



United States
Department of
Agriculture

Office of the
General Counsel
Mountain Region

740 Simms Street
Golden, CO 80401
Ph: (303) 275-5555
Fax: (303) 275-5557

Via Express Mail

August 8, 2008

Karen Maples
Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 2
290 Broadway, 16th Floor
New York, NY 10007-1866
Phone: (212) 637-3220

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II
2008 AUG 12 PM 2:22
REGIONAL HEARING
CLERK

Re: USDA ARS Tropical Agriculture Research Station
Mayaguez and Isabela, Puerto Rico
RCRA 02-2008-7505

Ms. Maples:

Enclosed please find the original and one copy of the Agricultural Research Service's Answer in the captioned matter. By copy of this letter, we are providing a copy of the Answer to Rudolph Perez in the EPA Region 2 Office of the Regional Counsel. If you have any questions regarding the Answer or the matter, please feel free to contact me anytime at (303) 275-5549 or at kirk.minckler@usda.gov.

Sincerely,

Kirk Minckler

Enclosures

Copies with enclosure to:

Rudolph Perez
Salvio Torres-Cardona
Earl Griffin
Pete Jovanovich
Ron McClain

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

In the Matter of)

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

Respondent)

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

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II
2009 AUG 12 PM 2:22
REGIONAL HEARING
CLERK

Docket No. RCRA-02-2008-506

ANSWER

Respondent in the captioned matter is the United States Department of Agriculture, Agricultural Research Service, hereinafter referred to as "ARS." ARS responds to the allegations in the United States Environmental Protection Agency's ("EPA") Complaint, Compliance Order and Notice of Opportunity for Hearing ("Complaint") as follows:

1. ARS admits the allegations in Paragraph 1 of the Complaint.
2. The statements in Paragraph 2 are interpretations and conclusions of law associated with the Resource Conservation and Recovery Act ("RCRA") and the Puerto Rico Underground Storage Tank Regulation ("PRUSTR"), to which no response is required. To the extent that there are any factual allegations in Paragraph 2, those allegations are denied.
3. The statements in Paragraph 3 are interpretations and conclusions of law associated with RCRA and the PRUSTR. ARS admits that the address information associated with its Mayaguez and Isabela facilities is accurate. ARS further admits that it owned and operated two UST systems at each of those facilities.
4. ARS notes that the dates alleged in Paragraph 4 are transposed as between the Mayaguez and Isabela facilities. ARS admits that it owned and operated two UST systems its Mayaguez facility, which were installed in 1992. ARS also admits that it owned and operated two UST systems at its Isabela facility, which were installed in 1994.
5. The statements in Paragraphs 5, 6, 7 and 8 are interpretations of RCRA and associated regulations and of Puerto Rico laws, to which no response is required.

9. The statement in the first portion of Paragraph 9 is an interpretation of RCRA and associated regulations, to which no response is required. Regarding the stated notice to the Commonwealth of Puerto Rico, ARS is without knowledge or information sufficient to form a belief as to the truth of the allegation, and on that basis denies the allegation.
10. ARS admits the allegations in the first sentence of Paragraph 10. As to the second sentence, ARS is without knowledge or information sufficient to form a belief as to the truth of the allegation, and on that basis denies the allegation.
11. ARS admits the allegations in Paragraph 11. ARS further notes that Paragraph 11 refers to and characterizes a document, which document speaks for itself and is the best evidence of its contents.
12. ARS admits the allegations in the first sentence of Paragraph 12. ARS further admits that EPA's NOV's stated alleged UST violations. ARS denies all other allegations of Paragraph 12 and notes that Paragraph 12 refers to and characterizes a document, which document speaks for itself and is the best evidence of its contents.
13. ARS admits the allegations of Paragraph 13.
14. ARS admits that, in general terms, the four USTs at its Mayaguez and Isabela facilities have stored either diesel fuel or gasoline from the time they were installed through April 2007. The remaining statements in Paragraph 14 are interpretations of the PRUSTR, to which no response is required.
15. The statements in Paragraph 15 are interpretations and legal conclusions associated the PRUSTR, to which no response is required. To the extent that there any factual allegations in Paragraph 15, those allegations are denied.

Count 1

16. The responses to Paragraphs 1 through 15 are restated and incorporated herein.
17. The statement in Paragraph 17 is a quotation from the PRUSTR, to which no response is required.
18. The first sentence of Paragraph 18 describes observations and impressions of EPA representatives. ARS admits that during the April 2007 Inspection, it did not provide any corrosion protection records to EPA.
19. ARS admits that a very short section of steel piping beneath each of its fuel dispensers was in contact with the ground. ARS further admits that the piping beneath its fuel dispensers routinely contained gasoline and diesel fuel.
20. ARS admits the allegations of Paragraph 20.
21. ARS admits the allegations in the first sentence of Paragraph 21. The second sentence of Paragraph 21 refers to and characterizes a document. That document speaks for itself and is the best evidence of its contents.

22. ARS admits the allegation in the first portion of the first sentence of Paragraph 22. The second portion of the first sentence, and the second sentence of Paragraph 22 refer to and characterize a document. That document speaks for itself and is the best evidence of its contents.
23. Paragraphs 23 and 24 refer to and characterize a document. That document speaks for itself and is the best evidence of its contents.
25. ARS admits that for the period December 22, 1998 to April 2007, there was a short (approximately two feet), vertical section of steel piping beneath each of four fuel dispensers, and that the piping was in contact with the ground. ARS further admits that there was no corrosion protection associated with the short section of pipe beneath each of the four fuel dispensers.
26. Paragraph 26 states a legal conclusion under the PRUSTR, to which no response is required.

Count 2

27. The responses to Paragraphs 1 through 26 are restated and incorporated herein.
28. The statements in Paragraphs 28, 29, 30, 31, 32, and 33 are interpretations of the PRUSTR, to which no response is required.
34. The allegations in Paragraphs 34 and 35 are observations and impressions of EPA personnel.
36. ARS admits the allegations in Paragraph 36.
37. Paragraph 37 refers to and characterizes a document, which document speaks for itself and is the best evidence of its contents.
38. ARS admits the allegations of Paragraph 38.
39. Paragraphs 39 and 40 refer to and characterize a document, which document speaks for itself and is the best evidence of its contents.
41. ARS admits the allegations in the first sentence of Paragraph 41. ARS also admits the allegations in the second sentence of Paragraph 41; ARS further states that the second sentence of Paragraph 41 refers to and characterizes a document, which document speaks for itself and is the best evidence of its contents.
42. ARS admits that from December 22, 1998 until April 2007 it did not consistently perform monthly monitoring for releases from the UST systems at its Mayaguez and Isabela facilities.
43. ARS restates the response to Paragraph 42. ARS further admits that between April 2006 and April 2007 it did not maintain records of release detection for the UST systems at its Mayaguez and Isabela facilities.

44. Paragraphs 44 and 45 state legal conclusions to which no response is required.

Count 3

46. The responses to Paragraphs 1 through 45 are restated and incorporated herein.

47. Paragraphs 47, 48, 49, 50 and 51 are interpretations of and conclusions of law associated with the PRUSTR, to which no response is required.

52. ARS admits the allegations in Paragraph 52.

53. ARS admits the allegations in Paragraph 53.

54. Paragraph 54 refers to and characterizes a document, which document speaks for itself and is the best evidence of its contents.

55. ARS admits the allegations in Paragraph 55.

56. ARS admits the allegations of Paragraph 56. ARS further notes that Paragraph 56 refers to and characterizes a document, which document speaks for itself and is the best evidence of its contents.

57. ARS admits the allegations of Paragraph 57. ARS further notes that Paragraph 57 refers to and characterizes a document, which document speaks for itself and is the best evidence of its contents.

58. Paragraph 58 is a legal conclusion and an interpretation of the PRUSTR, to which no response is required.

59. Paragraph 59 is a legal conclusion and an interpretation of the PRUSTR, to which no response is required.

60. ARS admits that from December 22, 1998 to April 2007 it did not perform line tightness tests on the piping associated with the UST systems at its Mayaguez and Isabela facilities. The remaining allegations in Paragraph 60 are legal conclusions associated with the PRUSTR, to which no response is required.

61. ARS admits that from December 22, 1998 to April 2007 it did not perform monthly monitoring for releases on the piping associated with the UST systems at its Mayaguez and Isabela facilities. The remaining allegations in Paragraph 61 are legal conclusions associated with the PRUSTR, to which no response is required.

62. ARS restates the responses to Paragraphs 60 and 61. ARS further admits that between April 2006 and April 2007 it did not maintain records of release detection for piping of the UST systems at its Mayaguez and Isabela facilities.

63. Paragraph 63 and 64 state legal conclusions to which no response is required.

To the extent that any allegation of fact in the Complaint remains unanswered, ARS denies such allegation.

Defenses

1. Each of the four fuel dispensers at ARS's Isabela and Mayaguez facilities included a short (approximately two foot) section of vertical suction piping immediately beneath the dispenser. This metal piping transitioned to fiberglass piping just below each dispenser. The remaining piping in all of the UST systems was fiberglass. Assuming but not admitting that cathodic protection was required for the short sections of vertical piping associated with each of the four dispensers, ARS asserts that the resulting infraction was minimal.
2. EPA's penalty calculation for Counts 1 and 3 overstate the potential for harm and the seriousness of the alleged violations. EPA's penalty calculations also do not account for cooperation by ARS, good faith efforts by ARS, and other unique factors. Any penalties associated with Counts 1 and 3 should be de minimis.
3. EPA's penalty calculations for Counts 1, 2, and 3 are inconsistent with calculations, settlements and decisions in other similar UST cases.
4. ARS emptied the two tanks at Mayaguez in March 2008 and has contracted for their removal. ARS has also made budget requests for removal of the two tanks at Isabela. Whereas ARS plans to remove all four tanks and to completely terminate UST operations, ARS should not be penalized for incidental infractions of the UST regulations.
5. ARS relied in good faith on the advice and expertise of its contractors and of the Puerto Rico Environmental Quality Board in its installation and operation of the UST systems at its Mayaguez and Isabela facilities. As an equitable matter, where ARS relied in good faith on these resources, ARS should not be penalized for incidental infractions of the UST regulations.

Hearing

ARS requests a hearing in this matter, pursuant to 40 C.F.R. 22.15 and 22.21 to 22.26.

Service

Pursuant to the Rule of Practice at 40 C.F.R. 22.5(c)(4), ARS advises the Regional Hearing Clerk and EPA that Kirk Minckler, at the address and phone information listed below, is the individual authorized to receive service of any future filings in this matter.

Respectfully submitted,

United States Department of Agriculture
Agricultural Research Service

By: *Kirk Minckler*

Kirk Minckler
USDA Office of the General Counsel
740 Simms Street, Room 309
Golden, CO 80401-4720
Phone: (303) 275-5549
Fax: (303) 275-5557
Email: kirk.minckler@usda.gov

Dated: August 8, 2008

CERTIFICATE OF SERVICE

I, Kirk Minckler, do hereby certify that on August 8, 2008 an original and one copy of the Agricultural Research Service's Answer in RCRA 02-2008-7505 was sent via Express Mail to:

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

I further certify that a copy of the Answer was sent via Express Mail to counsel for Complainant at:

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



Kirk Minckler
USDA Office of the General Counsel
740 Simms Street, Room 309
Golden, CO 80401-4720
Phone: (303) 275-5549
Fax: (303) 275-5557
Email: kirk.minckler@usda.gov