

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
 REGION 2**

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In the Matter of:	:	
	:	<b>CONSENT AGREEMENT</b>
PC Puerto Rico, LLC d/b/a USVI Fuel	:	<b>AND</b>
Services,	:	<b>FINAL ORDER</b>
	:	
Respondent.	:	Docket No. RCRA-02-2026-7500
	:	
Proceeding under Section 9006 of the	:	
Solid Waste Disposal Act, as amended	:	
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**PRELIMINARY STATEMENT**

This is a civil administrative proceeding instituted pursuant to Section 9006 of the Solid Waste Disposal Act as amended, 42 U.S.C. § 6901, *et seq.* (“RCRA” or the “Act”) and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22 (“CROP”). Complainant in this proceeding is the Acting Director of the Enforcement and Compliance Assurance Division, United States Environmental Protection Agency, Region 2 (“EPA”), who has been delegated the authority to sign consent agreements in pre-filing settlements between EPA and a party against whom an administrative action is taken for violations of requirements under RCRA and the corresponding federal regulations. Section 9006 of RCRA, 42 U.S.C. § 6991e, authorizes the EPA to enforce violations of the Act and the regulations promulgated pursuant to it. The Respondent, PC Puerto Rico, LLC d/b/a USVI Fuel Services (“Respondent”), has been the owner and/or operator of eight (8) federally regulated underground storage tanks (“USTs”) in the United States Virgin Islands (“USVI”) since 2012.

Based on EPA inspection findings, Respondent’s responses to EPA’s Notice of Violation and Request for Information (“NOV/RFI”), and related correspondence, EPA determined that the Respondent failed to meet requirements to: (1) conduct periodic walkthrough inspections every 30 days; (2) designate at least one Class A or B operator at three facilities; (3) designate each individual who meets the definition of Class C operator at each facility; (4) maintain a list of designated operators at five facilities; (5) use adequate overfill prevention; (6) continuously operate and maintain corrosion protection systems where required; (7) ensure that release detection methods are installed and calibrated in accordance with the manufacturer's instructions; and (8) conduct monthly monitoring of pressurized piping for line tightness.



Pursuant to Section 22.13(b) of the CROP, where the parties agree to settlement of one or more causes of action before the filing of an administrative complaint, a proceeding may be simultaneously commenced and concluded by issuance of a Consent Agreement and Final Order (“CAFO”) pursuant to 40 C.F.R. §§ 22.18(b)(2) and 22.18(b)(3). The Complainant and the Respondent have reached an amicable resolution of this matter and agree that settlement of this matter – by entering into this CAFO – is an appropriate means of resolving this case without further litigation.

No adjudicated findings of fact or conclusions of law have been made. Respondent neither admits nor denies EPA’s Findings of Fact and Conclusion of Law set forth below.

### **EPA’S FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. Respondent, a limited liability company registered in Puerto Rico and the U.S. Virgin Islands, is a “person” within the meaning of Sections 1004(15) and 9001(5) of the Act, 42 U.S.C. §§ 6903(15) and 6991(5), and 40 C.F.R. § 280.12.

2. In 2012, the Respondent became and remains the “owner” and/or “operator” of the USTs or “UST systems,” as those terms are defined in Section 9001 of the Act, 42 U.S.C. § 6991, and/or in 40 C.F.R. § 280.12, that are located at the following eight facilities across the USVI:

- a. Puma Pollyberg SS, 68, 69 & 70 Dronningen’s Gade, St. Thomas, VI 00802
- b. Puma Smith Bay SS, 33 Estate Freydenhoj, St. Thomas, VI 00802
- c. Puma Tutu SS, 1 Estate Anna's Retreat, St. Thomas, VI 00802
- d. Puma Veteran’s Drive SS, 1 Estate Demerara, St. Thomas, VI 00802
- e. Yacht Haven Grande, 5304 Yacht Haven Grande, Suite 100, St. Thomas, VI 00802
- f. Puma Airport SS, 9A Estate Constant, St. Thomas, VI 00802
- g. Puma Bovoni SS, 5A-28 & 5A-29 Estate Bovoni, St. Thomas, VI 00802, and
- h. Puma Northside SS, 98 Dorothea, St. Thomas, VI 00802

3. Pursuant to Sections 2002, 9002, and 9003 of the Act, 42 U.S.C. §§ 6912, 6991a, and 6991b, EPA promulgated rules setting forth requirements applicable to owners and operators of UST systems, codified at 40 C.F.R. Part 280. These rules include requirements related to periodic walkthrough inspections, designation of Class A, Class B, and Class C operators and listing designated operators at each facility, use of adequate overfill prevention, operation of corrosion protection systems, installation and calibration of release detection methods in accordance with the manufacturer’s instructions, and continued operation and maintenance of release detection in a temporarily closed tank system.

4. 40 C.F.R. § 280.12 defines an UST as “any one or combination of tanks (including underground pipes connected thereto) that is used to contain an accumulation of regulated substances, and the volume of which (including the volume of underground pipes connected thereto) is ten (10%) percent or more beneath the surface of the ground.”



5. Pursuant to 40 C.F.R. § 280.36(a)(1), as relevant here, owners and operators of underground storage tanks must complete walkthrough inspections every 30 days that check spill prevention equipment and release detection equipment as described in that section.

6. Pursuant to 40 C.F.R. § 280.241(a), owners and operators of underground storage tanks must designate at least one Class A and one Class B operator for each UST or group of USTs at a facility.

7. Pursuant to 40 C.F.R. § 280.241(b), owners and operators of underground storage tanks must designate each individual who meets the definition of Class C operator at the UST facility as a Class C operator.

8. Pursuant to 40 C.F.R. § 280.245(a), owners and operators of underground storage tank systems must maintain a list of designated Class A, Class B, and Class C operators that must identify all operators currently designated for the facility, and include names, class of operator trained, the date they assumed duties, the date each operator completed initial training, and any retraining.

9. Pursuant to 40 C.F.R. § 280.20(c)(1)(ii), UST system owners and operators must use overfill prevention equipment that will either (a) automatically shut off flow into the tank when the tank is no more than 95 percent full, (b) alert the transfer operator when the tank is no more than 90 percent full by restricting the flow into the tank or triggering a high-level alarm, or (c) restrict flow 30 minutes prior to overfilling, alert the transfer operator with a high level alarm one minute before overfilling, or automatically shut off flow into the tank so that none of the fittings located on top of the tank are exposed to product due to overfilling.

10. Pursuant to 40 C.F.R. § 280.31(a), all owners and operators of metal UST systems with corrosion protection must operate and maintain corrosion protection systems to continuously provide corrosion protection to the metal components of that portion of the tank and piping that routinely contain regulated substances and are in contact with the ground until the UST system is permanently closed or undergoes a change-in-service.

11. Pursuant to 40 C.F.R. § 280.40(a)(2), owners and operators of underground storage tank systems must provide a method, or combination of methods, of release detection that is installed and calibrated in accordance with the manufacturer's instructions.

12. Pursuant to 40 C.F.R. § 280.70, when an UST system is temporarily closed, owners and operators must continue, among other obligations, release detection when the UST is not empty.

13. Pursuant to Section 9005 of the Act, 42 U.S.C. § 6991d, on June 12-14, 2023, authorized representatives of EPA inspected the UST systems at the eight USVI facilities listed in paragraph 2 above to determine Respondent's compliance with the Act and 40 C.F.R. Part 280. EPA subsequently transmitted copies of its inspection reports to Respondent on or about August 2 and 14, 2023. On or about February 7, 2024, EPA sent Respondent an NOV/RFI.

14. Based on EPA's inspections, Respondent's responses to the NOV/RFI, and the



correspondence described above, EPA sent Respondent a letter inviting it to engage in settlement discussions on December 5, 2024.

15. Based on EPA's inspection reports, along with Respondent's responses to EPA's December 5, 2024, letter and related correspondence, EPA has determined that, between April of 2021 and April of 2024, Respondent failed to:

- a. Conduct periodic walkthrough inspections every 30 days, in accordance with 40 C.F.R. § 280.36(a)(1), at all eight of the facilities;
- b. Designate at least one Class A or B operator, in accordance with 40 C.F.R. § 280.241(a), at the Puma Pollyberg SS, Puma Smith Bay SS, and Puma Airport SS facilities;
- c. Designate each individual who meets the definition of a Class C operator, in accordance with 40 C.F.R. § 280.241(b), at all eight of the facilities;
- d. Maintain, for five of the facilities, a list of designated Class A, Class B, and Class C operators, which must identify all such operators currently designated for the facility, and include the names, class of operator trained, dates each assumed duties, date each completed initial training, and any retraining, in accordance with 40 C.F.R. § 280.245(a);
- e. Use adequate overfill prevention in accordance with 40 U.S.C. § 280.20(c)(1)(ii) at the Puma Smith Bay SS facility;
- f. Continuously operate and maintain a corrosion protection system in accordance with 40 C.F.R. § 280.31(a) at the Puma Airport SS facility;
- g. Ensure that release detection methods are installed and calibrated in accordance with the manufacturer's instructions, in accordance with 40 C.F.R. § 280.40(a)(2), at the Puma Pollyberg SS and Puma Tutu SS facilities; and
- h. Continue operation and maintenance of release detection in a temporarily closed tank system at the Puma Airport SS facility in accordance with 40 C.F.R. § 280.70.

16. Each of Respondent's failures to comply with the requirements set forth at 40 C.F.R. Part 280 constitutes a violation of RCRA, for which a penalty may be assessed under Section 9006(d)(2), 42 U.S.C. § 6991e(d)(2).

17. EPA and Respondent have engaged in settlement talks and have agreed to settle this matter as provided herein.

**CONSENT AGREEMENT**



18. Based upon the foregoing, and pursuant to Section 9006 of RCRA, 42 U.S.C. § 6991e, and 40 C.F.R. § 22.18, it is hereby agreed by and between the Complainant and the Respondent and voluntarily and knowingly accepted by the Respondent, that the Respondent, for purposes of this Consent Agreement:

- a. Admits the jurisdictional basis of this action;
- b. Neither admits nor denies the specific factual allegations herein;
- c. Consents to the assessment of the civil penalty set forth below;
- d. Consents to any and all conditions stated in the Consent Agreement;
- e. Consents to the issuance of the Final Order incorporating all the provisions of this Consent Agreement; and
- f. Waives its right to contest and to appeal that Final Order.

19. It is further hereby agreed by and between Complainant and Respondent, and voluntarily and knowingly accepted by Respondent, that Respondent shall hereinafter maintain compliance at the facilities listed in Paragraph 2 of EPA's Findings of Fact and Conclusions of Law with all regulations applicable to owners and operators of USTs as set forth at 40 C.F.R. Part 280, including but not limited to:

- a. Conducting periodic walkthrough inspections every 30 days;
- b. Designating at least one Class A or B operator at each facility;
- c. Designating each individual who meets the definition of a Class C operator;
- d. Maintaining a list of designated Class A, Class B, and Class C operators, which must identify all such operators currently designated for the facility, and include the names, class of operator trained, dates each assumed duties, date each completed initial training, and any retraining, at each facility;
- e. Using adequate overfill prevention;
- f. Continuously operating and maintaining a corrosion protection system;
- g. Ensuring that release detection methods are installed and calibrated in accordance with the manufacturer's instructions; and
- h. Continuing operation and maintenance of release detection in temporarily closed tank systems.

20. Respondent hereby certifies that, as of the date of its signature of this Consent



Agreement and to the best of its knowledge and belief, it is in compliance with applicable UST requirements at all of its facilities, especially but not limited to those facilities listed in Paragraph 2 of EPA's Findings of Fact and Conclusions of Law and the requirements referenced in Paragraph 15 of EPA's Findings of Facts and Conclusions of Law.

Penalty Payment

21. Respondent agrees to pay a civil penalty of **Two Hundred and Forty Thousand Dollars (\$240,000)** ("Assessed Penalty") within thirty (30) days of the date the Final Order ratifying this CAFO is filed with the Regional Hearing Clerk ("Filing Date").

22. Respondent shall pay the Assessed Penalty and any interest, fees, and other charges due using any method, or combination of appropriate methods, as provided on the EPA website: <https://www.epa.gov/financial/makepayment>. For additional instructions see: <https://www.epa.gov/financial/additional-instructions-making-payments-epa>.

23. When making a payment, Respondent shall:

- a. Identify every payment with Respondent's name and the docket number of this agreement, RCRA-02-2026-7500,
- b. Concurrently with any payment or within 24 hours of any payment, serve proof of such payment to the following person(s):

Gaetano LaVigna  
Enforcement and Compliance Assurance Division  
RCRA Compliance Branch  
U.S. Environmental Protection Agency - Region 2  
290 Broadway, 21st Floor  
New York, NY 10007  
[lavigna.gaetano@epa.gov](mailto:lavigna.gaetano@epa.gov)

and

U.S. Environmental Protection Agency  
Cincinnati Finance Division  
Via electronic mail to:  
[CINWD\\_AcctsReceivable@epa.gov](mailto:CINWD_AcctsReceivable@epa.gov)

"Proof of payment" means, as applicable, confirmation of credit card or debit card payment, or confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate that payment has been made according to EPA requirements, in the amount due, and identified with the appropriate docket number and Respondent's name.

24. Interest, Charges, and Penalties on Late Payments. Pursuant to 31 U.S.C. § 3717,



31 C.F.R. § 901.9, and 40 C.F.R. § 13.11, if Respondent fails to timely pay the full amount of the Assessed Penalty per this Agreement, EPA is authorized to recover, in addition to the amount of the unpaid Assessed Penalty, the following amounts.

- a. Interest. Interest begins to accrue from the Filing Date. If the Assessed Penalty is paid in full within thirty (30) days, interest accrued is waived. If the Assessed Penalty is not paid in full within thirty (30) days, interest will continue to accrue until any unpaid portion of the Assessed Penalty as well as any interest, penalties, and other charges are paid in full. To protect the interests of the United States the rate of interest is set at the IRS large corporate underpayment rate; any lower rate would fail to provide Respondent adequate incentive for timely payment.
- b. Handling Charges. Respondent will be assessed monthly a charge to cover EPA's costs of processing and handling overdue debts. If Respondent fails to pay the Assessed Penalty in accordance with this Agreement, EPA will assess a charge to cover the costs of handling any unpaid amounts for the first thirty (30) day period after the Filing Date. Additional handling charges will be assessed every thirty (30) days, or any portion thereof, until the unpaid portion of the Assessed Penalty as well as any accrued interest, penalties, and other charges are paid in full.
- c. Late Payment Penalty. A late payment penalty of seven percent per annum will be assessed monthly on all debts, including any unpaid portion of the Assessed Penalty, interest, penalties, and other charges, that remain delinquent for more than 90 days. Any such amount will accrue from the Filing Date.

25. Late Penalty Actions. In addition to the amounts described in the prior paragraph, if Respondent fails to timely pay any portion of the Assessed Penalty, interest, or other charges and penalties per this agreement, EPA may take additional actions. The actions EPA may take include, but are not limited to, the following.

- a. Refer the debt to a credit reporting agency or a collection agency, per 40 C.F.R. §§ 13.13 and 13.14.
- b. Collect the debt by administrative offset (*i.e.*, the withholding of money payable by the United States government to, or held by the United States government for, a person to satisfy the debt the person owes the United States government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, per 40 C.F.R. Part 13, Subparts C and H.
- c. Suspend or revoke Respondent's licenses or other privileges, or suspend or disqualify Respondent from doing business with EPA or engaging in programs EPA sponsors or funds, per 40 C.F.R. § 13.17.



- d. Refer this matter to the United States Department of Justice for litigation and collection, per 40 C.F.R. § 13.33.

26. Allocation of Payments. Pursuant to 31 C.F.R. § 901.9(f) and 40 C.F.R. § 13.11(d), a partial payment of debt will be applied first to outstanding handling charges, second to late penalty charges, third to accrued interest, and last to the principal that is the outstanding Assessed Penalty amount.

27. Tax Treatment of Penalties. Penalties, interest, and other charges paid pursuant to this Agreement shall not be deductible for purposes of federal taxes.

28. Pursuant to 26 U.S.C. § 6050X and 26 C.F.R. § 1.6050X-1, EPA is required to send to the Internal Revenue Service ("IRS") annually, a completed IRS Form 1098-F ("Fines, Penalties, and Other Amounts") with respect to any court order or settlement agreement (including administrative settlements), that require a payor to pay an aggregate amount that EPA reasonably believes will be equal to, or in excess of, \$50,000 for the payor's violation of any law or the investigation or inquiry into the payor's potential violation of any law, including amounts paid for "restitution or remediation of property" or to come "into compliance with a law." EPA is further required to furnish a written statement, which provides the same information provided to the IRS, to each payor (*i.e.*, a copy of IRS Form 1098-F). Failure to comply with providing IRS Form W-9 or Tax Identification Number ("TIN"), as described below, may subject Respondent to a penalty, per 26 U.S.C. § 6723, 26 U.S.C. § 6724(d)(3), and 26 C.F.R. § 301.6723-1. In order to provide EPA with sufficient information to enable it to fulfill these obligations, EPA herein requires, and Respondent herein agrees, that:

- a. If Respondent is not subject to the US Tax Code, it shall complete a W-8 BEN-E ("Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding and Reporting (Entities), which is available at <https://www.irs.gov/forms-pubs/about-form-w-8-ben-e>
  - i. Respondent shall email its completed IRS Form W-8 BEN-E to EPA's Cincinnati Finance Division at [Wise.Milton@epa.gov](mailto:Wise.Milton@epa.gov) within 30 days after the Regional Judicial Officer signs the Final Order ratifying this Agreement, and EPA recommends encrypting IRS Form 8 BEN-E email correspondence;
- b. If Respondent is subject to the US Tax Code, Respondent shall complete an IRS Form W-9 ("Request for Taxpayer Identification Number and Certification"), which is available at <https://www.irs.gov/pub/irs-pdf/fw9.pdf>;
- c. Respondent shall therein certify that its completed IRS Form W-9 includes Respondent's correct TIN or that Respondent has applied and is waiting for issuance of a TIN;
- d. Respondent shall email its completed Form W-9 to EPA's Cincinnati



Finance Division at [wise.milton@epa.gov](mailto:wise.milton@epa.gov) within 30 days of the Final Order ratifying this Agreement is filed, and EPA recommends encrypting IRS Form W-9 email correspondence; and

- e. In the event that Respondent has certified in its completed IRS Form W-9 that it has applied for a TIN and that TIN has not been issued to Respondent within 30 days of the effective date, then Respondent, using the same email address identified in the preceding sub-paragraph, shall further:
  - i. notify EPA's Cincinnati Finance Division of this fact, via email, within 30 days after the 30 days after the effective date of this order and
  - ii. provide EPA's Cincinnati Finance Division with Respondent's TIN, via email, within five days of Respondent's receipt of the TIN.

29. For purposes of the identification requirement in Section 162(f)(2)(A)(ii) of the Internal Revenue Code, 26 U.S.C. § 162(f)(2)(A)(ii), and 26 C.F.R. § 1.162-21(b)(2), performance of the tasks specified in Paragraph 1 of this section is restitution, remediation, or required to come into compliance with the law.

*Effect of Settlement and Reservation of Rights*

30. Full payment of the penalty described in this Consent Agreement shall only resolve Respondent's liability for federal civil penalties for the violations alleged herein in Paragraph 15 of EPA's Findings of Fact and Conclusions of Law. Full payment of this penalty shall not in any case affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

31. The provisions of this Consent Agreement shall be binding upon Respondent and its successors or assigns.

32. Respondent waives its right to request or to seek any hearing in this matter including one on the terms and conditions set forth in the Consent Agreement and the accompanying Final Order and/or EPA's Findings of Fact and Conclusions of Law, above.

33. By signing this Consent Agreement, Respondent waives any rights or defenses that Respondent has or may have for this matter to be resolved in federal court, including but not limited to any right to a jury trial, and waives any right to challenge the lawfulness of the Final Order accompanying the Consent Agreement.

34. Nothing in this document is intended or construed to waive, prejudice, or otherwise affect the right of EPA, or the United States, from pursuing any appropriate remedy, sanction or penalty prescribed by law against Respondent, if Respondent has made any material misrepresentations or has provided materially false information in any document submitted during this proceeding.



35. Each party hereto agrees to bear its own costs and attorney's fees in this matter.

36. Respondent has read this Consent Agreement, understands its terms, and agrees that the provisions herein shall be binding upon Respondent and its successors and assigns. The signatory for Respondent certifies that: (a) they are duly and fully authorized to enter into and ratify this Consent Agreement and to accept the accompanying Final Order and all the terms, provisions, and requirements set forth in this CAFO, and (b) they are duly and fully authorized to bind the party on behalf of which they are entering this CAFO to comply with and abide by all the terms, provisions, and requirements of this CAFO.

37. EPA and Respondent agree that the parties may use electronic signatures for this matter.

38. Respondent consents to the use of electronic signatures in this matter and to service upon it of a copy of this Consent Agreement and Final Order by an EPA employee other than the Regional Hearing Clerk via email to designated representative:

Jerry Lucas Marrero, Counsel  
O'Neill & Borges, LLC  
Legal Counsel for Respondent  
250 Muñoz Rivera Ave. Suite 800  
San Juan, Puerto Rico 00918  
[jerry.marrero@oneillborges.com](mailto:jerry.marrero@oneillborges.com)

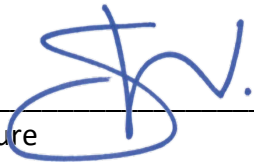
Receipt of the fully executed CAFO by the designated representative shall constitute Respondent's receipt and acceptance of the CAFO. Except as the parties may otherwise agree in writing, EPA shall send any future written communications related to this matter (including any correspondence related to payment of the penalty) by email to this designated representative.

39. Pursuant to 40 C.F.R. § 22.31(b), the executed Consent Agreement and accompanying Final Order shall become effective and binding when filed with the EPA, Region 2 Regional Hearing Clerk.

40. Nothing in this Consent Agreement or in the Final Order affects any rights, interests, claims, or causes of action of Respondent with respect to any third party not a signatory to this Consent Agreement.



For Respondent, PC Puerto Rico, LLC d/b/a USVI Fuel Services:

  
\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

For Complainant, the U. S. Environmental Protection Agency:

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Douglas McKenna  
Acting Director  
Enforcement and Compliance Assurance Division

A handwritten signature in blue ink, consisting of a stylized, circular scribble with a vertical line through the center.

## **FINAL ORDER**

The Regional Judicial Officer of the U.S. Environmental Protection Agency, Region 2, concurs in the foregoing Consent Agreement in the case of In the Matter of PC Puerto Rico, LLC d/b/a USVI Fuel Services, Docket Number RCRA-02-2026-7500. Said Consent Agreement, having been duly accepted and entered into by the parties, is hereby ratified, incorporated into, and issued as this Final Order. The effective date of this Order shall be the date of filing with the Regional Hearing Clerk of EPA - Region 2 (40 C.F.R. § 22.31(b)). This Final Order is being entered pursuant to the authority of 40 C.F.R. § 22.18(b)(3) and shall constitute an order issued under Section 9006(a) of the Solid Waste Disposal Act, as amended, 42 U.S.C. § 6991e(a).

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Dana P. Friedman  
Regional Judicial Officer  
U.S. Environmental Protection Agency – Region 2  
290 Broadway, 16th Floor  
New York, NY 10007-1866

