

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG.II

2008 SEP 30 PM 5:15

REGIONAL HEARING
CLERK

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region 2

IN THE MATTER OF

MUNICIPALITY OF SAN JUAN
Respondent

DR. JAVIER J. ANTÓN HOSPITAL
SAN JUAN CENTER FOR DIAGNOSTIC
AND TREATMENT

CONSENT AGREEMENT AND FINAL
ORDER

Docket No. RCRA-02-2007-7112

CONSENT AGREEMENT AND FINAL ORDER

A
This is a civil administrative proceeding instituted pursuant to Section 3008 of the Solid Waste Disposal Act, as amended by various laws including the Resource Conservation and Recovery Act and the Hazardous and Solid Waste Amendments of 1984 ("HSWA"), 42 U.S.C. §§ 6901 et seq. (referred to collectively as the "Act" or "RCRA"). 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 through 279.

Pursuant to Section 3006(b) of the Act, 42 U.S.C. § 6926(b), whereby the Administrator of EPA 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 federal hazardous waste program. The Commonwealth of Puerto Rico is not authorized by EPA to conduct a hazardous waste management program under Section 3006 of RCRA, 42 U.S.C. § 6926. Therefore, EPA retains primary responsibility for requirements promulgated pursuant to RCRA. As a result, all requirements in 40 C.F.R. Parts 260 through 268 and 270 through 279 relating to hazardous waste are in effect in the Commonwealth of Puerto Rico and EPA has the authority to implement and enforce these regulations.

The Complainant in this proceeding, the Director of the Caribbean Environmental Protection Division, (CEPD) EPA, Region 2, issued a "Complaint, Compliance Order and Notice of Opportunity for Hearing" ("Complaint") bearing Docket Number RCRA-02-2007-7112, to the Municipality of San Juan ("Respondent"), on September 27, 2007, and it served an answer on or about February 14th, 2008. The Complaint alleged that Respondent had violated requirements of RCRA and regulations concerning the handling and management of hazardous waste at its Dr. Javier J. Anton Hospital, San Juan center for

Diagnostic and Treatment, (also known as the Rio Piedras or San Juan CDT) (hereinafter "CDT") in Rio Piedras, Puerto Rico.

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 raised in the Complaint against Respondent at its CDT, without further litigation.

This CA/FO is being issued pursuant to, and under the authority of, 40 C.F.R. § 22.18(b). No adjudicated findings of fact or conclusions of law have been made. The following constitute EPA's Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. Respondent is the Municipality of San Juan, a municipal government authority governed under the "Ley de Municipios Autónomos" Public Law # 81, August 30, 1991, as amended.
2. Respondent owns and/or operates the CDT, one of its medical facilities. Respondent's facility is located at Number 1 Piñero Street corner of Vallejo Street, Río Piedras, Puerto Rico.
3. The CDT is part of the Municipality of San Juan's Department of Health. The CDT provides healthcare services to the general public and low income families residing in and around the Río Piedras area of the Municipality of San Juan.
4. The CDT is situated in a residential / commercial sector at the south side of the Rio Piedras commercial area.
5. Since at least 1940, Respondent has conducted (and continues to conduct) facility maintenance, medical care and medical activities (diagnosing and treating illnesses and diseases) in the course of conducting normal operations at the CDT. Among the healthcare programs and services provided at the Facility are primary emergency care, minor surgery, physical and rehabilitation medicine, pharmacy drugs and prescriptions, psychology, psychiatry, dental health services, drug abuse and their sub-specialities.
6. Respondent, in carrying out its medical related activities and in conducting normal building maintenance operations, has been generating "solid waste," as that term is defined in 40

In the Matter of the Municipality of San Juan, Docket No. RCRA-02-2007-7112

Consent Agreement and Final Order


C.F.R. § 261.2, in various maintenance areas, clinic laboratories, health care units, and other areas of the Facility at all times relevant to this Complaint.

7. As part of the above activities and maintenance operations, pursuant to records provided by Respondent to EPA, Respondent generated solid waste in various areas of the facility since at least March 3, 2005, and it continues to do so.
8. Respondent informed EPA, through a Notification of Regulated Waste Activity Form under the name "CMS Dr. Javier J. Antón" and dated March 20, 1993 (hereinafter the "Notification"), that in the course of carrying out its activities it had generated hazardous waste in and at the Facility.
9. The notification was prepared by an employee and/or agent of Respondent in the course of carrying out his/her employment or duties.
10. In the Notification, Respondent reported itself as generating hazardous wastes described by the use of various EPA waste codes. In the Notification Respondent indicated it generated less than 100 kg/month.
11. In response to the Notification, EPA provided Respondent with EPA Identification Number PRD987381563 for the facility referred to in the Notification.
12. The location described in the Notification is the CDT described in this Complaint.
13. On or about December 8, 2005, duly designated representatives of EPA conducted an inspection of the Facility, pursuant to Section 3007 of RCRA, 42 U.S.C. § 6927 (the "1st Inspection").
14. The purpose of the 1st Inspection was to perform a hazardous waste management compliance investigation, since EPA had previously responded to several incidents at the CDT, under CERCLA, including a fire incident and several spills in which it was discovered that metallic mercury had spilled throughout the Facility.
15. During the 1st Inspection, EPA also evaluated Respondent's compliance with applicable requirements of RCRA and its implementing regulations.
16. On or about December 8, 2005, duly designated representatives of EPA held an inspection closing conference (1st Inspection)

In the Matter of the Municipality of San Juan, Docket No. RCRA-02-2007-7112

Consent Agreement and Final Order

with Respondent's representatives at the Facility.

- 
17. During the closing conference, EPA discussed the preliminary findings of the 1st Inspection with Respondent's representatives. Among the findings, EPA expressed a major concern associated with the handling, storage, and management of hazardous wastes, including how the Respondent handled the three consecutive mercury spill incidents throughout the Facility. Specifically, EPA emphasized that a hazardous waste determination had not been made with respect to the mercury waste that were in the numerous containers and drums being stored at the facility. In addition, EPA indicated that a hazardous waste determination had not been made on the spent fluorescent lamps and decommissioned mercury-contained equipment as well as on the discarded material contaminated with mercury that was placed in plastic bags.
 18. The first incident occurred on or around March 3, 2005 during a fire incident at the hallway of the third floor of the Facility. The Respondent has alleged that the fire was caused by a third party and it involved criminal activity (Respondent alleges that a "burglary" occurred at the facility)
 19. During the fire approximately 1-3 sphygmomanometers broke, causing the metallic mercury reservoir to spill and contaminate the surrounding areas.
 20. The second incident occurred on or around August 25, 2005 in the Emergency Room of the facility, when the mercury reservoir of a sphygmomanometer broke, the mercury spill was not properly handled causing the contamination to spread to other areas of the Facility. Respondent admitted that the spill occurred but that it was as a result of a third party's action.
 21. The third incident occurred on or around September 6, 2005 in the Diagnostic Office of the Facility's second floor, when another mercury reservoir of a sphygmomanometer broke. Contamination of the surrounding areas resulted due to the improper handling of the hazardous waste by Respondent. In responding to the above-referenced spill incidents, Respondent did not properly control the contamination and attempted to clean up the mercury contamination by using janitorial personnel and conventional janitorial equipment (mops, brooms,

and rags) and did not use appropriate spill control, decontamination nor clean up equipment. Respondent's manner of attempting to clean up the spilled material resulted in the spreading of the mercury contamination and the exposure of employees and visitors to mercury contaminated material. The residuals generated from the clean-up activities, including materials contaminated with mercury, were placed in plastic bags and stored in the hospital basement. Air monitoring samples from mops, brooms, and bags showed elevated mercury vapor concentrations. None of the bags were properly contained or identified with its content. Respondent admitted that the incident occurred but that again it was as a result of a third party's action.

22. In the above incidents, EPA's Superfund Removal Team responded to the mercury spills. The EPA's Superfund Removal Team performed an assessment of the extent of contamination and air monitoring, among other things.
23. On or about June 7, 2006, duly designated representatives of EPA conducted another compliance inspection of the Facility, pursuant to Section 3007 of RCRA, 42 U.S.C. § 6927, (the "2nd Inspection").
24. The purpose of the 2nd Inspection was to investigate a 4th metallic mercury spill that had occurred in the emergency room and the basement of the Facility. This incident notification was the 4th metallic mercury spill that had been investigated at the Facility by EPA.
25. During the 2nd Inspection, EPA re-evaluated Respondent's compliance at the Facility with applicable requirements of RCRA and its implementing regulations.
26. On or about June 7, 2006, duly designated representatives of EPA held an inspection closing conference with Respondent's representatives at the Facility.
27. During the closing conference, EPA discussed with Respondent's representatives the preliminary findings of the 2nd Inspection, which included RCRA violations that were identified during the 1st Inspection, with Respondent's representatives. EPA notified that the mercury spills were not properly handled causing the mercury contamination to spread to other areas within the Facility. It was also notified to the Respondent

that containers with mercury waste showed some deficiencies in particular that some of them were open and were not properly labeled and marked with its accumulation start dates. There were still containers and drums with mercury waste that were identified in the 1st Inspection, that were not yet characterized in order to determine its final disposition as indicated by EPA during its first closing meeting.

- A*
28. During the course of the 1st and 2nd inspections, Respondent admitted that the facility did not have a program in place for the management and proper disposal of spent fluorescent lamp bulbs containing mercury. Spent fluorescent lamp bulbs were disposed with domestic waste (garbage).
 29. On or about September 29, 2006, EPA issued Respondent, pursuant to Sections 3007 and 3008 of RCRA, 42 U.S.C. §§ 6927 and 6928, a Notice of Violation ("NOV") and Information Request Letter, regarding its CDT, citing RCRA violations discovered during the inspection, and requiring the submission of certain information.
 30. The NOV requested Respondent to take immediate actions to correct the RCRA violations identified. EPA also requested to the Respondent to submit, within thirty (30) days of receipt of such correspondence, a response including: (1) a description of the actions that Respondent had taken to correct the violations; (2) documentation certifying that the violations had been corrected; and (3) a description of the procedures that would be put into place in order to prevent the occurrence of such violations in the future.
 31. On or about December 15, 2006, Respondent submitted its response (the "Response") to the NOV and Information Request Letter.
 32. The Response was prepared by an employee or agent of Respondent in the course of carrying out his/her employment or duties.
 33. The Response stated that the 1st metallic mercury spill occurred approximately on March 7, 2005, and it was handled by the Puerto Rico Environmental Quality Board (the "PREQB"), and a contractor. An emergency temporary RCRA EPA I.D. generator number was assigned under the Superfund Removal Program for the disposal of the generated hazardous waste.

In the Matter of the Municipality of San Juan, Docket No. RCRA-02-2007-7112
Consent Agreement and Final Order

34. According to Respondent the waste generated from the second and third spills were disposed on March 31, 2006. Clean up activities were performed by a private contractor. The hazardous wastes were placed in fourteen (14) 55-gallon drums (nine [9] 55-gallon plastic drums and five [5] 55-gallon metal drums) and disposed of in a New Jersey hazardous waste facility.
35. However, according to Respondent's response, the contractor left three (3) 55-gallon plastic drums, apparently from the third spill incident, since the hazardous waste was mixed with biomedical waste. In addition, a 55-gallon plastic drum was left with decommissioned old sphygmomanometers.
36. Based on EPA's review of Respondent's Response, EPA determined that Respondent failed to properly address and correct the violations cited in the NOV.

EPA's CONCLUSIONS OF LAW

37. Respondent is a "person" (as that term is defined in Section 1004(15) of the Act, 42 U.S.C. § 6903(15) and 40 C.F.R. § 260.10.
38. The CDT Facility constitutes a "facility," within the meaning of 40 C.F.R. § 260.10.
39. Respondent, in carrying out its medical related activities and in conducting normal building maintenance operations, has been generating "solid waste," as that term is defined in 40 C.F.R. § 261.2, in various maintenance areas, clinic laboratories, health care units, and other areas of the Facility.
40. As part of the above activities and maintenance operations, Respondent has generated, in various maintenance areas, clinic laboratories, health care units, and other areas of the Facility, "hazardous waste," as that term is defined in 40 C.F.R. § 261.3.
41. At all times mentioned in this Complaint and subsequent thereto, Respondent has been a hazardous waste "generator," at

In the Matter of the Municipality of San Juan, Docket No. RCRA-02-2007-7112
Consent Agreement and Final Order

its Facility as that term is defined in 40 C.F.R. § 260.10.

42. The Facility constitutes an "existing hazardous waste management facility" (or "existing facility") within the meaning of 40 C.F.R. § 260.10.
43. The Facility is and has been a "storage" facility for "hazardous waste," as those terms are defined in 40 C.F.R. § 260.10.
44. Respondent did not comply with all applicable conditions set forth in 40 C.F.R. § 262.34.
45. Based on EPA's Inspections and Respondent's Response, EPA issued a Complaint to respondent on September 27, 2007 alleging two counts of violations:

Count 1 - Failure to Make Hazardous Waste Determinations, 40 C.F.R. § 262.11.

Count 2 - Failure To Minimize Risks, 40 C.F.R. § 265.31 (of Subpart C).

CONSENT AGREEMENT

Based upon the foregoing, and pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928, 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 Complainant, 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 the allegations set forth in the Complaint; (c) neither admits nor denies the above "Findings of Fact" and/or "Conclusions of Law"; (d) consents to the assessment of the civil penalty as set forth below; (e) agrees to perform those actions listed below to come into compliance in accordance with the terms and conditions set forth herein; (f) consents to the issuance of the Final Order accompanying this Consent Agreement; and (g) waives its right to contest or appeal that Final Order.

In the Matter of the Municipality of San Juan, Docket No. RCRA-02-2007-7112
Consent Agreement and Final Order

It is further hereby agreed by and between Complainant and Respondent, and voluntarily and knowingly accepted by Respondent, that the parties shall comply with the following terms and conditions:

1. Respondent shall submit payment of a civil penalty in the total amount of FIFTY-FIVE THOUSAND DOLLARS (\$55,000), by cashier's or certified check, or wire transfer, in two payments as follows:


- a. An initial payment of TWENTY-SEVEN THOUSAND AND FIVE HUNDRED DOLLARS (\$27,500) shall be made no later than December 1st, 2008 and
- b. A Second and Final payment shall be made no later than January 15th, 2009 in the amount of TWENTY-SEVEN THOUSAND AND FIVE HUNDRED DOLLARS (\$27,500)).
- c. These TWO payments satisfy the totality of the civil penalty of FIFTY-FIVE THOUSAND DOLLARS (\$55,000).
- d. Checks shall be made payable to the "Treasurer of the United States of America." Payment shall be made payable to the "Treasurer, United States of America," and shall be mailed to:

US Environmental Protection Agency
Fines and Penalties
Cincinnati finance center
PO Box 979077
St. Louis, MO 63197-9000

The instrument of payment shall be identified with a notation thereon listing the following: In the Matter of Municipality of San Juan, Docket Number RCRA-02-2007-7112.

- e. Failure to pay the amount in full within the time periods set forth above may result in referral of this matter to the United States Department of Justice or the United States Department of the Treasury for collection.

In the Matter of the Municipality of San Juan, Docket No. RCRA-02-2007-7112
Consent Agreement and Final Order

- 
- f. Furthermore, if payment is not made on or before the dates specified in this document, interest for said payment shall be assessed at the annual rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717, on the overdue amount from the date said payment was to have been made through the date said payment has been received. In addition, a late payment handling charge of \$15.00 will be assessed for each thirty (30) calendar day period or any portion thereof, following the dates the payments were to have been made, in which payment of the amount remains in arrears. In addition, a 6% per annum penalty will be applied to any principal amount that has not been received by the EPA within ninety (90) calendar days of the dates for which the payments were required hereto to have been made.
- g. The civil penalty provided for in this paragraph constitutes a penalty within the meaning of 26 U.S.C. § 162(f).
- h. A copy of Respondent's instrument of payment shall be forwarded to each of:

Lourdes del Carmen Rodriguez
Assistant Regional Counsel
U.S. Environmental Protection Agency, Region 2
Office of Regional Counsel, Caribbean Team
Centro Europa Building, Suite 417
1492 Ponce de León Avenue
San Juan, Puerto Rico 00907

and

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

2. Complainant shall mail to Respondent (to the representative designated below) a copy of the fully executed Consent Agreement and Final Order ("CA/FO"), and Respondent consents to service of the CA/FO upon it by an employee of EPA other than the Regional Hearing Clerk.

3. Except as provided in paragraph "1", above, in this section (and except as the parties may in writing agree to otherwise), all documentation and information required to be submitted in accordance with the terms and conditions of this Consent Agreement shall be sent to:

FOR COMPLAINANT:

Eduardo González
Response and Remediation Branch
Caribbean Environmental Protection Division
Centro Europa Building, Suite 417
1492 Ponce de León Avenue
San Juan, Puerto Rico 00907



Lourdes del Carmen Rodriguez
Assistant Regional Counsel
U.S. Environmental Protection Agency, Region 2
Office of Regional Counsel, Caribbean Team
Centro Europe Building, Suite 417
1492 Ponce de Leon Avenue
San Juan, Puerto Rico 00907

FOR RESPONDENT:

Jorge R Quintana-Lajara, Esq.
P.O. Box 366029
San Juan, PR 00936-6029

Rafael A. Machargo, Esq.
P.O. Box 193005
San Juan, PR 00919-3005

Eng. Jose J. Molina Resto
Municipality of San Juan
Sub-Director Ejecutivo Interino
Area de Operaciones e Ingenieria
P.O. Box 9024100
San Juan, PR 00902-4100

4. Respondent has read this Consent Agreement, understands its terms, and consents to the issuance of the Final Order accompanying this Consent Agreement, consents to making full payment of the civil penalty in accordance with the terms and conditions set forth above, and consents to comply, to the extent that it has not already done so, with the terms and conditions of the Compliance Order that was issued as part of the Complaint, Compliance Order and Notice of Opportunity for Hearing to Respondent, on this matter, bearing Docket Number RCRA 02-2007-7112.

5. 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, state and local law and

regulations governing the generation, handling, treatment, storage, transport and disposal of hazardous waste (hereinafter, "the management"), 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.

6. Respondent shall certify within forty-five (45) calendar days of the effective date of the CA/FO, to the extent it has not already done so, that to the best of its knowledge and belief, Respondent is in full compliance with the items numbered in the Compliance Order. In so certifying, Respondent shall provide to Complainant, appropriate supporting documentation.

7. This Consent Agreement is being voluntarily entered into by the parties in full and final settlement of all civil liabilities (provided Respondent fully complies with the terms and conditions set forth in this Consent Agreement) that attach or might have attached to Respondent as a result of the violations alleged in the Complaint bearing Docket Number RCRA-02-2007-7112 and the alleged violations at the CDT Facility, which are described in paragraph 45, above, of the Conclusions of Law.

8. The provisions of this Consent Agreement shall be binding upon Respondent, its officials, authorized representatives and successors or assigns.

9. 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.

10. Respondent hereby waives its right to seek or to obtain any hearing on the allegations made in the Complaint, and on the terms and conditions set forth in the Consent Agreement and its accompanying Final Order and/or on the Findings of Fact/Conclusions of Law, above.

11. Respondent voluntarily waives any right it might have pursuant to 40 C.F.R. § 22.8 to be present during discussions with, or to be served with and reply to any memorandum or other communication addressed to, the Regional Administrator of EPA, Region 2, or the Deputy Regional Administrator of EPA, Region 2, where the purpose of such discussion, memorandum or other communication is to recommend that such official accept this Consent Agreement and issue the accompanying Final Order.

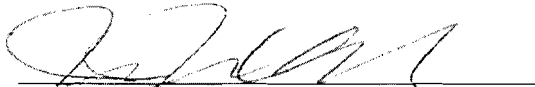
12. Pursuant to 40 C.F.R. § 22.31(b), the effective date of the Final Order herein shall be the date when filed with the Regional Hearing Clerk of the United States Environmental Protection Agency, Region 2.

13. Each party shall bear its own costs and fees in connection

SIGNATURES INCLUDED IN NEXT PAGE

with this proceeding.

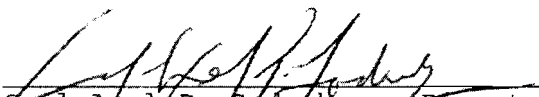
RESPONDENT: Municipality of San Juan

BY: 
Eng. Jose J. Molina Resto
Acting Deputy Executive Director
Engineering and Operations Area
XXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXX

NAME: Jose J. Molina Resto
(PLEASE PRINT)

DATE: September 30, 2008

COMPLAINANT:


Carl-Axel P. Soderberg, Director
Caribbean Environmental Protection Division
U.S. Environmental Protection Agency - Region 2
Centro Europa Building, Suite 417
1492 Ponce de León Avenue
San Juan, Puerto Rico 0090

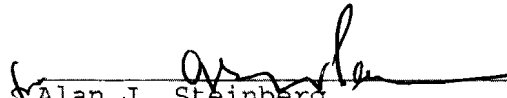
Date: 09-30-08

FINAL ORDER

A

The Regional Administrator of EPA, Region 2 (or anyone duly delegated to act on her behalf), concurs in the foregoing Consent Agreement in the case of In the Matter of the Municipality of San Juan bearing Docket Number RCRA-02-2007-7112. Said Consent Agreement, having been duly accepted and entered into by the parties, is hereby ratified, incorporated into and issued, as this Final Order, which shall become effective when filed 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 the authority of Section 3008 of RCRA, 42 U.S.C. § 6928.

DATED: 9/30/08



Alan J. Steinberg
Regional Administrator
U.S. Environmental Protection Agency,
Region 2
290 Broadway
New York, New York 10007-1866