



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

JUN 13 2018

CERTIFIED MAIL,
RETURN RECEIPT REQUESTED
Article Number: 7017 1450 0000 0133 6594

Lori L. Doughty, Esq.
Academy Counsel
Office of the Staff Judge Advocate
US Military Academy
646 Swift Road
West Point, New York 10996-1781

Re: In the Matter of U.S. Department of the Army
West Point Garrison
Docket Number RCRA- 02-2017-7109

Dear Ms. Doughty:

Enclosed please find a fully executed Consent Agreement and Final Order issued by the Regional Administrator, US EPA Region 2. Please note that the payment of the civil penalty must be received on or before thirty (30) calendar days of the date of signature of the Final Order, located at the end of this document.

Thank you for your assistance.

Sincerely,


Carl R. Howard
Assistant Regional Counsel

Enclosure

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2**

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In The Matter of:

U.S. Department of the Army
West Point Garrison,

Respondent,

Proceeding Under Sections 3008 and 9006
of the Solid Waste Disposal Act as
amended.

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**CONSENT AGREEMENT
AND
FINAL ORDER**

Docket No. RCRA-02-2017-7109

2017-07-13 11:10

PRELIMINARY STATEMENT

This is a civil administrative proceeding instituted pursuant to Sections 3008 and 9006 of the Solid Waste Disposal Act, as amended by various laws, including the Resource Conservation and Recovery Act, the Hazardous and Solid Waste Amendments of 1984 ("HSWA"), and the Federal Facilities Compliance Act of 1992, 42 U.S.C. §§ 6901 - 6991 (together hereafter the "Act" or "RCRA"), for injunctive relief and the assessment of civil penalties. The United States Environmental Protection Agency ("EPA") has promulgated regulations governing the handling and management of hazardous waste at 40 C.F.R. Parts 260 – 273 and 279 and governing the operation of underground storage tanks ("USTs") at 40 C.F.R. Part 280.

Section 3006(b) of the Act, 42 U.S.C. § 6926(b), provides that EPA's Administrator may, if certain criteria are met, authorize a state to operate a hazardous waste program (within the meaning of Section 3006 of the Act, 42 U.S.C. § 6926) in lieu of the regulations comprising the federal hazardous waste program (the Federal Program). The State of New York received final authorization to administer its base hazardous waste program on May 29, 1986. Since 1986, New York State has been authorized for many other hazardous waste requirements promulgated by EPA pursuant to RCRA. See 67 Fed. Reg. 49864 (August 1, 2002), 70 Fed. Reg. 1825 (January 11, 2005) 74 Fed. Reg. 31380 (July 1, 2009).

New York is authorized for most hazardous waste regulations issued by EPA as of January 22, 2002 and the Uniform Hazardous Waste Manifest Amendments issued by EPA on March 4, 2005 and June 16, 2005.

Section 3008(a) of the Act, 42 U.S.C. § 6928(a), authorizes EPA to enforce the regulations constituting the authorized state program, and EPA retains primary responsibility for the enforcement of certain requirements promulgated pursuant to HSWA.

Section 9006 of the Act, 42 U.S.C. § 6991e, authorizes EPA to issue an order requiring compliance with subchapter I of the Act [relating to UST requirements] and such Order may include civil penalties.

On September 28, 2017, Complainant in this proceeding, the Director of the Division of Enforcement and Compliance Assistance, United States Environmental Protection Agency, Region 2 (the "Region"), issued a Complaint and Notice of Opportunity for Hearing (the "Complaint") to Respondent. The Complaint alleged that Respondent violated requirements of the authorized New York hazardous waste program and the federal UST program.

The Complainant and Respondent agree, by entering into this Consent Agreement and Final Order ("CA/FO"), that settlement of this matter upon the terms set forth in this CA/FO is an appropriate means of resolving the claims in the Complaint without further litigation. This CA/FO is being issued pursuant to, and under authority of, 40 C.F.R. § 22.18(b). The parties have met and held settlement discussions. The recitation below of findings of fact and conclusions of law is not intended, nor is it to be construed, as Respondent either admitting or denying such findings and conclusions. No adjudicated finding of fact or conclusions of law have been made.

EPA'S FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. In accordance with Section 3008(a)(2) of RCRA, 42 U.S.C § 6928(a)(2), EPA has given the State of New York prior notice of this action.
2. The U.S. Department of the Army: West Point Garrison ("West Point" or "Respondent") is a department, agency or instrumentality of the executive branch of the Federal government.
3. Respondent is a "person" within the meaning of Section 9001(5) of the Act, 42 U.S.C. § 6991(5) and 40 C.F.R. § 280.12, and as that term is defined in Section 1004(15) of the Act, 42 U.S.C § 6903(15), and in Title 6 of the New York Codes, Rules and Regulations at 6 NYCRR § 370.2(b).¹
4. The location of the West Point Garrison, with headquarters at 681 Hardee Place, West Point, New York 10996, constitutes Respondent's "Facility," as that term is defined at 6 NYCRR § 370.2(b).
5. At all times relevant to this action, Respondent has "owned" and "operated" the Facility, as those terms are used in Section 9001 of the Act, 42 U.S.C. § 6991, and in 40 C.F.R. § 280.12, including three USTs at the Facility: #616 A, #912 B and #1950 B.
6. Pursuant to Section 9001(10), 42 U.S.C. § 6991(10) and 40 C.F.R. Section 280.12, an "UST" is "any one or combination of tanks (including underground pipes connected thereto) that is used to contain an accumulation of regulated substances..."

¹ All words or phrases that have been defined in reference to statutory and/or regulatory provisions are used throughout the Complaint as so defined.

7. Respondent's UST #616 A is a 500-gallon tank storing diesel fuel for an emergency generator, and USTs #912 B and #1950 B are 10,000-gallon tanks storing gasoline for vehicles, thus making the three USTs as defined in Section 9001(10), 42 U.S.C. § 6991(10) and 40 C.F.R. Section 280.12.

Respondent's Generation of Waste

8. West Point has been generating, and continues to generate, "solid waste" (within the meaning of 6 NYCRR § 371.1(c)) at its Facility.
9. In carrying out its activities, West Point has been generating, and continues to generate, hazardous waste, as defined in 6 NYCRR § 371.1(d), at the Facility.
10. As of August 18, 1980, and subsequent thereto, Respondent has been a generator of hazardous waste at the Facility.
11. At the time of EPA's Inspection described in paragraph 17 below, and at various times since then, Respondent generated at its Facility at least 1000 kilograms ("kg") of hazardous waste during a calendar month
12. At the time of EPA's Inspection described in paragraph 17 below, and at various times since then, Respondent was a small quantity handler of universal waste ("SQHUW"), as that phrase is defined in 6 NYCRR §374-3.1(i)(9)
13. The requirements for hazardous waste generators are set forth in 6 NYCRR §372.2.
14. The requirements for a SQHUW are set forth in 6 NYCRR §374-3.2
15. Pursuant to Section 3010 of RCRA, 42 U.S.C. § 6930, West Point informed EPA that West Point generated hazardous waste through a notification (EPA Form 8700-12) on August 18, 1980.
16. In response to the Notification, EPA provided West Point with EPA Identification Number NY8210020915.
17. On or about June 6 - 10, 2016, duly designated representatives of EPA conducted a Compliance Evaluation Inspection ("Inspection" or "June 2016 Inspection") of Respondent's Facility, pursuant to Section 3007 of the Act, 42 U.S.C. § 6927, and Section 9005 of the Act, 42 U.S.C. § 6991(d). The purpose of the inspection was in part to determine the Respondent's compliance with the Act.
18. On or about January 18, 2017, EPA issued to West Point a combined Notice of Violation ("NOV") and Information Request Letter ("IRL") regarding its Facility.

19. The NOV, which was issued pursuant to Sections 3008 and 9006 of the Act, 42 U.S.C. §§ 6928 and 6991e, respectively, informed West Point that EPA had identified a number of potential RCRA hazardous waste and UST violations at Respondent's Facility and required West Point to provide EPA with detailed descriptions and documentation of any actions it had taken to correct such violations.
20. The IRL, which was issued pursuant to Sections 3007 and 9005(a) of RCRA, 42 U.S.C. §§ 6927 and 6991d(a), respectively, sought information and documentation relating to hazardous waste activities and UST operations at the Facility and required that Respondent submit specific types of documentation relating to hazardous waste activities and UST operations at its Facility.
21. On or about February 21, 2017, a duly authorized representative of West Point submitted its certified Response to the combined NOV and IRL.
22. On September 28, 2017, EPA issued a Complaint to the Respondent alleging the following violations of Subtitles C and I of RCRA and its implementing regulations and/or the following failures:
 - a. failure to demonstrate the length of time that its universal waste ("UW") bulbs had been accumulated from the dates they became a waste, and failure to contain all UW lamps in containers or packages that were adequate to prevent breakage and that remained closed in violation of 6 NYCRR § 374-3.2(f)(3) and (d)(4)(i),
 - b. failure to determine whether each solid waste generated at its Facility constitutes a hazardous waste in violation of 6 NYCRR § 372.2(a)(2),
 - c. failure to maintain and operate its Facility to minimize the probability of fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil or surface water that could threaten human health or the environment in violation of 6 NYCRR § 373-3.3(b),
 - d. failure to keep onsite, at its Facility, a copy of each complete manifest document for each hazardous waste shipment that was accepted by the initial transporter within three years of that acceptance in violation of 6 NYCRR § 372.2(c)(1)(i),
 - e. operation of a hazardous waste management Facility without having obtained a permit or qualifying for interim status in violation of both Section 3005 of the Act, 42 U.S.C. § 6925, and 6 NYCRR § 373-1.2(a). Respondent was required to have a permit as a result of its storing hazardous waste without meeting the conditions listed in paragraphs "i" through and including "ix", below.
 - i. failure to maintain containers of hazardous waste in good condition as specified in 6 NYCRR § 373-3.9(b),

- ii. failure of a Large Quantity Generator to limit hazardous waste generation to 90 days as specified in 6 NYCRR Part 372.2(a)(8)(ii),
 - iii. failure to label containers with words identifying the hazardous waste as specified in 6 NYCRR § 373-3.9(d)(3),
 - iv. failure to clearly mark containers with the accumulation start date as specified in 6 NYCRR § 372.2(a)(8)(ii),
 - v. failure to ensure that hazardous wastes are stored either at central hazardous waste storage areas or at satellite accumulation areas as specified in 6 NYCRR Part 372.2(a)(8)(i)(a'),
 - vi. failure to have an adequate hazardous wastes contingency plan as specified in 6 NYCRR § 373-3.4,
 - vii. failure to conduct weekly inspections as specified in 6 NYCRR § 373-3.9(e),
 - viii. failure to train facility personnel handling hazardous wastes as specified in 6 NYCRR § 373-3.2(g),
 - ix. failure to maintain training records as specified in 6 NYCRR § 373-3.2(g),
- f. failure to test the cathodic protection system of Tank #616A in accordance with a code of practice developed by a nationally recognized association from at least April 19, 2013 through February 12, 2017, in violation of 40 CFR § 280.31(b)(2), and,
- g. failure to have properly conducted an acceptable method of piping release detection for UST Systems # 1950B at the time of the June 6, 2016 inspection and to maintain records of such testing or monitoring in violation of 40 C.F.R. §§ 280.41(b)(1)(ii) and 280.45(b).
23. On November 21, 2017, the parties met in an informal settlement conference. Subsequently, the parties have agreed to settle this matter as provided herein.

CONSENT AGREEMENT

Pursuant to Sections 3008 and 9006 of RCRA, 42 U.S.C. §§ 6928 and 6991e, and 40 C.F.R. § 22.18 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 C.F.R. Part 22, it is hereby agreed by and between the parties hereto, and voluntarily and knowingly accepted by Respondent, that Respondent, for purposes of this Consent Agreement and in the interest of settling this matter expeditiously without the time, expense or uncertainty of a formal adjudicatory hearing on the merits: (a) admits the jurisdictional allegations of the Complaint; (b) neither admits nor denies

EPA's Findings of Fact and Conclusions of Law set forth in this Consent Agreement; (c) consents to the assessment of the civil penalty and other terms of settlement set forth below; and (d) waives its right to contest or appeal the Final Order.

Based upon the foregoing, and pursuant to Section 3008 of RCRA and 40 C.F.R. § 22.18, it is hereby agreed as follows:

1. Respondent hereby certifies that, as of the date of its signature to this Agreement, to the best of its knowledge and belief, it is in compliance with all the requirements cited in the Complaint.
2. Respondent shall hereafter at its Facility comply with all the applicable requirements cited in the Complaint and any revisions to those rules that take effect in the future.
3. Any responses, documentation, and other communications submitted in connection with this Consent Agreement shall be sent to:

Mr. Charles Zafonte
Multi-Program Enforcement Officer
Compliance Assistance & Program Support Branch
Division of Enforcement and Compliance Assistance
U.S. Environmental Protection Agency, Region 2
290 Broadway, 21st floor
New York, New York 10007-1866

and

Carl R. Howard
Assistant Regional Counsel
Office of Regional Counsel
US Environmental Protection Agency
290 Broadway, 16th floor
New York, New York 10007-1866

EPA shall address any written communications to Respondent at the following address:

Lori L. Doughty, Esq.
Academy Counsel
Office of the Staff Judge Advocate
US Military Academy
646 Swift Road
West Point, New York 10996-1781

4. Respondent shall pay a civil penalty to EPA in the total amount of **NINETY THOUSAND DOLLARS** (\$90,000). Such payment shall be made by check or by Electronic Fund Transfer (EFT). If the payment is made by check, then the check shall be made payable to the **Treasurer, United States of America**, and shall be mailed to:

**U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000**

The check shall be identified with a notation thereon listing the following: ***IN THE MATTER OF U.S. DEPARTMENT OF THE ARMY, WEST POINT GARRISON***, and shall bear thereon the **Docket Number RCRA-02-2017-7109**

If Respondent chooses to make the payment by EFT, then Respondent shall provide the following information to its remitter bank:

1. Amount of Payment.
 2. SWIFT address: FRNYUS33, 33 Liberty Street, New York, NY 10045.
 3. Account Code for Federal Reserve Bank of New York receiving payment: 68010727.
 4. Federal Reserve Bank of New York ABA routing number: 021030004.
 5. Field Tag 4200 of the Fedwire message should read D 68010727 Environmental Protection Agency.
 6. Name of Respondent: U.S. DEPARTMENT OF THE ARMY, WEST POINT GARRISON,
 7. Case Number: **RCRA-02-2017-7109**
5. The payment must be received at the above address (or account of EPA) on or before thirty (30) calendar days after the date of the signature of the Final Order, which is located at the end of this CA/FO.
 6. Complainant shall mail to Respondent a copy of the fully executed CA/FO, and Respondent consents to service of the CA/FO upon it by an employee of EPA other than the Regional Hearing Clerk.
 7. Respondent has read this Consent Agreement, understands its terms, consents to the issuance of the Final Order accompanying this Consent Agreement, and consents to making full payment of the civil penalty in accordance with the terms and conditions set forth above.
 8. This CA/FO is not intended, and shall not be construed, to waive, extinguish or otherwise affect Respondent's obligation to comply with all applicable federal and state rules, laws and regulations governing the generation, handling, treatment, storage, transport and disposal of hazardous waste, nor is it intended or is it to be construed as a ruling on, or determination of, any issues related to any federal, state, or local permit.
 9. 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.

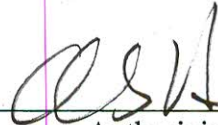
10. Full payment of the penalty described in paragraph 4, above, shall only resolve Respondent's liability for federal civil penalties for the violation(s) and facts alleged in the Complaint issued in this matter. Full payment of this penalty shall not in any case affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.
11. Failure to obtain adequate funds or appropriations from Congress does not release Respondent from its obligation to comply with RCRA, the applicable regulations thereunder, or with this CA/FO. Nothing in this CA/FO shall be interpreted to require obligation or payment of funds in violation of the Anti-Deficiency Act, 31 U.S.C. § 1341.
12. The provisions of this Consent Agreement shall be binding upon Respondent, its officials, authorized representatives and successors or assigns.
13. This Consent Agreement and any provision herein shall not be construed as an admission of liability in any criminal or civil action or other administrative proceeding, except in an action, suit or proceeding to enforce this Consent Agreement or any of its terms and conditions.
14. This Consent Agreement and Final Order does not waive, extinguish, or otherwise affect Respondent's obligation to comply with all applicable provisions of RCRA and the regulations promulgated thereunder.
15. Respondent waives its right to request a hearing on the Complaint, this Consent Agreement, or the Final Order included herein, including any right to contest any allegations or findings of fact or conclusions of law contained within these documents. In addition, Respondent expressly waives its right to confer with the Administrator pursuant to Section 6001(b)(2) of RCRA, 42 U.S.C. § 6961(b)(2).
16. The signatory for the Respondent certifies that: a) he or she is duly and fully authorized to enter into and ratify this Consent Agreement and all the terms, conditions and requirements set forth in this Consent Agreement, and b) he or she is duly and fully authorized to bind the party on behalf of whom (which) he or she is entering this Consent Agreement to comply with and abide by all the terms, conditions and requirements of this Consent Agreement.
17. Each party hereto shall bear its own costs and fees in this matter.

In The Matter of U.S. DEPARTMENT OF THE ARMY, WEST POINT GARRISON
Docket Number RCRA-02-2017-7109

RESPONDENT:

**U.S. DEPARTMENT OF THE ARMY, WEST
POINT GARRISON**

BY: _____



Authorizing Signature

NAME: _____

Andrew Hanson

(PLEASE PRINT)

TITLE: _____

Garrison Commander

DATE: _____

9 May 2018

COMPLAINANT

**UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY REGION 2**

Dore LaPosta, Director

Division of Enforcement and
Compliance Assistance

U.S. Environmental Protection Agency

- Region 2

290 Broadway

New York, New York 10007

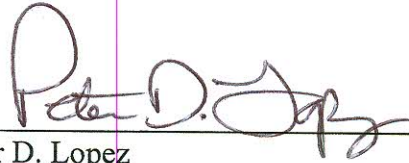
MAY 31 2018

DATE: _____

In The Matter of U.S. DEPARTMENT OF THE ARMY, WEST POINT GARRISON
Docket Number RCRA-02-2017-7109

FINAL ORDER

The Regional Administrator of the United States Environmental Protection Agency for Region 2 ratifies the foregoing Consent Agreement. The Consent Agreement entered into by the parties to this matter, is hereby approved, incorporated herein, and issued as an Order pursuant to Sections 3008 and 9006 of the Act, and 40 C.F.R. § 22.18. The effective date of this Order shall be the date of filing with the Regional Hearing Clerk, United States Environmental Protection Agency, Region 2, 40 C.F.R. § 22.31(b).



Peter D. Lopez
Regional Administrator
U.S. Environmental Protection Agency
Region 2
290 Broadway, 26th Floor
New York, NY 10007

DATE: _____

6/6/18

In The Matter of U.S. DEPARTMENT OF THE ARMY, WEST POINT GARRISON
Docket Number RCRA-02-2017-7109

CERTIFICATE OF SERVICE

I certify that I have this day caused to be sent the foregoing fully executed CONSENT AGREEMENT and FINAL ORDER, bearing the above-referenced docket number, in the following manner to the respective addressees below:

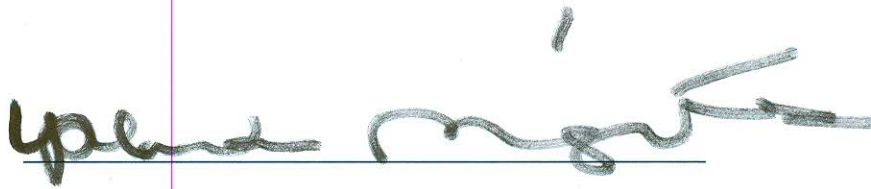
Original and One Copy
By Hand:

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

Copy by Certified Mail,
Return Receipt Requested:

Lori L. Doughty, Esq.
Academy Counsel
Office of the Staff Judge Advocate
US Military Academy
646 Swift Road
West Point, New York 10996-1781

JUN 13 2018
Dated: _____



A handwritten signature in dark ink, appearing to read "Lori L. Doughty", is written over a horizontal line.