



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

SEP 29 2008

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REGION 2  
2008 OCT -1 PM 3:31  
REGIONAL HEARING  
CLERK

**CERTIFIED MAIL- RETURN RECEIPT REQUESTED**

The Honorable James B. Peake  
Secretary  
U.S. Department of Veterans Affairs  
810 Vermont Ave NW  
Washington, DC 20420

Rafael Ramirez, Center Director  
Veterans Affairs Caribbean Healthcare System  
10 Calle Casia  
San Juan, PR 00921-3201

Re: **In the Matter of U.S. Department of Veterans Administration,  
Veterans Affairs Caribbean Healthcare System  
Docket No. RCRA-02-2008-7507**

Dear Mr. Secretary and Mr. Ramirez:

Enclosed is the Complaint, Compliance Order and Opportunity for Hearing in the above-referenced proceeding. The Complaint alleges violations of the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901 *et seq.*

You have the right to a formal hearing to contest any of the allegations in the Complaint and/or to contest the penalty proposed in the Complaint. If you wish to contest the allegations and/or the penalty proposed in the Complaint, you must file an Answer within **thirty (30)** days of your receipt of the enclosed Complaint with the Regional Hearing Clerk of the Environmental Protection Agency ("EPA"), Region 2, at the following address:

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

If you do not file an Answer within thirty (30) days of receipt of this Complaint and have not obtained a formal extension for filing an Answer from the Regional Judicial Officer of Region 2, a default order may be entered against you and the entire proposed penalty may be assessed.


Whether or not you request a formal hearing, you may request an informal conference with EPA to discuss any issue relating to the alleged violations and the amount of the proposed penalty. EPA encourages all parties against whom it files a Complaint to pursue the possibility of settlement and to have an informal conference with EPA. However, a request for an informal conference *does not* substitute for a written Answer, affect what you may choose to say in an Answer, or extend the thirty (30) days by which you must file an Answer requesting a hearing.

You will find enclosed a copy of the "Consolidated Rules of Practice," which govern this proceeding. (A brief discussion of some of these rules appears in the later part of the Complaint.) For your general information and use, I also enclose an "Information Sheet for U.S. EPA Small Business Resources." This document offers some useful information and resources.

EPA encourages the use of Supplemental Environmental Projects, where appropriate, as part of any settlement. I am enclosing a brochure on "EPA's Supplemental Environmental Projects Policy." Please note that these are only available as part of a negotiated settlement and are not available if this case has to be resolved by a formal adjudication.

If you have any questions or wish to schedule an informal conference, please contact the attorney whose name is listed in the Complaint.

Sincerely,



Dore LaPosta, Director  
Division of Enforcement and Compliance Assistance

Enclosures

cc: Karen Maples, Regional Hearing Clerk (without enclosures)



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Rafael Ramirez, Center Director  
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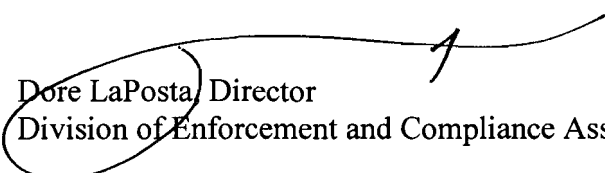
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If you have any questions or wish to schedule an informal conference, please contact the attorney whose name is listed in the Complaint.

Sincerely,



Dore LaPosta Director  
Division of Enforcement and Compliance Assistance

Enclosures

cc: Karen Maples, Regional Hearing Clerk (without enclosures)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2

U.S. ENVIRONMENTAL  
PROTECTION AGENCY REGION 2  
2008 OCT -1 PM 3:31  
REGIONAL HEARING  
CLERK

In the Matter of

U.S. Department of Veterans Affairs

Respondent

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

COMPLAINT, COMPLIANCE ORDER,  
AND NOTICE OF OPPORTUNITY  
FOR HEARING

Docket No. RCRA-02-2008-7507

**COMPLAINT**

This is a civil administrative proceeding instituted pursuant to Section 9006 of the Solid Waste Disposal Act, as amended, 42 U.S.C. § 9601 *et seq.* (hereinafter collectively referred to as the “Act”). Complainant in this proceeding, Dore LaPosta, Director, Division of Enforcement and Compliance Assistance of the United States Environmental Protection Agency, Region 2, (“EPA”), who has been duly delegated the authority to institute this action, upon information and belief, hereby alleges:

1. Respondent is the U.S. Department of Veterans Affairs (“Respondent”).
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 the Puerto Rico Underground Storage Tank Regulation (hereinafter “PRUSTR”).
3. Respondent is a department, agency or instrumentality of the executive branch of the federal government.
4. Respondent has been and remains the “owner” and “operator” of “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, at the Veterans Affairs Caribbean Healthcare System (“VACHS”) located at 10 Calle Casia, San Juan, Puerto Rico 00921-3201 (“the VACHS San Juan facility” or “the Facility”).

5. Respondent owns and operates two UST systems (Tanks 1 and 2), which were installed on September 23, 1993, in Area A of the Facility, and three UST systems (Tanks 3, 4 and 5), which were installed on June 28, 1999 (Tank 3) and on December 1, 2005 (Tanks 4 and 5) in Area B of the Facility. Specific information on these UST Systems appears in the following table:

**VACHS UST INFORMATION**

<b>Tank #</b>	<b>Capacity (gallons)</b>	<b>Contents</b>	<b>Tank/Piping Material</b>	<b>Fuel Usage</b>
1	1,200	Gasoline	Composite/Steel	Vehicles for emergencies
2	30,000	Diesel	Composite/Steel	Emergency generators and boilers
3	20,000	Diesel	FRP/FRP	Emergency generators and boilers
4	14,500	Diesel	FRP/FRP	Emergency generators only
5	14,500	Diesel	FRP/FRP	Emergency generators only

FRP = Fiberglass Reinforced Plastic

6. The tanks owned and operated by Respondent at the Facility are referred throughout this document as Tanks 1, 2, 3, 4 and 5.
7. The tanks and piping owned and operated by Respondent at the Facility are referred throughout this document as UST Systems 1, 2, 3, 4 and 5, when referring to both tanks and piping.
8. Pursuant to Sections 2002, 9002, and 9003 of the Act, 42 U.S.C. §§ 6912, 6991a, and 6991b, EPA promulgated rules setting forth requirements for owners and operators of UST Systems, set forth at 40 C.F.R. Part 280. Pursuant to the Puerto Rico Public Policy Environmental Act of 1970, the Commonwealth of Puerto Rico Environmental Quality Board (“EQB” or “the Board”) promulgated Underground Storage Tank Regulations on November 7, 1990, setting forth requirements for owners and operators of UST Systems.
9. Pursuant to 40 C.F.R. Part 281, the Commonwealth of Puerto Rico received State Program Approval, as set forth in the Federal Register, 63 Fed. Reg. 4591 (Jan. 30, 1998).
10. The federal codification and description of the State Program Approval of the Commonwealth of Puerto Rico UST program are set forth at 40 C.F.R. Section 280.102.
11. Pursuant to 40 C.F.R. Section 280.12, the Commonwealth of Puerto Rico Environmental Quality Board is the “implementing agency” responsible for enforcing

the requirements of the Act and the regulations promulgated pursuant thereto.

12. EPA retains the authority to exercise its enforcement authorities under Section 9006 of Subtitle I of RCRA, 42 U.S.C. Section 6991e, for violations of approved Commonwealth of Puerto Rico regulations, and has notified the Commonwealth of Puerto Rico pursuant to Section 9006(a)(2), 42 U.S.C. Section 6991e(a)(2) prior to issuing this administrative Complaint.
13. The UST Systems 1, 2 and 3 at the Facility store either diesel fuel or gasoline for use in vehicles or for use in emergency generators and boilers, and thus are subject to the UST requirements set forth in the Rules in Parts 1 through 13 of PRUSTR. The UST Systems 4 and 5 store diesel fuel for emergency generators only and thus are subject to all the UST requirements of PRUSTR except for release detection.
14. On or about February 13, 2008, pursuant to Section 9005 of the Act, 42 U.S.C. § 6991d, an authorized representative of EPA inspected the Facility to determine the Respondent's compliance with the Act and the Rules in Parts 1 through 13 of PRUSTR ("February 2008 Inspection").
15. On or about April 21, 2008, EPA sent a Notice of Violation ("NOV") and an Information Request Letter ("IRL") to representatives of Respondent. The IRL was issued pursuant to Section 9005(a) of the Act, 42 U.S.C. § 6991d(a).
16. EPA's NOV listed UST violations that were identified by EPA representatives during the February 2008 Inspection.
17. EPA's IRL sought general information about the USTs owned and/or operated by the Respondent 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.
18. On May 23, 2008, Respondent submitted a response to EPA's NOV and IRL (hereinafter "May 2008 Response"). On June 23, 2008, Respondent submitted a second response to EPA's NOV and IRL (Hereinafter "June 2008 Response"). On July 3, 2008, Respondent submitted a third response to EPA's NOV and IRL (hereinafter "July 2008 Response").
19. In the June 2008 Response, the Respondent stated that the UST Systems 1, 2, 3, 4 and 5 at the Facility had been the property of Respondent since their installation on the dates specified in paragraph 5 above.
20. During the February 2008 Inspection and for all time periods relevant to this Complaint, all of the UST systems at the Facility were "Petroleum UST Systems" as that term is defined in Rule 105 of PRUSTR.

**Count 1**  
**Respondent's Failure to Inspect Cathodic Protection System of  
UST Systems 1 and 2 and Failure to Maintain Testing Records**

21. Paragraphs 1 through 20 are realleged and incorporated herein.
22. Pursuant to Rule 302(B) of PRUSTR, “[a]ll UST systems equipped with cathodic protection systems must be inspected for proper operation by a qualified cathodic protection tester . . . within six (6) months of installation and at least every three (3) years thereafter.”
23. During the February 2008 Inspection, the EPA inspector observed that piping for UST Systems 1 and 2 included portions in contact with the ground and was single-wall steel with sacrificial-anode cathodic protection. Respondent’s representative could not provide any evidence that the cathodic protection system for UST Systems 1 and 2 had been inspected by a qualified cathodic protection tester within six (6) months of installation and at least every three (3) years thereafter.
24. During the February 2008 Inspection, the only cathodic protection test the facility had was for January 13, 2008; no prior surveys were available.
25. In the May 2008 Response, Respondent stated “VACHS concurs with USEPA statement” that “the cathodic protection system (sacrificial anode system) for the two UST systems with steel piping at Area A (USTs 1 and 2) was only tested once (in January 2008) by a qualified cathodic protection tester; no prior surveys were available.”
26. Pursuant to Rule 302(D)(2) of PRUSTR, records of the operation of the cathodic protection must be maintained and must include the results of testing from the last two (2) inspections required by Rule 302(B).
27. Pursuant to Rule 305(C) of PRUSTR, owners and operators of UST systems must keep the records required either: (1) at the UST site and immediately available for inspection by the Board; or (2) at a readily available alternative site and be provided for inspection to the Board upon request.
28. During the February 2008 Inspection, Respondent’s representative could not provide records of cathodic protection tests from the last two triennial inspections required by Rule 302(B) of PRUSTR.
29. EPA’s IRL specifically requested that Respondent submit documentation of corrosion protection and the last two system tests. The June 2008 Response only included records



showing the testing from cathodic protection inspections of UST Systems 1 and 2 conducted on January 17, 2008.

30. Respondent did not have a qualified cathodic protection tester inspect the cathodic protection system of UST Systems 1 and 2 within six (6) months of installation.
31. Between at least March 23, 1994 and January 16, 2008, Respondent did not have a qualified cathodic protection tester inspect the cathodic protection system of UST Systems 1 and 2 at least every three (3) years.
32. Between at least January 16, 2005 and January 16, 2008, Respondent did not maintain records of the results of testing from one of the last two triennial inspections of UST Systems 1 and 2.
33. Respondent's failure to maintain records of the results of testing from the last two triennial inspections of UST Systems 1 and 2 constitutes a violation of Rule 302(D)(2) of PRUSTR.
34. Respondent's failure to have a qualified cathodic protection tester inspect the cathodic protection system of UST Systems 1 and 2 within six (6) months of installation and every three (3) years thereafter constitutes a violation of Rule 302(B) of PRUSTR.

**Count 2**  
**Respondent's Failure to Have Overfill Prevention  
Equipment on UST Systems 1 and 2**

35. Paragraphs 1 through 34 are realleged and incorporated herein.
36. Pursuant to Rule 201(C) of PRUSTR, "to prevent . . . overfilling associated with the regulated substance transfer to the UST system, owners and operators must use . . . overfill prevention equipment."
37. During the February 2008 Inspection, the EPA inspector observed that the UST Systems 1 and 2 were not equipped with automatic shut off valves and were not connected to a high level alarm.
38. During the February 2008 Inspection, the UST Systems 1 and 2 had no overfill prevention equipment.
39. In the May 2008 Response, the Respondent stated "VACHS concurs with USEPA observation" that "USTs 1 and 2 were observed to lack overfill prevention equipment."

40. Respondent's January 16, 2008 UST registration form submitted to the EQB lists no overfill prevention equipment.
41. From the date that UST Systems 1 and 2 were installed on September 23, 1993 to the date of overfill protection installation on March 28, 2008, Respondent did not have overfill prevention equipment on UST Systems 1 and 2.
42. Respondent's failure to have overfill prevention equipment on UST Systems 1 and 2 constitutes a violation of Rule 201(C) of PRUSTR.

### **Count 3**

#### **Respondent's Failure to Monitor for Release Detection and Failure to Maintain Release Detection Records for UST Systems 1 and 2**

43. Paragraphs 1 through 42 are realleged and incorporated herein.
44. Pursuant to Rule 402 of PRUSTR, owners and operators of petroleum UST Systems must provide release detection for tanks.
45. Pursuant to Rule 402(A) of PRUSTR, subject to certain exceptions that are inapplicable to UST Systems 1 and 2, tanks must be monitored at least every thirty (30) days for releases using one of the methods listed in Rule 404(D)-(H) of PRUSTR.
46. Pursuant to Rule 402(A) of PRUSTR, inventory control (conducted monthly) and tank tightness testing (conducted every five (5) years) is a valid method of release detection for the first ten years after UST system installation when performance standards of Rule 201 or 202 of PRUSTR have been met.
47. During the February 2008 Inspection, the EPA inspector observed that Respondent employed inventory control and tank tightness testing for release detection of UST Systems 1 and 2 (installed on September 23, 1993) beyond the ten-year limit (September 23, 2003).
48. During the February 2008 Inspection, the EPA inspector observed that Respondent only measured tank levels and only had one tightness test performed in January 2008.
49. In the May 2008 Response, Respondent stated "VACHS concurs with USEPA statements" one of which was that "the facility failed to implement a compliant tank release detection method for USTs 1 and 2."
50. Pursuant to Rule 305(B)(4) of PRUSTR, owners and operators of UST Systems must maintain records of recent compliance with release detection requirements (Rule 406 of PRUSTR).

51. Pursuant to Rule 406(B) of PRUSTR, owners and operators of USTs must maintain the results of any sampling, testing, or monthly release detection monitoring for at least one year.
52. During the February 2008 Inspection, Respondent's representative could not provide the results of monthly release detection monitoring for UST Systems 1 or 2.
53. Respondent's failure to maintain the records of compliance with release detection requirements for UST Systems 1 and 2 constitutes a violation of Rule 305(B)(4) and Rule 406(B) of PRUSTR.
54. Respondent's failure to conduct monitoring for releases from UST Systems 1 and 2 constitutes a violation of Rule 402(A) of PRUSTR.

#### **Count 4**

#### **Respondent's Failure to Maintain Release Detection Records for UST 3**

55. Paragraphs 1 through 54 are realleged and incorporated herein.
56. Pursuant to Rule 404(D) of PRUSTR, automatic tank gauging (ATG) is a method of release detection for tanks.
57. Respondent used an automatic tank gauging method of release detection for UST Tank 3.
58. During the February 2008 Inspection, no ATG test results were available for the previous 12 months.
59. In the May 2008 Response, Respondent stated "VACHS concurs with USEPA statement [sic] for UST 1, 2, and 3" that "the facility indicated that automatic tank gauging ("ATG") was the primary tank release detection method for UST 3, but no ATG test results had been generated for the last 12 months."
60. During the February 2008 Inspection, Respondent's representative could not provide the results of monthly release detection monitoring for UST System 3.
61. Respondent's failure to maintain the results of at least a year of monitoring for releases from UST System 3 constitutes a violation of Rule 305(B)(4) and Rule 406(B) of PRUSTR.

#### **PROPOSED CIVIL PENALTY**

Section 9007 of the Act and Section 9006(d)(2)(A) of the Act, 42 U.S.C. Section 6991e

(d)(2)(A), authorizes the assessment of a civil penalty against a federal department or agency of up to \$10,000 for each tank for each day of violation of any requirement or standard promulgated by the Administrator. The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection and Improvement Act of 1996, Pub. L. No. 104-34, 110 Stat. 1321 (1996), required EPA to adjust its penalties for inflation on a periodic basis. EPA issued a Civil Monetary Penalty Inflation Adjustment Rule on December 31, 1996, see 61 Fed. Reg. 69360 (1996), and on February 13, 2004, see 69 Fed. Reg. 7121 (2004), codified at 40 C.F.R. Part 19.

Under Table I of the Civil Monetary Penalty Inflation Adjustment Rule, the maximum civil penalty under 42 U.S.C. Section 6991e(d)(2) for each tank for each day of violation occurring between January 30, 1997 and March 15, 2004, is \$11,000. No change was made in the maximum civil penalty for violations occurring after March 15, 2004.

The penalties are proposed pursuant to the “U.S. EPA Penalty Guidance for Violations of UST Requirements” dated November 1990 (“UST Guidance”). The penalty amounts in this guidance were amended by a May 9, 1997, EPA document entitled “Modifications to EPA Penalty Policies to implement the Civil Monetary Penalty Inflation Rule (pursuant to the Debt Collection Improvement Act of 1996)” and a September 21, 2004 document entitled, “Modifications to EPA Penalty Policies to implement the Civil Monetary Penalty Inflation Rule (pursuant to the Debt Collection Improvement Act of 1996, Effective on October 1, 2004).” (These documents are available upon request.) This UST guidance provides a rational, consistent, and equitable calculation methodology for applying the statutory penalty factors to particular cases.

Based upon the facts alleged in this Complaint and taking into account factors such as the seriousness of the violations and any good faith efforts by the Respondent to comply with the applicable requirements, the Complainant proposes, subject to receipt and evaluation of further relevant information, to assess the following civil penalties:

<u>Count 1:</u>	<b>Respondent’s Failure to Inspect Cathodic Protection System of UST Systems 1 and 2 and Failure to Maintain Testing Records.....</b>	<b>\$42,544</b>
<u>Count 2:</u>	<b>Respondent’s Failure to Have Overfill Prevention Equipment on UST Systems 1 and 2 .....</b>	<b>\$56,327</b>
<u>Count 3:</u>	<b>Respondent’s Failure to Monitor for Release Detection and Failure to Maintain Release Detection Records for UST Systems 1 and 2.....</b>	<b>\$36,883</b>
<u>Count 4:</u>	<b>Respondent’s Failure to Maintain Release Detection Records for UST 3 .....</b>	<b>\$7,253</b>
Total Overall Proposed Penalty Amount .....		<b>\$143,007</b>

Penalty Computation Worksheets explaining the rationale for the proposed civil penalties in this case are attached to this Complaint.

### **COMPLIANCE ORDER**

Based on the foregoing, and pursuant to the authority of Sections 9006 and 9007 of the Act, 42 U.S.C. § 6991e and 6991f, Complainant issues the following Compliance Order to the Respondent, which shall take effect thirty (30) days after service of this Order (*i.e.*, the effective date) unless by that date Respondent has requested a hearing on the parts applicable to it, pursuant to 40 C.F.R. § 22.15. See 42 U.S.C. § 6991(e)(b) and 40 C.F.R. §§ 22.37(b) and 22.7(c):

1. Respondent shall maintain its USTs in compliance with the applicable requirements found in Part 2 (Rules 201 through 203), Part 3 (Rules 301 through 305), and Part 4 (Rules 401 through 406) of PRUSTR, including but not limited to corrosion protection, overfill protection, and release detection requirements.
2. Respondent shall submit, within fifteen (15) days of the effective date of this Order, records documenting compliance with Rules 201(B), 201(C), 203(B), 302(D)(2), 402(A), 305(B)(4)), and 406(B) for the UST systems at the VACHS San Juan facility.
3. If Respondent is unable to comply with a particular provision by the end of the 15-day period as provided in paragraph 2 above, Respondent shall notify EPA in writing within the 15-day period. The notice shall explain the reasons for the noncompliance and shall also provide a schedule for achieving expeditious compliance with the requirement.
4. In all documents or reports submitted to EPA pursuant to this Compliance Order, the Respondent shall, by its officers, 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 the information contained in this written notice and the accompanying documents is true, accurate, and complete. As to the identified portions of this response for which I cannot personally verify their accuracy, I certify under penalty of law that this response and all attachments were prepared in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant potential penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

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Signature of Authorized Representative of Respondent

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Name

---

Title

Respondent shall submit the documents specified above, as well as the above written notice required to be submitted pursuant to this paragraph to:

**Charles Zafonte**  
**Enforcement Officer**  
**U.S. EPA Region 2**  
**Division of Enforcement & Compliance Assistance**  
**Compliance Assistance and Program Support Branch**  
**290 Broadway, 21<sup>st</sup> Floor**  
**New York, NY 10007-1866**

**NOTICE OF LIABILITY FOR ADDITIONAL CIVIL PENALTIES**

Pursuant to Sections 9006(a)(3) and 9007 of the Act, 42 U.S.C. Section 699e(a)(3) and 6991(f), and in accordance with the Debt Collection and Improvement Act of 1996, Pub. L. No. 104-34, 110 Stat. 1321 (1996) and the regulations promulgated thereunder (see the Civil Monetary Inflation Rule, 61 Fed. Reg. 69630 (December 31, 1996) and 69 Fed. Reg. 7121 (February 13, 2004), codified at 40 C.F.R. Part 19), a violator failing to comply with a Compliance Order within the time specified in the Order is liable for a civil penalty up to \$32,500 for each day of continued noncompliance.

**PROCEDURES GOVERNING THIS ADMINISTRATIVE LITIGATION**

The rules of procedure governing this civil administrative litigation have been set forth in 64 Fed. Reg. 40138 (July 23, 1999), entitled, "CONSOLIDATED RULES OF PRACTICE GOVERNING THE ADMINISTRATIVE ASSESSMENTS OF CIVIL PENALTIES, ISSUANCE OF COMPLIANCE OR CORRECTIVE ACTION ORDERS, AND THE REVOCATION, TERMINATION OR SUSPENSION OF PERMITS", and which are codified at 40 C.F.R. Part 22 (hereinafter "Consolidated Rules"). A copy of these rules accompanies this "Complaint, Compliance Order and Notice of Opportunity for Hearing" (hereinafter referred to as the "Complaint").

## A. Answering The Complaint

Where Respondent intends to contest any material fact upon which the Complaint is based, to contend that the proposed penalty and/or the Compliance Order is inappropriate or to contend that Respondent is entitled to judgment as a matter of law, Respondent must file with the Regional Hearing Clerk of EPA, Region 2, both an original and one copy of a written Answer to the Complaint, and such Answer must be filed within 30 days after service of the Complaint. See 40 C.F.R. §§ 22.15(a) and 22.7(c). The address of the Regional Hearing Clerk of EPA, Region 2, is:

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

Respondent shall also then serve one copy of the Answer to the Complaint upon Complainant. See 40 C.F.R. § 22.15(a).

Respondent's Answer to the Complaint must clearly and directly admit, deny, or explain each of the factual allegations that are contained in the Complaint. See 40 C.F.R. § 22.15(b). Where Respondent lacks knowledge of a particular factual allegation and so state in its Answer, the allegation is deemed denied. See 40 C.F.R. § 22.15(b). The Answer shall also set forth: (1) the circumstances or arguments that are alleged to constitute the grounds of defense, (2) the facts that Respondent disputes (and thus intend to place at issue in the proceeding) and (3) whether Respondent requests a hearing. See 40 C.F.R. § 22.15(b).

Respondent's failure to affirmatively raise in the Answer facts that constitute, or that might constitute, the grounds of its defense may preclude Respondent, at a subsequent stage in this proceeding, from raising such facts and/or from having such facts admitted into evidence at a hearing.

## B. Opportunity To Request A Hearing

If requested by the Respondent in its Answers, a hearing upon the issues raised by the Complaint and Answer may be held. See 40 C.F.R. § 22.15(c). If, however, Respondent does not request a hearing, the Presiding Officer (as defined in 40 C.F.R. § 22.3) may hold a hearing if the Answer raises issues appropriate for adjudication. See 40 C.F.R. § 22.15(c). With regard to compliance orders in the Complaint, unless Respondent requests a hearing pursuant to 40 C.F.R. § 22.15 within 30 days after such orders are served, such orders shall automatically become final. See 40 C.F.R. § 22.37.

Any hearing in this proceeding will be held at a location determined in accordance with 40 C.F.R. § 22.21(d). A hearing of this matter will be conducted in accordance with the applicable provisions of the Administrative Procedure Act, 5 U.S.C. §§ 551-59, and the procedures set forth in Subpart D of 40 C.F.R. Part 22.

### C. Failure To Answer

If Respondent fails in its Answers to admit, deny, or explain any material factual allegation contained in the Complaint, such failure constitutes an admission of the allegation. See 40 C.F.R. § 22.15(d). If Respondent fails to file timely [i.e., in accordance with the thirty (30)-day period set forth in 40 C.F.R. § 22.15(a)] an Answer to the Complaint, Respondent may be found in default upon motion. See 40 C.F.R. § 22.17(a). Default by Respondent constitutes, for purposes of the pending proceeding only, an admission of all facts alleged in the Complaint and a waiver of Respondent's right to contest such factual allegations. See 40 C.F.R. § 22.17(a). Following a default by Respondent for a failure to timely file an Answer to the Complaint, any default order shall be issued pursuant to 40 C.F.R. § 22.17.

Any penalty assessed in the default order shall become due and payable by Respondent without further proceedings thirty (30) days after the default order becomes final under 40 C.F.R. § 22.27(c). See 40 C.F.R. § 22.17(d). If necessary, EPA may then seek to enforce such final default order against Respondent, and to collect the assessed penalty amount. Any default order requiring compliance action shall be effective and enforceable against Respondent without further proceedings on the date the default order becomes final under 40 C.F.R. § 22.27(c). See 40 C.F.R. § 22.17(d).

### D. Exhaustion Of Administrative Remedies

Where Respondent fails to appeal an adverse initial decision to the Environmental Appeals Board pursuant to 40 C.F.R. § 22.30, and that initial decision thereby becomes a final order pursuant to the terms of 40 C.F.R. § 22.27(c), Respondent waives its opportunity to confer with the Administrator. See 40 C.F.R. § 22.31(e).

In order to appeal an initial decision to EPA's Environmental Appeals Board ("EAB"); [see 40 C.F.R. § 1.25(e)], Respondent must do so "within thirty (30) days after the initial decision is served upon the parties." See 40 C.F.R. § 22.30(a). Pursuant to 40 C.F.R. § 22.07(c), where service is effected by mail, "five days shall be added to the time allowed by these rules for the filing of a responsive pleading or document." Note that the 45-day period provided for in 40 C.F.R. § 22.27(c) [discussing when an initial decision becomes a final order] does not pertain to or extend the time period prescribed in 40 C.F.R. § 22.30(a) for a party to file an appeal to the EAB of an adverse initial decision.



## INFORMAL SETTLEMENT CONFERENCE

Whether or not Respondent requests a formal hearing, EPA encourages settlement of this proceeding consistent with the provisions of the Act and its applicable regulations. See 40 C.F.R. § 22.18(b). At an informal conference with a representative(s) of Complainant, Respondent may comment on the charges made in this Complaint, and Respondent may also provide whatever additional information that it believes is relevant to the disposition of this matter, including: (1) actions Respondent has taken to correct any or all of the violations herein alleged, (2) any information relevant to Complainant's calculation of the proposed penalty, (3) the effect the proposed penalty would have on Respondent's ability to continue in business and/or (4) any other special facts or circumstances Respondent wishes to raise.

Complainant has the authority to modify the amount of the proposed penalty, where appropriate, to reflect any settlement agreement reached with Respondent, to reflect any relevant information previously not known to Complainant or to dismiss any or all of the charges, if Respondent can demonstrate that the relevant allegations are without merit and that no cause of action as herein alleged exists. Respondent is referred to 40 C.F.R. § 22.18.

Any request for an informal conference or any questions that Respondent may have regarding this Complaint should be directed to:

**Karen L. Taylor, Esq.**  
**Assistant Regional Counsel**  
**Office of Regional Counsel**  
**U.S. Environmental Protection Agency, Region 2**  
**290 Broadway, 16<sup>th</sup> floor**  
**New York, New York 10007-1866**  
**(212) 637-3637**

The parties may engage in settlement discussions irrespective of whether Respondent has requested a hearing. See 40 C.F.R. § 22.18(b)(1). Respondent's requesting a formal hearing does not prevent it from also requesting an informal settlement conference; the informal conference procedure may be pursued simultaneously with the formal adjudicatory hearing procedure. A request for an informal settlement conference constitutes neither an admission nor a denial of any of the matters alleged in the Complaint. Complainant does not deem a request for an informal settlement conference as a request for a hearing as specified in 40 C.F.R. § 22.15(c).

A request for an informal settlement conference does not affect Respondent's obligation to file a timely Answer to the Complaint pursuant to 40 C.F.R. § 22.15. No penalty reduction, however, will be made simply because an informal settlement conference is held.

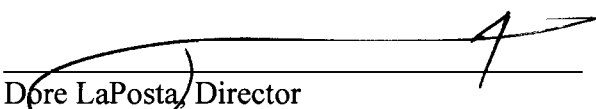
Any settlement that may be reached as a result of an informal settlement conference shall be embodied in a written consent agreement. See 40 C.F.R. § 22.18(b)(2). In accepting the consent agreement, Respondent waives its right to contest the allegations in the Complaint and waives its right to appeal the final order that is to accompany the consent agreement. See 40 C.F.R. § 22.18(b)(2). In order to conclude the proceeding, a final order ratifying the parties' agreement to settle will be executed. See 40 C.F.R. § 22.18(b)(3).

Respondent's entering into a settlement through the signing of such Consent Agreement and its complying with the terms and conditions set forth in the such Consent Agreement terminates this administrative litigation and the civil proceedings arising out of the allegations made in the Complaint. Respondent's entering into a settlement does not extinguish, waive, satisfy or otherwise affect its obligation and responsibility to comply with all applicable statutory and regulatory requirements, and to maintain such compliance.

**RESOLUTION OF THIS PROCEEDING WITHOUT HEARING OR CONFERENCE**

If, instead of filing an Answer, Respondent wishes not to contest the compliance order in the Complaint and wants to pay the total amount of the proposed penalty within 30 days after receipt of the Complaint, Respondent should promptly contact the Assistant Regional Counsel identified on the previous page.

Dated: SEPTEMBER 29, 2008

  
\_\_\_\_\_  
Dore LaPosta, Director  
Division of Enforcement and Compliance Assistance  
U.S. Environmental Protection Agency - Region 2  
290 Broadway, 21<sup>st</sup> Floor  
New York, NY 10007-1866

Enclosures

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

**CERTIFICATE OF SERVICE**

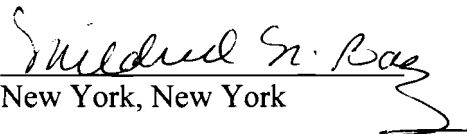
This is to certify that I have this day caused to be mailed a copy of the foregoing Complaint, Compliance Order, and Notice of Opportunity for Hearing, bearing Docket Number RCRA-02-2008-7507, and a copy of the Consolidated Rules of Practice, 40 C.F.R. Part 22, by certified mail, return receipt requested, to:

The Honorable James B. Peake  
Secretary  
U.S. Department of Veterans Affairs  
810 Vermont Ave NW  
Washington, DC 20420

Rafael Ramirez, Center Director  
Veterans Affairs Caribbean Healthcare System  
10 Calle Casia  
San Juan, PR 00921-3201

I hand-carried the original and a copy of the foregoing Complaint to the Office of the Regional Hearing Clerk, United States Environmental Protection Agency, Region 2.

Dated:     OCT 1 -     2008

  
New York, New York

**PENALTY COMPUTATION WORKSHEET**

**Count 1:                    Respondent's Failure to Inspect the Cathodic Protection System of UST Systems 1 and 2 Within Six Months of Installation and Every 3 Years Thereafter and to Maintain Records of Results of Testing from the Last 2 Triennial Inspections**

**Part 1: Background**

Facility in violation:      Veterans Administration Caribbean Healthcare System, San Juan, PR

<u>Violation:</u>	<u>Regulation</u> Rule 302(B) of PRUSTR	<u>Non-compliance</u> Failure to inspect UST systems with cathodic protection within 6 months of installation and at least every 3 years thereafter
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Penalty Calculation Period:

Date Gravity-based Penalty Calculations Started:      The violation started on March 23, 1994, six months after UST installation on September 23, 1993.

Date Gravity-based Penalty Calculations Ended:      The violation ended on January 17, 2008, when the first cathodic protection inspection was conducted.

1. Days of Noncompliance for Gravity-Based Penalty:      1,570 days (EPA is only seeking gravity penalty for the period from October 1, 2003 to January 17, 2008)

2. Number of Tank Systems: 2

**Part 2: Economic Benefit Component / Cost Savings**

3. Capital Costs:	\$0	Basis: N/A
4. One-Time Non-depreciable Expenditure:	\$2,500	Basis: May 7, 2007 estimate <sup>1</sup>
5. Avoided Costs (Annual Expenditure):	\$833.33	Basis: N/A
6. Economic Benefit Component:	\$14,812	Basis: BEN model v. 4.3

*Justification of Economic Benefit Component / Cost Savings:*

The economic benefit component, calculated with the BEN computer model, is more accurately categorized as "cost savings" for Federal facilities. The period of non-compliance begins when the first inspection was required on March 23, 1994, which was six months after the date of installation (September 23, 1994).

The \$2,500 cost estimate for inspection and certification of a cathodic protection system was provided by the Respondent's contractor, Las Americas Petroleum Services Corp in Puerto Rico. The BEN computer model was used to calculate the cost savings realized from having avoided this expense for the period of

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<sup>1</sup> Estimate made by Las Americas Petroleum Services Corp. and forwarded to EPA on September 24, 2007.

non-compliance identified above. Since after initial inspection, the inspection is required triennially, the annual cost was estimated by dividing this amount by three. Compliance was assumed to have been attained on January 17, 2008, but will be confirmed with the Respondent.

**Part 3: Matrix Value for the Gravity-Based Component**

- 7. Per-Tank Matrix Value (MV): \$1,500
- 8. Total Tank MV (line 2 times line 7) \$3,000

**Inflation Adjustment Rule:**

9. a.  $\$1,500 \times 1.10$  (inflation adjustment for pre-March 15, 2004)=\$1,650.

9. b.  $\$1,500 \times 1.2895$  (inflation adjustment for post March 15, 2004) = \$1,934.00.

See Modifications to EPA Penalty Policies to Implement the Civil Monetary Penalty Inflation Adjustment Rule (Pursuant to the Debt Collection Improvement Act of 1996, Effective October 1, 2004).

Potential for Harm: Major

Extent of Deviation: Major

*Justification for Potential for Harm:* The potential for harm resulting from this violation was determined to be “major.” EPA guidance characterizes the six-month violation as having a major potential for harm, and the triennial violation as having a moderate potential for harm. Respondent’s failure to inspect UST systems for proper operation and continued maintenance of corrosion protection for its steel UST systems could have resulted in releases of product into the environment.

*Justification for Extent of Deviation:* The extent of deviation was determined to be “major.” EPA guidance characterizes the six-month and triennial violation as a major deviation. Respondent exhibited a total lack of compliance with this requirement for the time period in which the penalty is being sought.

**Part 4: Violator-Specific Adjustments to Matrix Value**

Note: Lines 10 a., 11a. 12.a. and 13.a., below, have the Matrix Value of \$1650, which reflects an inflation adjustment increase of 10% for pre-March 15, 2004 period. Lines 10 b., 11.b., 12.b., and 13 b., below, have the Matrix Value of \$1934, which reflects an inflation adjustment increase of 17.23% for post-March 15, 2004 period.

	% Change (+/-) MV	Matrix Value	Total Dollar Adjustment
10.a. Degree of cooperation or non-cooperation:	0	\$1,650	\$0.00
b.	0	\$1,934	\$0.00
11.a. Degree of willfulness or negligence:	0	\$1,650	\$0.00
b.	0	\$1,934	\$0.00
12.a. History of noncompliance:	0	\$1,650	\$0.00
b.	0	\$1,934	\$0.00

13. a. Unique factors:	0	\$1,650	\$0.00
b.	0	\$1,934	\$0.00

*Justification for Degree of Cooperation/ Non-cooperation:*

Based on information currently available to EPA, no adjustment was made.

*Justification for Degree of Willfulness or Negligence:*

No adjustment was made.

*Justification for History of Noncompliance:*

No adjustment was made.

*Justification for Unique Factors:*

No adjustment was made.

**Part 5: Gravity-Based Component**

14.a. Adjusted Matrix Value (AMV) for Pre-March 15, 2004 period of violation: (line 9a. plus any Dollar Adjustment in lines 10a.through 13a.:  $\$1,650 + 0 = \$1,650$ . Multiply by 2 tanks =  $\$3,300$

b.. Adjusted Matrix Value (AMV) for Post-March 15, 2004 period of violation: (line 9.b. plus Dollar Adjustment in lines 10b. through 13b.):  $\$1,934 + 0 = \$1,934$ . Multiply by 2 tanks =  $\$3,868$

15. Level of Environmental Sensitivity: Moderate  
Environmental Sensitivity Multiplier (ESM): 1.5

*Justification for Level of Environmental Sensitivity:*

The Environmental Sensitivity Multiplier for this violation was determined to be “moderate”, corresponding to a sensitivity level of 1.5. The Puerto Rico North Coast Aquifer extends from the north coast into the area around the Facility. Since the aquifer is in the general area of the Facility, any releases of product from Respondent’s UST systems could impact the aquifer.

16. Days of Non-compliance Multiplier (DNM): (1,570 days of violation) = 5.0

Pre-3/15/04 component of DNM: 1.5 (166 days of violation)

Post-3/15/04 component of DNM: 3.5 (1,404 days of violation). The post-3/15/04 component of DNM, which is 3.5, was calculated by subtracting the pre-3/15/04 component (1.5) from the DNM for the entire Period (5.0). (This methodology avoids the use of a higher DNM multiplier than appropriate).

17. Gravity-based Component:

Pre-March 15, 2004 violation period:  $\$3,300$  (AMV) x 1.5 (ESM) x 1.5 (DNM) =  $\$7,425$ .

Post-March 15, 2004 violation period:  $\$3,868 \text{ (AMV)} \times 1.5 \text{ (ESM)} \times 3.5 \text{ (DNM)} = \$20,307$

Total Gravity Based Penalty: \$27,732

**Part 6: Initial Penalty Target Figure**

18. Economic Benefit Component (from line 6):	\$14,812
19. Gravity-Based Component (from line 17):	\$27,732
<b>20. Initial Penalty Target Figure (line 18 plus 19):</b>	<b>\$42,544</b>

**Count 2: Respondent's Failure to Have Overfill Prevention Equipment on UST Systems 1 and 2**

**Part 1: Background**

Facility in violation: Veterans Administration Caribbean Healthcare System

<u>Violation:</u>	<u>Regulation</u> Rule 201 (C) of PRUSTR	<u>Non-compliance</u> Failure to have overfill prevention equipment on UST systems 1 and 2.
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Penalty Calculation Period:  
Date Gravity-based Penalty Calculations Started: Violation started at the installation of UST Systems 1 and 2 on September 23, 1993.

Date Gravity-based Penalty Calculations Ended: Violation ended with installation of new overfill prevention equipment on March 28, 2008.

1. Days of Noncompliance for Gravity-Based Penalty: 1,640 days (EPA is only seeking gravity penalty for the period from October 1, 2003 to January 17, 2008)

2. Number of Tanks: 2

**Part 2: Economic Benefit Component / Cost Savings**

3. Capital Costs:	\$27,782	Basis: Cost quote from Respondent
4. One-Time Non-depreciable Expenditure:	\$0	Basis: N/A
5. Avoided Costs (Annual Expenditure):	\$0	Basis: N/A
6. Economic Benefit Component:	\$39,560	Basis: BEN model v. 4.3

*Justification of Economic Benefit Component / Cost Savings:*

The economic benefit component, calculated with the BEN computer model, is more accurately categorized as "cost savings" for Federal facilities. The period of non-compliance begins on the date of UST installation (September 23, 1993). March 28, 2008, the date of compliance, and the cost of compliance (\$27,782) are taken from the Solares' (Respondent's contractor's) invoice, dated February 25, 2008, with the confirmation of date by Eng. Carlos Cruz, Chief of the Facility's Environmental Regulatory Section in a July 3, 2008 e-mail.

**Part 3: Matrix Value for the Gravity-Based Component**

4. Per-Tank Matrix Value (MV):	\$750
5. Total MV (lines 2 times line 4)	\$1,500

**Inflation Adjustment Rule:**

6. a.  $\$750 \times 1.10$  (inflation adjustment for pre-March 15, 2004) = \$825

6. b.  $\$750 \times 1.2895$  (inflation adjustment for post March 15, 2004) = \$967

See Modifications to EPA Penalty Policies to Implement the Civil Monetary Penalty Inflation Adjustment Rule (Pursuant to the Debt Collection Improvement Act of 1996, Effective October 1, 2004).



Potential for Harm: Moderate

Extent of Deviation: Major

*Justification for Potential for Harm:* The potential for harm resulting from this violation was determined to be “moderate.” Respondent’s failure to provide an overfill prevention system for its existing UST systems can result in a release into the environment associated with product transfer to the UST systems. Failure to provide overfill prevention equipment is a moderate harm, consistent with the UST penalty policy.

*Justification for Extent of Deviation:* The extent of deviation was determined to be “major.” Respondent exhibited a total lack of compliance with this requirement for the time period in which the penalty is being sought.

**Part 4: Violator-Specific Adjustments to Matrix Value**

Note: Lines 7 a., 8a. 9.a. and 10.a., below, have the Matrix Value of \$825, which reflects an inflation adjustment increase of 10% for pre-March 15, 2004 period. Lines 7 b., 8.b., 9.b., and 10 b., below, have the Matrix Value of \$967, which reflects an inflation adjustment increase of 17.23% for post-March 15, 2004 period.

	% Change (+/-) MV	Matrix Value	Total Dollar Adjustment
7. a. Degree of cooperation or non-cooperation:	0	\$825	\$0.00
b.	0	\$967	\$0.00
8. a. Degree of willfulness or negligence:	0	\$825	\$0.00
b.	0	\$967	\$0.00
9. a. History of noncompliance:	0	\$825	\$0.00
b.	0	\$967	\$0.00
10. a. Unique factors:	0	\$825	\$0.00
b.	0	\$967	\$0.00

*Justification for Degree of Cooperation/ Non-cooperation:*

Based on information presently available to EPA, no adjustment was made.

*Justification for Degree of Willfulness or Negligence:*

No adjustment was made.

*Justification for History of Noncompliance:*

No adjustment was made.

*Justification for Unique Factors:*

No adjustment was made.

**Part 5: Gravity-Based Component**

11.a. Adjusted Matrix Value (AMV) for Pre-March 15, 2004 period of violation: (line 6a. plus any Dollar Adjustment in lines 7a. through 10a.:  $\$825 + 0 = \$825$ . Multiply by 2 Tanks=  $\$1,650$

b.. Adjusted Matrix Value (AMV) for Post-March 15, 2004 period of violation: (line 6.b. plus Dollar Adjustment in lines 7b. through 10b.):  $\$967 + 0 = \$967$ . Multiply by 2 Tanks =  $\$1,934$ .

12. Level of Environmental Sensitivity: Low  
Environmental Sensitivity Multiplier (ESM): 1.5

*Justification for Level of Environmental Sensitivity:*

The Environmental Sensitivity Multiplier for this violation was determined to be “moderate”, corresponding to a sensitivity level of 1.5. The Puerto Rico North Coast Aquifer extends from the north coast into the area around the Facility. Since the aquifer is in the general area of the Facility, any releases of product from Respondent’s UST systems could impact the aquifer.

13. Days of Non-compliance Multiplier (DNM): (1,640 days of violation) = 6.0

Pre-3/15/04 component of DNM: 1.5 (166 days of violation)

Post-3/15/04 component of DNM: 4.5 (1,626 days of violation). The post-3/15/04 component of DNM, which is 4.5, was calculated by subtracting the pre-3/15/04 component (1.5) from the DNM for the entire Period (6.0). (This methodology avoids the use of a higher DNM multiplier than appropriate).

14. Gravity-based Component:

Pre-March 15, 2004 violation period:  $\$1,650$  (AMV) x 1.5 (ESM) x 1.5 (DNM)= $\$3712.50$

Post-March 15, 2004 violation period:  $\$1,934$  (AMV) x 1.5 (ESM) x 4.5 (DNM)=  $\$13054.50$

Total Gravity Based Penalty:  $\$16,767$

**Part 6: Initial Penalty Target Figure**

15. Economic Benefit Component (from line 3):  $\$39,560$   
16. Gravity-Based Component (from line 14):  $\$16,767$

**17. Initial Penalty Target Figure (line 15 plus 16):  $\$56,327$**

**Count 3: Respondent's Failure to Provide Required Release Detection Monitoring for UST System Tanks 1 and 2**

**Part 1: Background**

Facility in violation: Veterans Administration Caribbean Healthcare System

<u>Violation:</u>	<u>Regulation</u> Rule 402 of PRUSTR	<u>Non-compliance</u> Failure to provide required release detection monitoring for UST System 1 and 2 Tanks.
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Penalty Calculation Period:  
Date Gravity-based Penalty Calculations Started: Violation started on September 23, 2003, ten years after September 23, 1993, the date of UST installation. The release detection method employed by Respondent was no longer compliant after ten years.

Date Gravity-based Penalty Calculations Ended: Violation ended approximately March 15, 2008. Respondent requested to provide date.

- 1. Days of Noncompliance for Gravity-Based Penalty: 1,635 days
- 2. Number of Tanks: 2

**Part 2: Economic Benefit Component / Cost Savings**

3. Capital Costs:	\$0	Basis: N/A
4. One-Time Non-depreciable Expenditure:	\$0	Basis: N/A
5. Avoided Costs (Annual Expenditure):	\$720	Basis: Per another Respondent in PR, 24 samples at \$30/sample
6. Economic Benefit Component:	\$3,349	Basis: BEN model v. 4.3

*Justification of Economic Benefit Component / Cost Savings:*

The economic benefit component, calculated with the BEN computer model, is more accurately categorized as "cost savings" for Federal facilities. The period of non-compliance begins ten years after the date of UST installation (September 23, 1993), that is, September 23, 2003. The assumption of a March 15, 2008 compliance date will be verified with Respondent.

**Part 3: Matrix Value for the Gravity-Based Component**

4. Matrix Value (MV):	\$1,500
5. All-Tank MV (lines 2 times line 4)	\$3,000

Inflation Adjustment Rule:

6. a.  $\$1,500 \times 1.10$  (inflation adjustment for pre-March 15, 2004) = \$1,650.

6. b.  $\$1,500 \times 1.2895$  (inflation adjustment for post March 15, 2004) = \$1,934.

See Modifications to EPA Penalty Policies to Implement the Civil Monetary Penalty Inflation Adjustment Rule (Pursuant to the Debt Collection Improvement Act of 1996, Effective October 1, 2004).

Potential for Harm: Major

Extent of Deviation: Major

*Justification for Potential for Harm:* The potential for harm resulting from this violation was determined to be "Major." Respondent's failure to provide a release detection system for its existing UST systems can result in a release into the environment of product stored in the UST systems.

*Justification for Extent of Deviation:* The extent of deviation was determined to be "Major." Respondent exhibited a total lack of compliance with this requirement for the time period in which the penalty is being sought, and per EPA guidance.

**Part 4: Violator-Specific Adjustments to Matrix Value**

Note: Lines 7a., 8a., 9.a. and 10.a., below, have the Matrix Value of \$1650, which reflects an inflation adjustment increase of 10% for pre-March 15, 2004 period. Lines 7 a., 8.b., 9.b., and 10 b., below, have the Matrix Value of \$1934, which reflects an inflation adjustment increase of 17.23% for post-March 15, 2004 period.

	% Change (+/-) MV	Matrix Value	Total Dollar Adjustment
7. a. Degree of cooperation or non-cooperation:	0	\$1,650	\$0.00
b.	0	\$1,934	\$0.00
8. a. Degree of willfulness or negligence:	0	\$1,650	\$0.00
b.	0	\$1,934	\$0.00
9.a. History of noncompliance:	0	\$1,650	\$0.00
b.	0	\$1,934	\$0.00
10. a. Unique factors:	0	\$1,650	\$0.00
b.	0	\$1,934	\$0.00

*Justification for Degree of Cooperation/ Non-cooperation:*

Based on information presently available to EPA, no adjustment was made.

*Justification for Degree of Willfulness or Negligence:*

No adjustment was made.

*Justification for History of Noncompliance:*

No adjustment was made.

*Justification for Unique Factors:*

No adjustment was made.

**Part 5: Gravity-Based Component**

11.a. Adjusted Matrix Value (AMV) for Pre-March 15, 2004 period of violation: (line 6a. plus any Dollar Adjustment in lines 7a. through 10.a.:  $\$1,650 + 0 = \$1,650$ . Multiply by 2 Tanks =  $\$3,300$

b.. Adjusted Matrix Value (AMV) for Post-March 15, 2004 period of violation: (line 6.b. plus Dollar Adjustment in lines 7b. through 10.b.:  $\$1,934 + 0 = \$1,934$ . Multiply by 2 Tanks =  $\$3,868$

12. Level of Environmental Sensitivity: Moderate  
Environmental Sensitivity Multiplier (ESM): 1.5

*Justification for Level of Environmental Sensitivity:*

The Environmental Sensitivity Multiplier for this violation was determined to be “moderate”, corresponding to a sensitivity level of 1.5. The Puerto Rico North Coast Aquifer extends from the north coast into the area around the Facility. Since the aquifer is in the general area of the Facility, any releases of the Facility, product from Respondent’s UST systems would impact the aquifer.

13. Days of Non-compliance Multiplier (DNM): (1,635 days of violation) = 6.0

Pre-3/15/04 component of DNM: 1.5 (174 days of violation).

Post-3/15/04 component of DNM: 4.5 (1,461 days of violation).

The post-3/15/04 component of DNM, which is 4.5, was calculated by subtracting the pre-3/15/04 component (1.5) from the DNM for the entire Period (6.0). (This methodology avoided the use of a higher DNM multiplier than appropriate).

14. Gravity-based Component:

Pre-March 15, 2004 violation period:  $\$3,300$  (AMV) x 1.5 (ESM) x 1.5 (DNM) =  $\$7,425$

Post-March 15, 2004 violation period:  $\$3,868$  (AMV) x 1.5 (ESM) x 4.5 (DNM) =  $\$26,109$

Total Gravity-Based Penalty:  $\$33,534$

**Part 6: Initial Penalty Target Figure**

15. Economic Benefit Component (from line 3):  $\$3,349$

16. Gravity-Based Component (from line 14):  $\$33,534$

**17. Initial Penalty Target Figure (line 15 plus 16):  $\$36,883$**

**Count 4: Respondent's Failure to Maintain Release Detection Records for UST System 3 Tank**

**UST System 3**

**Part 1: Background**

Facility in violation: Veterans Administration Caribbean Healthcare System

<u>Violation:</u>	<u>Regulation</u> Rule 402 and 406 of PRUSTR	<u>Non-compliance</u> Failure to maintain required release detection monitoring for UST Systems 3.
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Penalty Calculation Period:

Date Gravity-based Penalty Calculations Started: Violation started on February 13, 2007, i.e., twelve months prior to the EPA inspection on February 13, 2008.

Date Gravity-based Penalty Calculations Ended: February 13, 2008

1. Days of Noncompliance for Gravity-Based Penalty: 365 days
2. Number of Tanks: 1

**Part 2: Economic Benefit Component / Cost Savings**

3. Economic Benefit – Not assessed at this time.

**Part 3: Matrix Value for the Gravity-Based Component**

4. Matrix Value (MV): \$1,500

5. All-Tank MV (lines 2 times line 7) \$1,500

Inflation Adjustment Rule:

6.  $\$1,500 \times 1.2895$  (inflation adjustment for post March 15, 2004) = \$1,934.

See Modifications to EPA Penalty Policies to Implement the Civil Monetary Penalty Inflation Adjustment Rule (Pursuant to the Debt Collection Improvement Act of 1996, Effective October 1, 2004).

Potential for Harm: Major

Extent of Deviation: Major

*Justification for Potential for Harm:* The potential for harm resulting from this violation was determined to be "major." Respondent's failure to maintain adequate release detection records interferes with the ability of Facility management and regulatory agencies to determine whether product is being kept within the UST system and out of the environment.

*Justification for Extent of Deviation:* The extent of deviation was determined to be “major.” Respondent exhibited a total lack of compliance with this requirement for the time period in which the penalty is being sought.

**Part 4: Violator-Specific Adjustments to Matrix Value**

	% Change (+/-) MV	Matrix Value	Total Dollar Adjustment
7. Degree of cooperation or non-cooperation:	0	\$1,934	\$0.00
8. Degree of willfulness or negligence:	0	\$1,934	\$0.00
9. History of noncompliance:	0	\$1,934	\$0.00
10. Unique factors:	0	\$1,934	\$0.00

*Justification for Degree of Cooperation/ Non-cooperation:*  
Based on information presently available to EPA, no adjustment was made.

*Justification for Degree of Willfulness or Negligence:*  
No adjustment was made.

*Justification for History of Noncompliance:*  
No adjustment was made.

*Justification for Unique Factors:*  
No adjustment was made.

**Part 5: Gravity-Based Component**

11. Adjusted Matrix Value (AMV) for Post-March 15, 2004 period of violation: (line 6. plus Dollar Adjustment in lines 7 through 10):  $\$1,934 + 0 = \$1,934$ . Multiply by 1 UST system =  $\$1,934$

12. Level of Environmental Sensitivity: Moderate  
Environmental Sensitivity Multiplier (ESM): 1.5

*Justification for Level of Environmental Sensitivity:*  
The Environmental Sensitivity Multiplier for this violation was determined to be “moderate”, corresponding to a sensitivity level of 1.5. The Puerto Rico North Coast Aquifer extends from the north coast into the area around the Facility. Since the aquifer is in the general area of the Facility, any releases of product from Respondent’s UST systems would impact the aquifer.

13. Days of Non-compliance Multiplier (DNM): (365 days of violation) = 2.5

14. Gravity-based Component:

Post-March 15, 2004 violation period:  $\$1,934 \text{ (AMV)} \times 1.5 \text{ (ESM)} \times 2.5 \text{ (DNM)} = \$7,253$

Total Gravity Based Penalty: \$7,253

**Part 6: Initial Penalty Target Figure**

15. Economic Benefit Component (from line 3): \$0

16. Gravity-Based Component (from line 14): \$7,253

17. Initial Penalty Target Figure (line 15 plus 16): **\$7,253**