



DEPARTMENT OF VETERANS AFFAIRS
Canandaigua VA Medical Center
400 Fort Hill Avenue, Canandaigua, NY 14424

528A5/600/138

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

In the Matter of
United States Veterans Administration,
Canandaigua VA Medical Center,
Respondent

ANSWER

Docket No.RCRA-02-2008-7504

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

**TO: Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
290 Broadway, 17th floor
New York, New York 10007-1866**

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG.II
2008 MAY -7 PM 2:56
REGIONAL HEARING
CLERK

ANSWER

Respondent, United States Department of Veterans Affairs, Canandaigua VA Medical Center, and for its answer to the complaint herein alleges:

1. Deny that the Respondent is the United States Veterans Administration. The proper name for Respondent is the United States Department of Veterans Affairs.
2. Admit the allegations set forth in Paragraphs 2, 3, 4, 5, 9, 10, 11, 12, 13, 14, 15, 16, 17, 19 & 20 of the Complaint.
3. With respect to Paragraph 6, deny knowledge or information sufficient to form a basis as to the truth of the allegations set forth therein.
4. With respect to Paragraph 7, admit that on or about April 30, 2007, an authorized representative of EPA ("Inspector") inspected the Facility, but deny knowledge or information sufficient to form a basis as to the truth of each and every other allegations set forth in the therein.
5. In Paragraph 8, deny knowledge or information sufficient to form a basis as to the truth of each and every other allegations set forth in the therein.
6. Deny the allegations set forth in Paragraph 18 of the Complaint. At the time of the April 2007 inspection, release detection records before January 2007 were no longer available although same had previously existed.
7. Deny the allegations set forth in Paragraph 21 as to the last sentence. The Respondent initially had records of its release detection during the entire calendar year 2006, but was unable to find them after the responsible employee's retirement from the Medical Center in December 2006.

8. Deny the allegations set forth in Paragraph 22 in their entirety.
9. Deny the allegations set forth in Paragraph 23 and explain that the request for release detection records was made in April of 2007. Pursuant to 40 C.F.R. § 280.45(b), Respondent was only required to have records for a twelve (12) month period from the date of the request. Respondent acknowledges that it did not have records from May 1, 2006 to December 31, 2006, however it provide to the EPA with four (4) months of release detection record for the period from January 2007 to April 2007.

AS AND FOR A FIRST DEFENSE

10. Pursuant to 40 C.F.R. § 280.45(b), Respondent was only required to have release detection records for a twelve month period. Respondent provided records to the EPA for the four (4) months period immediately preceding the request. Respondent was therefore not required, per regulation, to maintain records from January 1, 2006 to December 31, 2006 as the request was made in April of 2007.

AS AND FOR A SECOND DEFENSE

11. As and for the Penalty Calculation Period, and to the extent that Respondent failed to comply with the record keeping requirements, the days of non-compliance should be reduced to 240 days as the Respondent provided four (4) months of release detection records to the EPA.

AS AND FOR A THIRD DEFENSE

12. As and for the Potential for Harm, Respondent asserts that the Potential for Harm was not "major" as categorized in the Complaint. The Leak Detection System on Tank #019 was fully operable and correctly monitored the tank during the period in question. As such, there was no potential for harm, given that the Leak Detection System would have properly alerted Respondent of any potential leak or malfunction. Furthermore, there was no adverse environmental event or leak that occurred during the period in question.

AS AND FOR A FOURTH DEFENSE

13. As and for the Extent of Deviation, Respondent asserts that the Extent of Deviation was less than "major" as there was no willful misconduct or intentional negligence on the part of the Department. In addition, Respondent did not exhibit a "total lack of compliance with the requirement" alleged in the Complaint, as the Respondent properly provided the EPA with release detection records for the four (4) months immediately preceding the request, which was made in April of 2007.

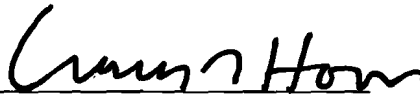
AS AND FOR A FIFTH DEFENSE

14. Respondent's culpable conduct should be reduced by and to the extent of its efforts to mitigate future damages. Respondent, on its own initiative, took immediate corrective action to mitigate any future paperwork failure, including but not limited to, providing additional staff training; modifying the internal quality assurance process to include providing the monthly tank records to the engineering manager for review; adding a full-time Green Environmental Management System Coordinator position to provide additional assistance in monitoring regulatory compliance; and sponsoring a comprehensive tank training session for all of VISN 2 in March of 2008 at a cost of \$11,000. This training session was conducted by Ben Thomas Associates, a national authority on underground storage tank regulations, who also provided training on behalf of the Region 2 EPA Office.

WHEREFORE, Respondent requests a hearing relative to allegations set forth in the Complaint and such other relief as is deemed just and proper.

DATED: Canandaigua, New York, May 6, 2008

Respectfully Submitted:
Respondent:
United States Department of Veterans Affairs,
Canandaigua VA Medical Center

By: 
Craig S. Howard
Medical Center Director
Canandaigua VA Medical Center

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