



DEPARTMENT OF THE ARMY
US ARMY INSTALLATION MANAGEMENT COMMAND
HEADQUARTERS, UNITED STATES ARMY GARRISON, WEST POINT
681 HARDEE PLACE
WEST POINT, NEW YORK 10996-1514

REPLY TO
ATTENTION OF:

December 3, 2009

Chief, Environmental Law Division

Helen S. Ferrara
Regional Judicial Officer
US Environmental Protection Agency, Region 2
290 Broadway, 16th floor
New York, NY 10007-1866

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG.1
2009 DEC -9 PM 2:09
REGIONAL HEARING
CLERM

Dear Ms. Ferrara:

In the matter of U.S. Department of the Army and Army and Air Force Exchange Service, West Point Garrison, Docket no. RCRA-02-2009-7507, please find enclosed an original and one copy of an Answer and Request for Hearing on behalf of Respondent, Army, submitted pursuant to 40 C.F.R. § 22.15. Please have these documents marked *filed* and return a confirmed copy to me along with a written response that the Request for Hearing has been granted.

The bulk of the allegations made in the Complaint are not contested, however the following allegations (see list below) are either denied, partially denied and/or explained.

List of Allegations that are Denied, or Explained (paragraph numbers from the Complaint):

Allegations denied: 49; 50; 59; 62; 63; 66; 67; 68

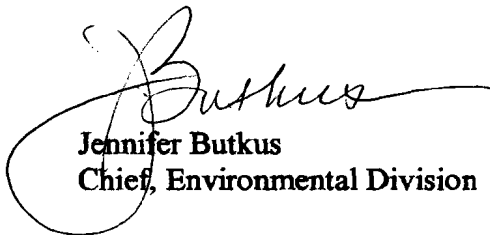
Allegations partially denied: 41; 42; 44; 45; 46; 51; 54; 55; 57; 58

West Point is in current compliance with all applicable UST system standards under 40 CFR § 280 for all UST systems at the facility, including corrosion protection, release detection and release investigation and reporting requirements. As a component of the compliance, UST inspectors are being given annual training in December 2009 and January 2010. This training will include, but will not be limited to, increased emphasis on spill bucket maintenance and proper operating procedures for generating Volumetric Leak Detection UST and piping systems records showing explicit compliance with leak threshold monitoring of 0.2 gallons per hour.

We will submit to EPA, within 30 days of the effective date of the Compliance Order, the records of release detection demonstrating compliance with 40 CFR §§ 280.41 and 280.44 for USTs #648B and #716B. We believe a tank tightness test for UST #716B is not required because none of the conditions triggering the need for the tank tightness test existed for that tank. However, we will perform a tightness test and submit the results to EPA if the requirement is included in the Consent Order.

Because we are admitting, denying, and explaining some of the allegations, the Army seeks to reduce the penalties and fines assessed. The Army requests a formal hearing IAW 40 C.F.R. § 22.15(c).

We desire an amenable resolution and possible settlement for this matter. We believe this can best be achieved at an informal settlement conference and we desire to hold such a conference as soon as possible IAW 40 C.F.R. § 22.18(b). We are requesting an informal settlement conference by copy of this letter to Naomi Shapiro, Assistant Regional Counsel, Office of Regional Counsel, US EPA Region 2. We maintain that a request for an informal settlement conference does not constitute an admission of any of the matters alleged in the Complaint



Jennifer Butkus
Chief, Environmental Division

CERTIFICATE OF SERVICE

I hereby certify that the Answer and Request for Hearing by myself, Jennifer Butkus, in the matter of Department of the Army, West Point Garrison; and the Army and Air Force Exchange Service, West Point, NY, Docket No. RCRA-02-2009-7507, was served on the parties as indicated below:

Certified Mail -

Original:

**Helen S. Ferrara
Regional Judicial Officer
EPA Region II
US Environmental Protection Agency, Region 2
290 Broadway, 16th Floor
New York, NY 10007-1866**

Copy:

**Naomi Shapiro
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**Colonel Jill M. Grant
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**MICHAEL C. WHITTINGTON
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Army & Air Force Exchange Service
3911 S. Walton Walker Blvd.
Dallas, TX 75236-1598**

IN THE MATTER OF)
)
UNITED STATES ARMY)
WEST POINT GARRISON COMMAND)
)
AND)
)
ARMY AND AIR FORCE)
EXCHANGE SERVICE)
)
DOCKET NUMBER RCRA-02-2009-7507)

ANSWER TO THE COMPLAINT

3 DECEMBER 2009

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REGION 2
2009 DEC -9 PM 2:09
REGIONAL HEARING
CLERK

The Respondent United States Army, West Point Garrison Command (Army), submits this answer in response to the allegations submitted by the Complainant, Dore LaPosta, Director, Division of Enforcement and Compliance Assistance of the United States Environmental Protection Agency, Region 2 (EPA). This answer is not on behalf of the Army and Air Force Exchange Service (AAFES).

COUNT 1

The Army admits that the allegations in paragraphs 1 through 29 for Count 1 are true.

COUNT 2

Army admits allegations in paragraphs 30 to 40, also 43.

Explanation and Answer to paragraph 41. Army recognizes that the records of ATG/ IM printouts or hand-recorded data from the ATG/IM displays provided to EPA were tank inventory records, not Volumetric Leak Detection records. However based on questioning of our equipment supplier for the ATG/ IM, if the IM had detected a leak, there would have been an alarm which would have appeared on the monitor display, and an alarm status would have been printed on the printout that was generated by the tank inspectors. We therefore believe that the records kept for UST #648B generally meet the regulatory requirements and "implicitly" showed compliance with 40 CFR 280.41 and 280.44.

Explanation and answer to paragraph 42. The same answer as proved above for paragraph 41 applies to the printouts generated for UST #716B.

Explanation and answer to paragraphs 44 and 45. The Automatic Tank Gage (ATG) equipment on UST # 648B and UST #716B were replaced on or about September 16, 2009. As explained for paragraph 41, the leak detection method maintained for USTs #648B and #716B for the period from April 2008 through September 2009 was an "implicit" method based on the absence of any noted alarms. Army has recently had ATG/IMs reprogrammed to facilitate generation of explicit VLD type records that state the UST system passed a leak test at 0.2 gallons/ hr leak threshold. The double wall Fiberglass Reinforced Plastic (FRP) fill pipes for UST #648B and

UST #716B connect to the interstitial monitored spaced for these tanks; leak testing for the piping is provided by the Interstitial Monitors for these two tanks.

Explanation and answer to paragraph 46. The Army maintained and performed monthly inspections on an ATG/IM system, with a non-operational printer, for UST #648B from the period April 2008 to August 2009. The documentation of the compliance status of the UST system is "implicit" due to lack of VLD type ATG/ IM printouts from the period April 2008 to April 2009. From the period May 2009 to August 2009, the records of the operation were hand-recorded from the monitor display. Since September 25, 2009, the ATG/ IM has been fully operational and have been monitored monthly. The Army performed monthly inspections of the ATG/IM system for UST #716B for the period April 2008 to August 2009. For the sub-period February 2009 to August 2009, the liquid level probe for this ATG/IM system was not operational; however the Interstitial Monitor was still operational and "implicit" records of leak detection were maintained on a monthly basis.

COUNT 3

Army admits allegations in paragraphs 47, 48, 52, 53 and 56.

Denial and answer to paragraph 49. During the tank inspection of April 2009, the tank was reporting that the liquid level probe was functioning with a "no probe" indicator. The "no probe" indication is not an alarm status. No alarm lights were present and no alarm reports were shown on the monitor printouts. The "no probe" status was noted in the monthly inspection reports for this tank.

Denial and answer to paragraphs 50 and 51. The gauge indicator, "Waste Oil Tank no. 1 509 gal," which appeared on the April 2009 Incon model TS-1000K monitor printout, was an indication of the volumetric capacity of the tank as calculated by the Incon monitor based on the dimensions of the tank. We learned this during a telephone conference on October 6, 2009 from Mr. Jason Grant, the technical specialist with Franklin Fueling Systems, parent company of Incon fueling gauges. The printout does not indicate that the liquid level probe was actually reading 509 gallons of contents in the tank. The "Waste Oil tank no. 1 509 gal" also appears of the printouts from July 2008 through January 2009. These printouts also indicate that the liquid contents of the tank, as measured by the monitor, range between 118 to 151 gallons. There was no indication that the sensor for the IM was not working, even though the liquid level probe was not working. The IM is a separate sensor than the liquid level probe. If the IM sensor had recorded a leak, it would have been reported on the printout. Therefore, the tank did not actually contain 509 gallons; it has the capacity to hold 509 gallons. When we manually tested the level of UST #716B the day after the April 2009 inspection, we read that the tank only held 100 gallons of used oil.

Explanation and answer to paragraph 54. The UST #716B tank monitor was replaced during the week of September 14, 2009 by UST contractor, Environmental and & Fueling Services, LLC. The current tank monitor is an Omntec OEL 8000II ATG system with Interstitial Monitor.

Explanation and answer to paragraph 55. The Army has not conducted a tank tightness test on this tank because the results of the September, October and November 2009 monthly UST ATG/IM monitoring results using the new Ormtec 8000II monitor demonstrate no indication of leakage.

Explanation and answer to paragraph 57, 58 and 59. The Army did not report a suspected release of unusual operating condition for UST #716B to the NY DEC because the specific conditions encountered did not trigger the requirements for "unusual operating conditions." The Army maintains that the specific "unusual operating conditions" stated in 40 CFR §280.50(b), specifically "erratic behavior of product dispensing equipment, sudden loss of product from UST systems or unexplained presence of water in the tank," were not present at this tank. The system equipment may have been defective, but the system was not exhibiting the "unusual operating conditions" specified in the regulations. For that reason, the Army believes that the failure to respond to the probe malfunction is not a violation of 40 C.F.R. §280.50(b). The Army believes that the clause "unless system equipment is found to be defective but not leaking" is triggered only by the specific unusual operating conditions cited in the regulation, below. These specific conditions were not present at UST #716B; therefore, Army believes that the regulation did not require immediate repair or replacement of equipment.

"40 CFR 280.50 (b): Unusual operating conditions observed by owners and operators (such as the erratic behavior of product dispensing equipment, the sudden loss of product from UST system or unexplained presence of water in the tank) unless system equipment is found to be defective but not leaking and is immediately repaired or replaced ."

COUNT 4

The Army admits the allegations in paragraphs 60 and 61.

Denial and answer to paragraph 62. The Army denies that the spill bucket for UST #616A was severely rusted. The amount of water and debris in the spill bucket was minimal. The spill bucket is made of polyethylene and does not rust. The rust that was observed during the inspection was superficial and was associated with the metal mechanism for draining the spill bucket into the fill port.

Denial and answer to paragraph 63. The Army denies that the spill bucket for UST #845F was severely rusted because the spill bucket in this UST is also made of polyethylene. The water and debris were due to melted snow that had entered the bucket.

Explanation and answer to paragraph 64. The Army believes that EPA representatives may have misunderstood statements by facility representatives concerning inspections of UST #845F. This UST, including the spill bucket, has been routinely inspected each month.

Denial and answer to paragraph 66. The Army denies that the spill bucket for UST #616A has not been maintained in a condition adequate to prevent release of product to the environment when the transfer hose is disconnected from the fill pipe. Hydrostatic testing performed on November 13, 2009 demonstrated the integrity of the spill bucket.

Denial and answer to paragraph 67. The Army denies that the spill bucket for UST #845F has not been maintained in a condition adequate to prevent the release of product to the environment when the transfer hose is disconnected from the fill pipe. Hydrostatic testing performed on November 13, 2009 demonstrated the integrity of the spill bucket.

Denial and answer to paragraph 68. The Army denies that it has ever failed to maintain adequate spill buckets for USTs #616A and #845F. Consequently, the Army denies that it has violated 40 CFR §§280.20(c) and 280.21(d).

COUNT 5

The respondent AAFES will provide response to Count 5 in their separate answer. The Army denies all responsibility for this allegation, as it is AAFES's responsibility to conduct annual tests of the automatic line leak detectors and to maintain records of the test for USTs #1202A, #1202B, and #1202C.

RESOLUTION SOUGHT

EPA computation of penalty for Count 2: Failure of Respondent Army to monitor USTs #648B and #716B for releases every 30 days and to maintain results for 12 months

The base penalty (Matrix Value) for each tank is \$1500; hence \$3000 for the two tanks. Due to the adjustment for inflation, the base amount is increased to \$4055. EPA states that it further increases the base by 50% to \$6082 (Adjusted Matrix Value) to account for the degree of "willfulness or negligence." EPA claims that Army should have known about the deficiencies in release detection and recordkeeping in February 2009 for UST #716B. Further, EPA claims that Army did know about the non-compliance of both tanks on April 15, 2009 at the time of EPA's inspection and that Army didn't award the contract until September 30, 2009. Finally, EPA asserts that Army didn't seek an alternate means of release detection from the USTs in the interim. The EPA is claiming that this sequence of events is evidence of Army's degree of willfulness or negligence.

The Army completed the upgrades to the ATG/IM on USTs #648B and #716B in the period of September 16, 2009 to September 25, 2009. The Army responded to the EPA Notice of Violation (NoV) and Information Request with a comprehensive Summary of UST Compliance Status on July 20, 2009. Given the time requirements of standard Army contracting procedures, the Army responded readily to the EPA inspection and the NoV and should not be considered "willful or negligent." The Army requests that the multiplier of 50% for "willful and negligent" action be reduced and/or removed.

The EPA is applying an Environmental Sensitivity multiplier of 1.5 (moderate Environmental Sensitivity) because the "facility lies just north of and adjacent to a source water protection area and adjacent to the Hudson River." The UST #648B is approximately 450 feet from the Hudson River and the UST #716B is approximately 2000 feet from the Hudson River. Neither tank is located in a watershed for public water supply for either West Point or the Village of Highland Falls. The Army requests that EPA reduce the classification of the Environmental Sensitivity to "low," which has a corresponding multiplier of 1.0 (does not increase the magnitude of the fine).

EPA calculation for proposed fine on Count 3: Failure to respond appropriately to indications of a release from UST #716B

The base assessment for the UST violation of not responding to indications of a release is \$1500, which with inflation is adjusted to \$2124. EPA increased the Adjusted Matrix Value to \$3186, a 50% increase due to "degree of will fullness or negligence" because "Army had indications of unusual operating conditions since February 26, 2009 and did not notify the implementing agency (DEC) or taken the required steps despite the UST being in alarm status."

Army claims that the entire proposed penalty is not applicable to actions of Army because the "unusual operating conditions" in the rules at 40 CFR §§ 280.52 do not apply since the specific conditions cited in the rules "*such as the erratic behavior of product dispensing equipment, the sudden loss of product from UST system or unexplained presence of water in the tank*" didn't apply to the operation of UST #716B.

EPA assigned a multiplier for Environmental Sensitivity of 1.5 because the “facility lies in a source water protection area and adjacent to the Hudson River.” UST #716B is approximately 2000 feet from the Hudson River. It is not located in a watershed for a public water supply for either West Point or the Village of Highland Falls. In the event that the EPA decides to impose a penalty for this count, the Army requests that EPA reduce the classification of the Environmental Sensitivity to “low,” which has a corresponding multiplier of 1.0 (does not increase the magnitude of the fine).

Calculation of penalty for Count 4: Failure to provide adequate Spill Prevention for USTs #616A and #845F

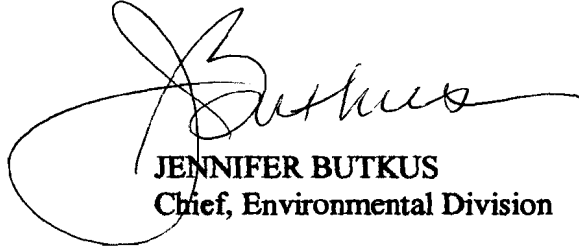
The EPA claims that the spill prevention buckets for USTs #616A and #845F were not “adequate.” The language in 40 CFR 280.20(c) regarding USTs refers to an equipment specification, not a maintenance specification. The EPA is alleging that the condition of the buckets was not adequate to contain a spill over a period of 227 days, the time from the inspection of April 15, 2009 to September 30, 2009. The spill buckets on both USTs #616A and #845F were cleaned shortly after the inspection, so they were maintained in a condition to contain spills during most of the period cited by EPA as being the period of violation. The base amount (Matrix Value) for both spill buckets is \$3000, which is adjusted for inflation by EPA to \$4249. The EPA applied an Environmental Sensitivity multiplier of 1.5 and a “days of noncompliance multiplier” of 2.0 for a total proposed penalty of \$12,747.

Army suggests that the spill buckets were not in violation of the rules at 40 CFR 280.20(c) so assessing any penalty would be inappropriate. Furthermore if a penalty is assessed, the period of the violation was less than 90 days, so the “days of non-compliance” multiplier would be 1.0. UST #616A is approximately 400 feet from the Hudson River and UST #845F is more than 2000 feet from the Hudson River. Neither tank is within a watershed for a public water supply for either West Point or the Village of Highland Falls. The Army requests that EPA reduce the classification of the Environmental Sensitivity to “low,” which has a corresponding multiplier of 1.0 (does not increase the magnitude of the fine).

Tightness Test for UST #716B

The Army has not conducted a tank tightness test on this tank because the results of the September, October and November 2009 monthly UST ATG/IM monitoring results using the new Omntec 8000II monitor demonstrated no indication of leakage. The Army requests that the requirement for a tightness test of UST #716B be deleted from the Consent Order.

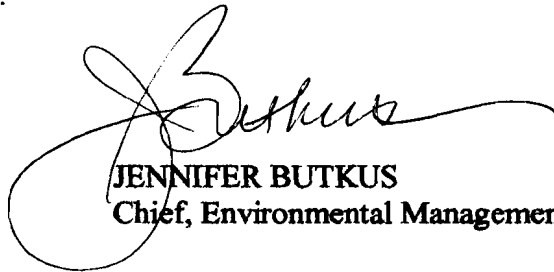
Because we are admitting, denying, and explaining some of the allegations, the Army seeks to reduce the penalties and fines assessed. We believe this can best be achieved at an informal settlement conference, and we desire to hold such a conference as soon as possible IAW 40 C.F.R. § 22.18(b). The Army requests a formal hearing IAW 40 C.F.R. § 22.15(c). We maintain that a request for an informal settlement conference does not constitute an admission of any of the matters alleged in the Complaint. We desire a reasonable resolution and possible settlement for this matter.



JENNIFER BUTKUS
Chief, Environmental Division

CERTIFICATION

I certify that the information contained in this 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 systems or those 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 penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

A handwritten signature in black ink, appearing to read 'J Butkus', with a large, stylized loop at the end.

JENNIFER BUTKUS
Chief, Environmental Management Division