy, Naval Activity Puerto Rico
Docket Number RCRA-02-2010-7502

FINAL ORDER

The Regional Administrator (or anyone duly delegated to act on her behalf) of the U.S. Environmental Protection Agency, Region 2, concurs in the foregoing Consent Agreement in the case of In the Matter of the U.S. Department of the Navy, Naval Activity Puerto Rico, Docket Number RCRA-02-2010-7502. The Consent Agreement, having been duly accepted and entered into by the parties to this matter, is hereby ratified, and incorporated into this Final Order, which is hereby issued and shall take effect when filed with the Regional Hearing Clerk of EPA, Region 2 pursuant to 40 C.F.R. Section 22.31(b). This Final Order is being entered pursuant to the authority of 40 C.F.R. Section 22.18(b)(3) and shall constitute an order issued under authority of Section 9006 of RCRA, 42 U.S.C. Section 6991e.



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

DATE: 9/29/10

U.S. Department of the Navy, Naval Activity Puerto Rico
Docket Number RCRA-02-2010-7502

CERTIFICATE OF SERVICE

I certify that I have caused to be sent the foregoing CONSENT AGREEMENT and its accompanying FINAL ORDER bearing the above referenced docket number, in the following manner to the respective addressees listed below:

Copy by
Certified Mail/
Return Receipt Requested:

James E. Anderson, Director
Base Realignment and Closure
Program Management Office Southeast
U.S. Department of the Navy
4130 Faber Place Drive, Suite 202
North Charleston, SC 29405

Original and One Copy
by Hand:

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

Dated: Sept. 29, 2010
New York, New York

Beverly Kolentz