



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. 2
2009 JUL -6 1M 7:03
REGIONAL HEARING
CLERK

JUL -2 2009

**CERTIFIED MAIL-
RETURN RECEIPT REQUESTED**

Kirk Minckler
USDA Office of the General Counsel
740 Simms Street, Room 309
Golden, CO 80401-4720

Re: U.S. Department of Agriculture- Agricultural Research Service - Tropical Agriculture
Research Station – Mayaguez and Isabela, Puerto Rico
Docket Number RCRA-02-2008-7505

Dear Mr. Minckler:

Enclosed is a copy of the Consent Agreement and Final Order (“CA/FO”) in the above-referenced proceeding, signed by the Regional Administrator of the U.S. Environmental Protection Agency, Region 2.

Please arrange for the payment of the penalty according to the instructions given in the Order.

Sincerely yours,


Rudolph Perez
Assistant Regional Counsel

Enclosure

cc: William Moran, ALJ
Wanda Garcia Ayala, WQA-PREQB

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. 2
2008 JUL -6 AM 7:09
REGIONAL HEARING
CLERK

In the Matter of:

U.S. Department of Agriculture-
Agricultural Research Service -
Tropical Agriculture Research Station
- Mayaguez and Isabela, Puerto Rico

Respondent

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

**CONSENT AGREEMENT
AND FINAL ORDER**

Docket No. RCRA-02-2008-7505

This administrative proceeding was instituted pursuant to Section 9006 of the Solid Waste Disposal Act, as amended, 42 U.S.C. §6901 *et seq.* and the Federal Facilities Compliance Act of 1992, 42 U.S.C. § 6901 *et. seq* (referred to collectively as the "Act" or "RCRA").

The Complainant in this proceeding, the Director of the Division of Enforcement and Compliance Assistance, United States Environmental Protection Agency ("EPA"), Region 2 ("EPA" or "Complainant"), issued a "Complaint, Compliance Order, and Notice of Opportunity for Hearing" to the U.S. Department of Agriculture ("USDA" or "Respondent") on June 30, 2008 for alleged violations at its Tropical Agriculture Research Station located in Mayaguez and Isabela, Puerto Rico. 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 approval for its underground storage tank program on January 30, 1998)

The Complainant and Respondent have reached an amicable resolution of this matter and agree, by entering into this Consent Agreement and Final Order ("CA/FO") pursuant to the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules"), 40 C.F.R. Part 22, including, specifically, 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. The Respondent is a department, agency or instrumentality of the executive branch of the federal government.
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. For all times relevant to the allegations set forth in the Complaint, Respondent "owned" and/or "operated" the "underground storage tanks" ("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 Tropical Agricultural Research Station ("TARS") at 2200 Pedro Albizu Campos Ave., Mayaguez, Puerto Rico 00680 (the "Mayagüez Facility") and at the TARS Experimental Farm in the Barrio Guerrero, Sector El Cañon, Isabela, Puerto Rico 00662 (the "Isabela Facility") (hereinafter both facilities are collectively referred to as the "Facilities").
4. On or about April 18, 2007, pursuant to Section 9005 of the Act, 42 U.S.C. § 6991d, representatives of EPA ("EPA Representatives") inspected the Facilities (the "Inspection"). The purpose of this inspection was in part to determine the Respondent's

compliance with the Act and Rules in Parts 1 through 12 of PRUSTR.

5. During the Inspection and for all time periods relevant to the allegations set forth in the Complaint, all UST Systems at the Facilities have stored either diesel fuel or gasoline for use in vehicles, and thus have been and remain subject to the UST requirements set forth at the Rules in Parts 1 through 12 of PRUSTR.
6. During the Inspection and for all time periods relevant to the allegations set forth in the Complaint, all of the UST systems at the Facilities were "petroleum UST systems" as that term is defined in Rule 105 of PRUSTR.
7. On or about July 20, 2007, EPA sent Respondent one letter containing the following attachments: one Information Request Letter ("IRL") for each of the Facilities and one Notice of Violation ("NOV") for each of the Facilities.
8. EPA's Information Request Letters sought general information about the USTs owned and/or operated by the Respondent at the Facilities, as well as information about any actions taken to correct the violations, and to prevent recurrence of the violations identified in the NOVs. EPA's NOVs listed UST violations that had been identified by EPA during the Inspection.
9. On or about September 24, 2007, Respondent submitted to EPA a response to the NOVs and Information Request Letters. In addition, on or about February 29, 2008, Respondent submitted to EPA a follow-up response (collectively referred to as the "Respondent's Responses").
10. Based on the inspection by EPA and Respondent's Responses, the Complaint alleged that Respondent committed the following violations at the Facilities:
 - (i) Failure to provide corrosion protection for steel piping in contact with the ground in

- violation of Rule 201 (B) of PRUSTR.
- (ii) Failure to conduct release detection in violation of Rule 402(A) of PRUSTR or to maintain the results of release detection in violation of Rule 305(B)(4), Rule 305(C), and Rule 406 of PRUSTR.
 - (iii) Failure to perform a line tightness test or use a monthly monitoring release detection method for the piping in violation of Rule 402 (B) of PRUSTR or to maintain the results of release detection for the piping in violation of Rule 305(B)(4), Rule 305(C), and Rule 406 of PRUSTR.
11. Respondent has informed EPA that it has removed all gasoline and diesel from the two (2) USTs at the Mayaguez Facility and complied with the temporary closure requirements of Rule 701 of PRUSTR. Respondent has further informed EPA that Respondent has awarded a contract for the permanent closure (including a site assessment) of those USTs as provided in Rules 702 through 705 of PRUSTR. Respondent has also agreed to award a contract, within six (6) months of the effective date of this CA/FO, for the removal of the two (2) USTs at the Isabela Facility.

CONSENT AGREEMENT

Based upon the foregoing, and pursuant to Section 9006 of RCRA, 42 U.S.C. § 6991e, and 40 C.F.R. § 22.18 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, the parties hereby agree, as follows:

1. Respondent admits the jurisdictional basis of this action and neither admits nor denies the Findings of Fact and Conclusions of Law set forth above. Respondent agrees not to

contest EPA's jurisdiction with respect to the execution of this Consent Agreement, the issuance of the attached Final Order, or the enforcement of the CAFO.

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 to its conditions.
3. This Consent Agreement and Final Order shall not relieve Respondent from its continuing obligation to comply with all applicable provisions of federal, Commonwealth or local environmental laws.
4. Respondent shall pay, by cashier's or certified check or by Electronic Fund Transfer (EFT), a civil penalty for settlement of the violations described above, in the amount of **thirty thousand dollars** (\$30,000.00). If the payment is made by check, then the payment shall be made to the "Treasurer of the United States of America" and shall be mailed to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000

The check shall be identified with a notation of both the name and docket number of this case as: In the Matter of the U.S. Department of Agriculture- Agricultural Research Service - Tropical Agriculture Research Station – Mayaguez and Isabela, Puerto Rico, Docket Number RCRA-02-2008-7505. 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").

- a) If Respondent chooses to make the payment by EFT, then 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: In the Matter of the U.S. Department of Agriculture- Agricultural Research Service - Tropical Agriculture Research Station - Mayaguez and Isabela, Puerto Rico
- 7) Case Number: RCRA-02-2008-7505.

Such EFT must be received on or before sixty (60) calendar days after the Effective Date of this CA/FO.

- b. Whether the payment is made by check or by ETF, Respondent promptly thereafter furnish reasonable proof that such

payment has been made to both:

Rudolph Perez
Assistant Regional Counsel, U.S.
Environmental Protection Agency
290 Broadway, 16th Floor
New York, New York, 10007-1866

And

Karen Maples
Regional Hearing Clerk
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. Compliance Provisions

a. To the extent it has not already done so, Respondent shall:

i) Achieve compliance, within thirty (30) calendar days after the Regional Administrator's signature of the Final Order, and maintain compliance with all applicable provisions of PRUSTR at the Isabela Facility, including: (a) providing corrosion protection for steel piping in contact with the ground as required by Rule 201 (B) of PRUSTR; (b) conducting release detection as required by Rule 402(A) of PRUSTR and maintaining the results of release detection as required by Rule 305(B)(4), Rule 305(C), and Rule 406 of PRUSTR; and (c) performing a line tightness test at least every three (3) years, or using a monthly monitoring release detection method for the piping as required by Rule 402 (B) of PRUSTR and maintaining the results for the piping as required by Rule 305(B)(4), Rule 305(C), and Rule 406 of PRUSTR.

ii) Within six (6) months after the Regional Administrator's signature of the Final Order, execute a contract for the removal and proper closure in accordance with PRUSTR (including Rules 702 (Permanent Closure) and 703 (Site Assessment) of PRUSTR), of the two (2) USTs at the Isabela Facility. Within two (2) months after the award of the

contract, submit to the Puerto Rico Environmental Quality Board (“EQB”) a request for approval to remove the two (2) USTs at the Isabela Facility and promptly remedy any deficiencies in the request identified by EQB. Within two (2) months of submitting to EQB the request for approval to remove the two (2) USTs and every two (2) months thereafter until the two (2) USTs are permanently closed, Respondent shall submit to EPA a written report on the status of its efforts to permanently close the two (2) USTs at the Isabela Facility. Within two (2) months of receiving any necessary approval from EQB, initiate field work for permanent closure (including site assessment) of the two (2) USTs at the Isabela Facility.

iii) Within fifteen (15) calendar days after the Regional Administrator’s signature of the Final Order, submit records documenting compliance with paragraph 5(a) (i), including compliance with Rules 201 (B), 402(A), 305(B)(4), Rule 305(C), and Rule 406 of PRUSTR at the Isabela Facility. Within seven (7) months after Respondent executes a contract for the removal and proper closure of the 2 (two) USTs at the Isabela Facility, submit records documenting such contract.

iv) Within two (2) months after, the permanent closure of the two (2) USTs at the Isabela Facility is completed, submit to EPA records documenting compliance with Rules 702 (Permanent Closure) and 703 (Site Assessment) of PRUSTR.

v) Not use the two (2) USTs at the Mayaguez Facility unless Respondent complies with all applicable provisions of PRUSTR, including compliance with Rules 201 (B), 402(A), 305(B)(4), Rule 305(C), and Rule 406 of PRUSTR. Within sixty (60) calendar days after the Regional Administrator’s signature of the Final Order and every sixty (60) calendar days thereafter until the two (2) USTs are permanently closed, Respondent shall submit

to EPA a written report on the status of its efforts to permanently close the two (2) USTs at the Mayaguez Facility. Within thirty (30) days after Respondent has permanently closed the two (2) USTs at the Mayaguez facility, Respondent shall submit to EPA records documenting compliance with Rules 702 (Permanent Closure) and 703 (Site Assessment) of PRUSTR.

vi) Comply with any future EPA requests, pursuant to Section 9005 and/or 40 C.F.R. § 280.34, for information relating to any or all of the UST systems owned and/or operated by the USDA Agricultural Research Service, Tropical Agricultural Research Station in Puerto Rico.

vii) In all documents and reports submitted to EPA pursuant to this CA/FO, 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 Agriculture. 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.

- b. 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

6. If Respondent fails to submit the records as required by paragraph 5 (a) (ii) (iii), (iv), and (vii) above, it shall pay a stipulated penalty for each day that it fails to submit this report as follows:

Period of

<u>Failure to Comply</u>	<u>Penalty Per Day Per Violation</u>
1 st to 10 th calendar day	\$100
11 th to 30 th calendar day	\$300
31 to 60 calendar days	\$500
Each day in excess of 60 calendar days	\$1000

7. If the parties to this Consent Agreement agree that delay or noncompliance has been or will be caused by events, conditions, or circumstances entirely beyond the control of Respondent and if the parties to this Consent Agreement further agree that Respondent could not have prevented such delay or noncompliance by the exercise of due diligence, the time for performance of such requirement shall be extended for a period not to exceed the actual delay resulting from such circumstances and stipulated penalties for such delay

or noncompliance shall not accrue for such period. Respondent shall bear the burden of proving to EPA by a preponderance of the evidence, through a written submission to EPA, that any delay was caused by circumstances entirely beyond the control of Respondent and that Respondent could not have prevented such delay by the exercise of due diligence. In the event that EPA does not agree that a delay has been or will be caused by circumstances beyond the control of Respondent, EPA will notify Respondent in writing of its decision.

8. Complainant may, in her 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. If, after review of Respondent's submission, Complainant determines that Respondent has failed to comply with the provisions of this Consent Agreement, and Complainant does not, in her 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. Any penalty owed pursuant to this paragraph shall be paid in accordance with the instructions set forth in paragraph "4" of the Consent Agreement, above. Failure to pay the stipulated penalty in full will result in further action for collection or other appropriate action.
9. This Consent Agreement is being voluntarily and knowingly entered into by Respondent and EPA to resolve (upon full payment of the civil penalty and any stipulated penalty that comes due) Respondent's liability pursuant to Section 9006 for civil penalties for the violations of federal UST requirements specifically alleged in the Complaint issued in

this case. 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.

10. 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.
11. 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.
12. 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.
13. Each party hereto agrees to bear its own costs and fees in this matter.
14. 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.
15. Respondent consents to service upon Respondent of a copy of this CA/FO by an EPA employee other than the Regional Hearing Clerk.

16. 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.
17. 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.
18. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines may present 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 and to the reservation of right 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 there under, and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this CAFO, 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.
19. The provisions of this Consent Agreement shall be binding upon Respondent, its officials, authorized representatives and successors or assigns and upon Complainant.

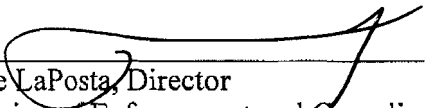
RESPONDENT:

BY: Edward B. Knipling
Name: EDWARD B. KNIPLING
Title: ADMINISTRATOR, ARS
DATE: 6/17/09

U.S. Department of Agriculture- Agricultural Research Service - Tropical Agriculture
Research Station – Mayaguez and Isabela, Puerto Rico
Docket Number RCRA-02-2008-7505

COMPLAINANT:

BY:



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

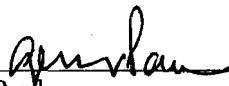
DATE:

JUNE 26, 2009

U.S. Department of Agriculture- Agricultural Research Service - Tropical Agriculture
Research Station – Mayaguez and Isabela, Puerto Rico
Docket Number RCRA-02-2008-7505

FINAL ORDER

The Regional Administrator (or anyone duly delegated to act on his 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 Agriculture- Agricultural Research Service - Tropical Agriculture Research Station – Mayaguez and Isabela, Puerto Rico, Docket Number RCRA-02-2008-7505 . 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. 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.



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

DATE: 6/30/09

**U.S. Department of Agriculture- Agricultural Research Service - Tropical Agriculture
Research Station – Mayaguez and Isabela, Puerto Rico
Docket Number RCRA-02-2008-7505**

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:

Original and One Copy
by Hand:

William Moran
Administrative law Judge
Office of Administrative law Judges
U. S. Environmental Protection Agency
Mail Code 1900L
1200 Pennsylvania Ave., NW, Suite 350
Washington, DC 20005

Copy by
Certified Mail/
Return Receipt Requested:

Kirk Minckler
USDA Office of the General Counsel
740 Simms Street, Room 309
Golden, CO 80401-4720

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: JUL - 2 , 2009
New York, New York

