



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

JUN 30 2008

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REGIONAL HEARING
CLERK

Edward B. Knipling
Administrator
Agricultural Research Service
US Department of Agriculture
Jamie L. Whitten Building
14th & Independence Avenue, SW
Washington, DC 20250

Darrell F. Cole
Area Director
South Atlantic Area
Agricultural Research Service
U.S. Department of Agriculture
950 College Station Road
Athens, GA 30605

Re: **In the Matter of U.S. Department of Agriculture - Agricultural Research Service -
Tropical Agriculture Research Stations Mayaguez and Isabela, Puerto Rico
Docket No. RCRA-02-2008-7505**

Dear Sirs:

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

Internet Address (URL) • <http://www.epa.gov>

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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: Ricardo Goenaga
Research Leader
Tropical Agriculture Research Station
Agricultural Research Service
US Department of Agriculture
2200 Pedro Albizu Campos Avenue, Suite 201
Mayaguez, Puerto Rico 00680-5470

Kirk Minckler, Esq.
Office of General Counsel
US Department of Agriculture

740 Simms Street, Suite 309
Golden, Colorado 80401-4720

Karen Maples, Regional Hearing Clerk (without enclosures)
Wanda Garcia Ayala, PREQB

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG.11
2003 JUL -9 PM 4: 09
REGIONAL HEARING
CLERK

In the Matter of

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

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-02-2008-7505

COMPLAINT

This is a civil administrative proceeding instituted pursuant to Section 9006 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act ("RCRA"), the Hazardous and Solid Waste Amendments of 1984 ("HSWA"), the Superfund Amendments and Reauthorization Act of 1986 ("SARA"), 42 U.S.C. §§6901 *et seq.*, the Federal Facility Compliance Act of 1992, and the Energy Policy Act of 2005, 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, alleges the following:

1. Respondent is the U.S. Department of Agriculture, Agricultural Research Service ("Respondent"). 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 the Puerto Rico Underground Storage Tank Regulation (hereinafter "PRUSTR").
3. Respondent is the "owner" and "operator" of "underground storage tank" 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 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 also referred to as the “Facilities”).

4. Respondent owns and operates two UST systems at the Mayaguez Facility which were installed in 1994 and two UST systems at the Isabela Facility which were installed in 1992.
5. Pursuant to §§ 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 promulgated Underground Storage Tank Regulations on November 7, 1990, setting forth requirements for owners and operators of UST Systems.
6. 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. 4589 (Jan. 30, 1998).
7. 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 282.102.
8. 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.
9. 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 issued notice to the Commonwealth of Puerto Rico pursuant to Section 9006(a)(2), 42 U.S.C. Section 6991e(a)(2) prior to issuing the administrative Complaint in this proceeding.
10. On or about April 18, 2007, pursuant to Section 9005 of the Act, 42 U.S.C. § 6991d, two authorized representatives of EPA (“Representatives”) inspected the Facilities. 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 (“April 2007 Inspection”).
11. On or about July 20, 2007, EPA sent Respondent one letter containing the following attachments: one Information Request Letter (“Information Request Letter”) for each of the Facilities and one Notice of Violation (“NOV”) for each of the Facilities, which were issued pursuant to Sections 9005(a) and 9006 of the Act, 42 U.S.C. §6991d(a) and 42 U.S.C. §6991e, respectively.

12. 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 NOV's. EPA's NOV's listed UST violations that were identified by EPA during the April 2007 Inspection.
13. On or about September 24, 2007, Respondent submitted to EPA a response to the NOV's and Information Request Letter ("September 24, 2007 Response"). In addition, on or about February 29, 2008, Respondent submitted to EPA a follow-up response ("February 29, 2008 Follow-up Response").
14. During the April 2007 Inspection and for all time periods relevant to this 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.
15. During the April 2007 Inspection and for all time periods relevant to this Complaint, all of the UST systems at the Facilities were "petroleum UST systems" as that term is defined in Rule 105 of PRUSTR.

Count 1

**Respondent's Failure to Provide Corrosion Protection for Steel Piping
in Contact with Ground**

16. Paragraphs 1 through 15 are realleged and incorporated herein.
17. Pursuant to Rule 201 (B) of PRUSTR, "The piping that routinely contains regulated substance and is in contact with the ground must be properly designed, constructed, and protected from corrosion in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory ..." as further specified in the Rule.
18. During the April 2007 Inspection, the EPA Representatives observed bare steel piping from the fuel dispensers in direct contact with the ground at the two UST systems at the Mayaguez Facility and at the two UST systems at the Isabela Facility, but the EPA Representatives did not observe any form of corrosion protection for the UST piping. In response to the EPA Representatives' oral request for documentation and records, Facility representatives could not provide any corrosion protection records.

19. The bare steel piping from the fuel dispensers in direct contact with the ground at the Facilities, as mentioned in paragraph 18 above, routinely contained regulated substances, including gasoline and diesel fuel.
20. EPA's NOV's cited the corrosion protection violations at the Facilities. In addition, EPA's Information Request Letters specifically asked Respondent for records of corrosion protection and the last two tests for its systems at the Facilities.
21. In its September 24, 2007 Response, Respondent did not include any corrosion protection records regarding the Isabela Facility. In its answer to EPA's question as to how Respondent was going to correct the violation, Respondent stated that, "Once the current construction upgrades are completed we believe that the tanks will be in full compliance and no further action on this specific item will be required."
22. In its September 24, 2007 Response, Respondent did not include any corrosion protection records regarding the Mayaguez Facility and stated that, "Records for cathodic protection testing do not exist." In its answer to EPA's question as to how Respondent was going to correct the violation, Respondent further stated that, "After the upgrades are completed steel pipes will no longer be a component of the system and therefore, cathodic protection will not be required."
23. In its February 29, 2008 Follow-up Response, Respondent stated regarding the Isabela Facility that "An inspection of the dispensers shows that the vertical section of the pipe directly beneath each dispenser is metal."
24. In its February 29, 2008 Follow-up Response, Respondent stated regarding the Mayaguez Facility that "It does appear that the vertical lines beneath each dispenser (approximately two feet long each) are metal."
25. For the period of time beginning with the effective date for upgrade requirements (December 22, 1998) until the time of the April 2007 Inspection, Respondent failed to provide corrosion protection for steel piping in contact with the ground at the Mayaguez and Isabela Facilities as required by Rule 201 (B) of PRUSTR.
26. Respondent's failure to provide corrosion protection for steel piping in contact with the ground at the Mayaguez and Isabela Facilities constitutes violations of Rule 201 (B) of PRUSTR.

Count 2

Respondent's Failure to Conduct Release Detection and to Maintain Release Detection Records of Tanks

27. Paragraphs 1 through 26 are realleged and incorporated herein.
28. Pursuant to Rule 402 (A) of PRUSTR, owners and operators of petroleum UST Systems must monitor tanks at least every thirty (30) days for releases using one of the methods listed in Rule 404 (D) – (H).
29. 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).
30. Pursuant to Rule 406 of PRUSTR, owners and operators of UST systems must maintain records of recent compliance with release detection requirements in accordance with Rule 305 of PRUSTR demonstrating compliance with all applicable requirements of Part IV (Release Detection).
31. Pursuant to Rule 406(B), owners and operators of UST systems must maintain the results of any sampling, testing, or monthly release detection monitoring for at least one year.
32. 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 Environmental Quality Board; or (2) at a readily available alternative site and be provided for inspection to the Environmental Quality Board upon request.
33. Pursuant to Rule 404 (D) of PRUSTR, automatic tank gauging (“ATG”) is a method of release detection for tanks.
34. During the April 2007 Inspection, the EPA Representatives observed that the two UST systems at the Mayaguez Facility and the two UST systems at the Isabela Facility, were connected to ATG equipment.
35. During the April 2007 Inspection, EPA Representatives observed that the ATG equipment mentioned in paragraph 34 above, was not performing release detection.
36. During the April 2007 Inspection, after EPA Representatives’ oral request, Respondent’s representatives did not provide any release detection records for the two USTs at the Mayaguez Facility and the two USTs at the Isabela Facility.
37. In its July 20, 2007 Information Request Letter, EPA specifically requested release detection records for one year for the two UST systems at the Mayaguez Facility and the two UST systems at the Isabela Facility.
38. In its September 24, 2007 Response, Respondent did not provide records showing that release detection had been performed at the two USTs at the Mayaguez Facility and the two USTs at the Isabela Facility prior to the April 2007 Inspection.

39. In its September 24, 2007 Response, Respondent stated regarding the Isabela Facility that the existing leak detection monitors were installed and placed into operation in September 2006 but that “the contractor did not program the equipment to conduct periodic leak tests.”
40. In its September 24, 2007 Response, Respondent stated regarding the Mayaguez Facility that the existing leak detection monitors were installed and placed into operation in September 2006 but that “the contractor did not program the equipment to conduct periodic leak tests.”
41. On or about May 30, 2008, one of the EPA Representatives sent an e-mail to a representative of Respondent asking for the method of release detection used by Respondent at the Facilities before the present ATG systems were installed in 2006. In his reply e-mail, Respondent’s representative stated that “a system was installed at Mayaguez and Isabela at the time of the installation of the USTs (early 90’s)...” and that “...the system never worked....”
42. Beginning with the effective date for upgrade requirements (December 22, 1998) until the time of the April 2007 Inspection, Respondent failed to monitor monthly for releases the two USTs at the Mayaguez Facility and the two USTs at the Isabela Facility.
43. Between at least April 2006 and the April 2007 Inspection, Respondent failed to monitor monthly for releases the two USTs at the Mayaguez Facility and the two USTs at the Isabela Facility and failed to maintain records of release detection for the two USTs at the Mayaguez Facility and the two USTs at the Isabela Facility.
44. Respondent’s failures to conduct release detection at the two USTs at the Mayaguez Facility and the two USTs at the Isabela Facility constitute violations of Rule 402(A) of PRUSTR.
45. Respondent’s failures to maintain the results of at least one year of release detection at the two USTs at the Mayaguez Facility and the two USTs at the Isabela Facility constitute violations of Rule 305(B)(4), Rule 305(C), and Rule 406 of PRUSTR.

Count 3

Respondent’s Failure to Conduct Release Detection and to Maintain Release Detection Records of Piping

46. Paragraphs 1 through 45 are realleged and incorporated herein.

47. Pursuant to Rule 402 (B) of PRUSTR, the owner or operator of an UST system must monitor underground piping that routinely contains substances for release. Pursuant to Rule 402 (B) (2) of PRUSTR, underground piping that conveys regulated substances under suction must either have a line tightness test conducted at least every three (3) years and in accordance with Rule 405 (B), or use a monthly monitoring method conducted in accordance with Rule 405 (C) and Rule 404 (E) – (H). Pursuant to Rule 402 (B) (2) of PRUSTR, no release detection is required for suction piping that is designed and constructed to meet both of the following standards: pursuant to Rule 402 (B) (2) (c), only one check valve is included in each suction line and pursuant to Rule 402 (B) (2) (d), the check valve is located directly below and as close as practical to the suction pump.
48. Pursuant to Rule 305 (B) (4), owners and operators of UST Systems must maintain records of recent compliance with release detection requirements (Rule 406).
49. Pursuant to Rule 406 of PRUSTR, owners and operators of UST systems must maintain records of recent compliance with release detection requirements in accordance with Rule 305 of PRUSTR demonstrating compliance with all applicable requirements of Part IV (Release Detection).
50. Pursuant to Rule 406 (B), owners and operators of UST systems must maintain the results of any sampling, testing, or monthly release detection monitoring for at least one year.
51. 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 Environmental Quality Board; or (2) at a readily available alternative site and be provided for inspection to the Environmental Quality Board upon request.
52. At the time of the April 2007 EPA Inspection, Respondent stated that it had suction pipes at the two UST systems at the Mayaguez Facility and the two UST systems at the Isabela Facility. After EPA's Representatives oral request, Respondent was not able to provide documentation to the EPA Representatives showing the number and position of any check valves at those UST systems.
53. At the time of the April 2007 EPA Inspection, Respondent stated that it did not perform any type of release detection for the pipes.
54. In its July 20, 2007 Information Request Letter, EPA specifically requested release detection records for one year for the two UST systems at the Mayaguez Facility and the two UST systems at the Isabela Facility.
55. In its September 24, 2007 Response, Respondent did not provide to EPA any records showing that Respondent had conducted release detection of piping for the two UST systems at the Mayaguez Facility and the two UST systems at the Isabela Facility.

56. In its September 24, 2007 Response, Respondent provided to EPA a copy of "Notification for Underground Storage Tanks" from Respondent to the Environmental Quality Board ("EQB") in Puerto Rico regarding the UST systems at the Mayaguez Facility. The notification is dated September 20, 2007 and states that the two UST systems at the Mayaguez Facility have suction pipes with valves at the tanks.
57. In its September 24, 2007 Response, Respondent provided to EPA a copy of "Notification for Underground Storage Tanks" from Respondent to the EQB regarding the UST systems at the Isabela Facility. The notification is dated March 15, 1994 and states that the two UST systems at the Isabela Facility have suction pipes with valves at the tanks.
58. Respondent has not established that the two UST systems at the Mayaguez Facility and two UST systems at the Isabela Facility qualified for an exemption from the requirement to perform release detection for the piping under Rule 402 (B) (2) of PRUSTR.
59. Respondent had to monitor the piping for releases pursuant to Rule 402 (B) of PRUSTR.
60. For the period of time beginning with the effective date for upgrade requirements (December 22, 1998) until the time of the April 2007 Inspection, Respondent failed to perform a line tightness test at least every three (3) years in accordance with Rule 405 (B) of PRUSTR for the piping at the Mayaguez and Isabela Facilities.
61. For the period of time beginning with the effective date for upgrade requirements (December 22, 1998) until the time of the April 2007 Inspection, Respondent failed to use a monthly monitoring method in accordance with Rule 405 (C) and Rule 404 (E) – (H) for the piping at the Mayaguez and Isabela Facilities as required by Rule 402 (B) (2) of PRUSTR.
62. Between at least April 2006 and the April 2007 Inspection, Respondent failed to perform a line tightness test or to monitor monthly for releases the piping of two UST systems at the Mayaguez Facility and the two UST systems at the Isabela Facility and failed to maintain records of release detection for the piping of the two UST systems at the Mayaguez Facility and the two UST systems at the Isabela Facility.
63. Respondent's failures to perform a line tightness test at least every three (3) years, or use a monthly monitoring release detection method for the piping at the two UST systems at the Mayaguez Facility and the two UST systems at the Isabela Facility constitute violations of Rule 402 (B) of PRUSTR.
64. Respondent's failures to maintain the results of at least one year of release detection for the piping of the two UST systems at the Mayaguez Facility and the two UST systems at

the Isabela Facility constitute violations of Rule 305(B)(4), Rule 305(C), and Rule 406 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 Respondents 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> | Respondent's Failure to Provide Corrosion Protection for Steel Piping in Contact with Ground | \$31,253 |
| <u>Count 2:</u> | Respondent's Failure to Conduct Release Detection and to Maintain Release Detection Records of Tanks | \$38,685 |
| <u>Count 3:</u> | Respondent's Failure to Conduct Release Detection and to Maintain Release Detection Records of Piping | \$38,685 |

Total Proposed Penalty Amount

\$108,623

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 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), 305 (B) (4), 305 (C), 402, and 406 for the UST systems at the Mayaguez and Isabela Facilities.
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.

Signature of Authorized Representative of Respondent

Name

Title

Respondent shall submit the documents specified above to:

**Charles Zafonte
Enforcement Officer
U.S. EPA Region 2
Compliance and Program Support Branch
290 Broadway, 21st 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 Answers 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 their 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 Answers raise 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)] Answers 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(c).

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:

Rudolph Perez
Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th floor
New York, New York 10007-1866
(212) 637-3220

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 their 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 want 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: June 30, 2008



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

TO:

Edward B. Knipling
Administrator
Agricultural Research Service

Darrell F. Cole
Area Director
South Atlantic Area
Agricultural Research Service

Enclosures

cc: Ricardo Goenaga
Research Leader
Tropical Agriculture Research Station
Agricultural Research Service
US Department of Agriculture
2200 Pedro Albizu Campos Avenue, Suite 201
Mayaguez, Puerto Rico 00680-5470

Kirk Minckler, Esq.
Office of General Counsel
US Department of Agriculture
740 Simms Street, Suite 309
Golden, Colorado 80401-4720

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-02-2008-7505, and a copy of the Consolidated Rules of Practice, 40 C.F.R. Part 22, by certified mail, return receipt requested, to:

Edward B. Knipling
Administrator
Agricultural Research Service
US Department of Agriculture
Jamie L. Whitten Building
14th & Independence Avenue, SW
Washington, DC 20250

Darrell F. Cole
Area Director
South Atlantic Area
Agricultural Research Service
U.S. Department of Agriculture
950 College Station Road
Athens GA 30605

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

Dated: JUL - 9, 2008


New York, New York

Enclosure:
Penalty Computation Worksheets for the proposed civil penalties

(See file UST Table)

UST SYSTEMS LOCATED at TARS¹ in MAYAGUEZ and ISABELA

UST System	Capacity (gallons)	Stored Substance & Use
TARS Mayaguez Tank 1	5,000	Gasoline for fueling fleet vehicles, farm equipment, lawn mowers and grounds maintenance equipment.
TARS Mayaguez Tank 2	2,000	Diesel for fueling fleet vehicles, farm trucks, tractors and emergency generator.
TARS Isabela Tank 1	2,500	Gasoline for fueling fleet vehicles.
TARS Isabela Tank 2	2,500	Diesel for farm tractors.

¹ Tropical Agriculture Research Station.

Enclosure II
PENALTY COMPUTATION WORKSHEET

Count 1: Respondent's Failure to Provide Corrosion Protection for Steel Piping in Contact with Ground

UST System: Two UST systems each at Mayaguez and Isabela, PR Respondent: U.S. Department of Agriculture

Part 1: Background

Facility in violation: U.S. Department of Agriculture, TARS, Mayaguez and Isabela, Puerto Rico

<u>Violation:</u>	<u>Regulation</u> PRUSTR Rule 201 (B)	<u>Non-compliance</u> Respondent's Failure to Provide Corrosion Protection for Steel Piping in Contact with Ground
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Penalty Calculation Period:

Date Gravity-based Penalty Calculations Started: December 22, 1998

Date Gravity-based Penalty Calculations Ended: Some time after November 2007, when violation was to be resolved. (12/1/2007 For purposes of this calculation)

- | | |
|---|-----------------------------|
| 1. Days of Noncompliance for Gravity-Based Penalty: | Statutory maximum (5 years) |
| 2. Number of UST Systems: | 4 |

Part 2: Economic Benefit Component / Cost Savings

- | | | |
|--|--------------|-------------------------------|
| 3. Capital Costs/facility: | \$de minimis | Basis: engineering knowledge* |
| 4. One-Time Non-depreciable Expenditure: | \$0 | Basis: N/A |
| 5. Avoided Costs (Annual Expenditure): | \$0 | Basis: N/A |
| 6. Economic Benefit (EB) Component: | \$0 | Basis: N/A |

* **The information provided by Respondent to EPA indicated that** the length of metal pipe in contact with the ground was a few feet. Taking this information into consideration, the potential for an economic benefit was based not on providing cathodic protection, but on the much cheaper alternative of extending the fiberglass piping up into the dispenser sump. This economic benefit of this cost is de minimis.

Part 3: Matrix Value for the Gravity-Based Component

Potential for Harm: Major Extent of Deviation: Minor

Justification for Potential for Harm:

The potential for harm resulting from this violation was determined to be "major" per

EPA guidance. Piping is frequently the source of leaks from UST systems; hence there is a need to protect pipes from corroding to the point where releases of regulated substances to the environment might occur. Failure to provide corrosion protection poses a substantial and continuing risk of a release and may also have a substantial adverse effect on the regulatory program.

Justification for Extent of Deviation:

The extent of deviation for this violation was determined to be “minor” per EPA guidance. The tanks and the majority of the piping was fiberglass piping; only the vertical section of piping below the dispenser was determined to be steel.

- 7. Matrix Value (MV): \$500
- 8. Inflation Adjustment Rule: Pre 3/15/04 = 1.1
Post 3/15/04 = 1.2895

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) (September 21, 2004 memo)

- 9. MV for all tank systems (line 2 x line 7): \$2,000

Part 4: Violator-Specific Adjustments to Matrix Value

	% Change (+/-) MV	Matrix Value	Total Dollar Adjustment
10. Degree of cooperation or non-cooperation:	0	\$2,000	\$0.00
11. Degree of willfulness or negligence:	0	\$2,000	\$0.00
12. History of noncompliance:	0	\$2,000	\$0.00
13. Unique factors:	0	\$2,000	\$0.00
14. Adjusted Matrix Value (AMV):	0	\$2,000	\$0.00

Justification for Degree of Cooperation/ Non-cooperation:

EPA is not currently aware of any cooperative or good faith efforts on the part of the Respondent. No adjustment was made either positive or negative for this violation.

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.

AMV = TMV + Dollar Adjustments

Part 5: Gravity-Based Component

Level of Environmental Sensitivity: High

Justification for Level of Environmental Sensitivity:

The Environmental Sensitivity Multiplier for this violation was determined to be “high”, corresponding to a sensitivity level of 2.0. US Geological Survey (USGS) Water Resources data indicate that the Puerto Rico North Coast Limestone Aquifer, which is the principal source of water for most municipalities and industries in the area, extends under the Isabela site.

The USGS Water Resources Survey of Mayaguez indicates that the city uses well water within the city, encompassing the TARS site. Ref: “Hydrogeologic Terranes, Selected Subbasins Geophysical Transects, Lineament Traces and Well Locations within Municipio of Mayaguez, Puerto Rico” – Jesus Rodriguez-Martinez, 2004.

15. Environmental Sensitivity Multiplier (ESM): 2.0

16. Days of Noncompliance Multiplier (DNM): 6.5 (5 years)
Pre 3/14/04 – 3.0
Post 3/14/04 – 3.5

The post 3/15/04 component of the DNM (3.5), was calculated by subtracting the pre 3/15/04 component (3.0 based on 470 days) from the DNM for the entire period (6.5 based on 5 years). This method avoids the use of a higher DNM multiplier than is appropriate.

17. Gravity-based Component: \$31,253

Gravity-based Component = AMV x ESM x DNM x inflation adjustments

Pre 3/15/04 inflation adjustment of 1.1 (DNM = 3.0):
 $\$2000 \times 2 \times 3.0 \times 1.1 = \$13,200$

Post 3/15/04 inflation adjustment 1.2895 (DNM = 3.5):
 $\$2000 \times 2 \times 3.5 \times 1.2895 = \$18,053$

Part 6: Initial Penalty Target Figure

18. Economic Benefit Component: \$0
19. Gravity-Based Component: \$31,253
20. Initial Penalty Target Figure: \$31,253

Count 2: Respondent's Failure to Conduct Monthly Release Detection and to Maintain Release Detection Records of Tanks

UST System: Two UST systems each at Mayaguez Respondent: U.S. Department of Agriculture and Isabela, PR

Part 1: Background

Facility in violation: U.S. Department of Agriculture, TARS, Mayaguez and Isabela, Puerto Rico

<u>Violation:</u>	<u>Regulation</u>	<u>Non-compliance</u>
	PRUSTR Rule 402(A), Rule 305(B)(4) and (C), and Rule 406	Failure to monitor monthly for releases from tanks and to maintain the resulting records.

Penalty Calculation Period:

Date Gravity-based Penalty Calculations Started: March 2006

Date Gravity-based Penalty Calculations Ended: March 2007

1. Days of Noncompliance for Gravity-Based Penalty: 365 Days
Despite EPA's request for release detection records for one year, no release detection records were made available.

2. Number of UST Systems: 4

Part 2: Economic Benefit Component / Cost Savings

3. Capital Costs:	\$de minimis	Basis: *
4. One-Time Non-depreciable Expenditure:	\$0	Basis: N/A
5. Avoided Costs (Annual Expenditure):	\$0	Basis: N/A
6. Economic Benefit Component:	\$0	Basis: N/A

* Respondent had installed automatic tank gauges and other monitors, but did not use them to monitor the tanks. The additional cost to use the automatic tank gauges would have been nominal, and its economic benefit would have been de minimis.

Part 3: Matrix Value for the Gravity-Based Component

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

8. Inflation Adjustment Rule:
\$1,500 x 1.2895 (inflation adjustment): \$1,934.25

9. MV for all tank systems (line 2 x line 8) \$7,737

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” in accordance with EPA penalty guidance. Failure to detect and respond to releases to the environment poses a substantial risk of harm to the environment since releases may go unnoticed for a lengthy period of time. Failure to maintain release detection records also has a substantial adverse effect on the regulatory program as it is often the only way for the regulatory agencies to ensure that monthly release detection has been performed.

Justification for Extent of Deviation:

The extent of deviation for this violation was determined to be “major” in accordance with EPA penalty guidance. Although Veeder-Root ATG systems had been installed, they were neither set up nor programmed to perform release detection; neither was any documentation maintained to indicate that release detection was performed for the USTs.

Part 4: Violator-Specific Adjustments to Matrix Value

	% Change (+/-) MV	Matrix Value	Total Dollar Adjustment
10. Degree of cooperation or non-cooperation:	0	\$7,737	\$0.00
11. Degree of willfulness or negligence:	0	\$7,737	\$0.00
12. History of noncompliance:	0	\$7,737	\$0.00
13. Unique factors:	0	\$7,737	\$0.00
14. Adjusted Matrix Value (AMV):	0	\$7,737	\$0.00

Justification for Degree of Cooperation/ Non-cooperation:

EPA is not currently aware of any cooperative or good faith efforts on the part of the Respondent. No adjustment was made either positive or negative for this violation.

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.

$$\underline{AMV = TMV + Dollar Adjustments}$$

Part 5: Gravity-Based Component

Level of Environmental Sensitivity: High

Justification for Level of Environmental Sensitivity: The Environmental Sensitivity Multiplier for this violation was determined to be “high”, corresponding to a sensitivity level of 2.0. US Geological Survey (USGS) Water Resources data indicate that the Puerto Rico North Coast Limestone Aquifer, which is the principal source of water for most municipalities and industries in the area, extends under the Isabela site.

The USGS Water Resources Survey of Mayaguez indicates that the city uses well water within the city, encompassing the TARS site. Ref: “Hydrogeologic Terranes, Selected Subbasins Geophysical Transects, Lineament Traces and Well Locations within Municipio of Mayaguez, Puerto Rico” – Jesus Rodriguez-Martinez, 2004.

- 15. Environmental Sensitivity Multiplier (ESM): 2.0
- 16. Days of Noncompliance Multiplier (DNM): 2.5
- 17. Gravity-based Component: \$38,685

Gravity-based Component = AMV (Adjusted for increase after 1/30/97) x ESM x DNM

$$\$7,737 \times 2.0 \times 2.5 = \$38,685$$

Part 6: Initial Penalty Target Figure

- 18. Economic Benefit Component: \$0
- 19. Gravity-Based Component: \$38,685
- 20. Initial Penalty Target Figure: \$38,685**

Count 3: Respondent's Failure to Conduct Monthly Release Detection and to Maintain Release Detection Record of Piping

UST System: Two UST systems each at Mayaguez Respondent: U.S. Department of Agriculture and Isabela, PR

Part 1: Background

Facility in violation: U.S. Department of Agriculture, TARS, Mayaguez and Isabela, Puerto Rico

<u>Violation:</u>	<u>Regulation</u>	<u>Non-compliance</u>
	PRUSTR Rule 402 (B), Rule 305 (B)(4), Rule 305 (C), And Rule 406	Failure to monitor monthly for releases from piping and to maintain the resulting records.

Penalty Calculation Period:

Date Gravity-based Penalty Calculations Started: March 2006

Date Gravity-based Penalty Calculations Ended: March 2007, when release detection began.

1. Days of Noncompliance for Gravity-Based Penalty: 365 Days
Despite EPA's request for release detection records for one year, no release detection records were made available.

2. Number of UST Systems: 4

Part 2: Economic Benefit Component / Cost Savings

3. Capital Costs:	\$de minimis	Basis: *
4. One-Time Non-depreciable Expenditure:	\$0	Basis: N/A
5. Avoided Costs (Annual Expenditure):	\$0	Basis: N/A
6. Economic Benefit Component:	\$0	Basis: N/A

* Respondent had installed automatic tank gauges, but did not use them to monitor the tanks. The additional cost to use the automatic tank gauges would have been nominal.

Part 3: Matrix Value for the Gravity-Based Component

7. Matrix Value (MV):	\$1,500
8. Inflation Adjustment Rule: \$1,500 x 1.2895 (inflation adjustment) :	\$1,934.25
9. MV for all tank systems (line 2 x line 8)	\$7,737

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” in accordance with EPA penalty guidance. Failure to detect and respond to releases to the environment poses a substantial risk of harm to the environment since releases may go unnoticed for a lengthy period of time. Failure to maintain release detection records also has a substantial adverse effect on the regulatory program as it is often the only way for the regulatory agencies to ensure that release detection has been performed.

Justification for Extent of Deviation:

The extent of deviation for this violation was determined to be “major” in accordance with EPA penalty guidance. The two facilities’ suction piping systems failed to meet the exemption requirement for release detection. As such they were required to provide either triennial line tightness testing or monthly monitoring. No records were kept to indicate release detection had been performed on the piping.

Part 4: Violator-Specific Adjustments to Matrix Value

	% Change (+/-) MV	Matrix Value	Total Dollar Adjustment
10. Degree of cooperation or non-cooperation:	0	\$7,737	\$0.00
11. Degree of willfulness or negligence:	0	\$7,737	\$0.00
12. History of noncompliance:	0	\$7,737	\$0.00
13. Unique factors:	0	\$7,737	\$0.00
14. Adjusted Matrix Value (AMV):	0	\$7,737	\$0.00

Justification for Degree of Cooperation/ Non-cooperation:

EPA is not currently aware of any cooperative or good faith efforts on the part of the Respondent. No adjustment was made either positive or negative for this violation.

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.

$$\underline{AMV = TMV + Dollar Adjustments}$$

Part 5: Gravity-Based Component

Level of Environmental Sensitivity: High

Justification for Level of Environmental Sensitivity: The Environmental Sensitivity Multiplier for this violation was determined to be “high”, corresponding to a sensitivity level of 2.0. US Geological Survey (USGS) Water Resources data indicate that the Puerto Rico North Coast Limestone Aquifer, which is the principal source of water for most municipalities and industries in the area, extends under the Isabela site.

The USGS Water Resources Survey of Mayaguez indicates that the city uses well water within the city, encompassing the TARS site. Ref: “Hydrogeologic Terranes, Selected Subbasins Geophysical Transects, Lineament Traces and Well Locations within Municipio of Mayaguez, Puerto Rico” – Jesus Rodriguez-Martinez, 2004.

- 15. Environmental Sensitivity Multiplier (ESM): 2.0
- 16. Days of Noncompliance Multiplier (DNM): 2.5
- 17. Gravity-based Component: \$38,685

Gravity-based Component = AMV (Adjusted for increase after 1/30/97) x ESM x DNM

$\$7,737 \times 2.0 \times 2.5 = \$38,685$

Part 6: Initial Penalty Target Figure

- 18. Economic Benefit Component: \$0
- 19. Gravity-Based Component: \$38,685

- 20. Initial Penalty Target Figure: \$38,685