

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

IN THE MATTER OF:

**USVI Department of Health - Division of
Environmental Health -St. Thomas & St.
Croix**

Respondent

Proceeding under Section 3008 of the Solid
Waste Disposal Act, as amended,
42 U.S.C. § 6928

**COMPLAINT, COMPLIANCE ORDER
AND NOTICE OF OPPORTUNITY FOR
HEARING**

Docket No. RCRA-02-2010-7111

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II
2010 OCT - 1 A 11: 37
REGIONAL HEARING
CLERK

I. COMPLAINT

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 and used oil at 40 C.F.R. Parts 260 through 279.

This COMPLAINT, COMPLIANCE ORDER AND NOTICE OF OPPORTUNITY FOR HEARING (Complaint) serves notice of EPA's preliminary determination that the United States Virgin Islands Department of Health - Division of Environmental Health (hereinafter "Respondent" or "VIDOH") has violated requirements of RCRA and regulations implementing RCRA, concerning the management of hazardous waste at its facilities in Saint Thomas and Saint Croix, United States Virgin Islands (USVI).

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 US Virgin Islands 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 US Virgin Islands and EPA has the authority to implement and enforce these regulations.

Section 3008(a)(1) of RCRA, 42 U.S.C. § 6928(a)(1), provides, in part, that "whenever on the basis of any information the Administrator [of EPA] determines that any person has violated or is in violation of any requirement of this subchapter [Subtitle C of RCRA], the Administrator may issue an order assessing a civil penalty for any past or current violation."

Pursuant to Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), “[a]ny penalty assessed in the order [issued under authority of Section 3008(a) of RCRA, 42 U.S.C. § 6928(a)] shall not exceed \$25,000 per day of noncompliance for each violation of a requirement of [Subtitle C of RCRA].” Under authority of the Federal Civil Penalties Inflation Adjustment Act of 1990, 104 Stat. 890, Public Law 101-410 (codified at 28 U.S.C. § 2461 note), as amended by the Debt Collection Improvement Act of 1996, 110 Stat. 1321, Public Law 104-134 (codified at 31 U.S.C. § 3701 note), EPA has promulgated regulations, codified at 40 C.F.R. Part 19, that, inter alia, increased to \$27,500 the maximum penalty EPA might obtain pursuant to Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3) for violations occurring between January 31, 1997 and March 15, 2004, the maximum penalty to \$32,500 for violations occurring after March 15, 2004. The maximum civil penalty for violations after January 12, 2009, is \$37,500 per day of violation.

The Complainant in this proceeding, the Director of the Caribbean Environmental Protection Division, EPA, Region 2, who has been duly delegated the authority to institute this action, hereby alleges:

GENERAL ALLEGATIONS

Jurisdiction

1. Jurisdiction lies over the subject matter of this action pursuant to Section 3008(a) of RCRA, 42 U.S.C. §§ 6928(a), and 40 C.F.R. § 22.1(a)(4).

Respondent’s background

2. Respondent is VIDOH, an executive department of the Government of the Virgin Islands, created and organized by the Virgin Islands Code, Titles 3 and 19.
3. As set forth by the Virgin Islands Code, the VIDOH has direct responsibility for conducting programs of preventive medicine, including special programs in Maternal and Child Health, Family Planning, Environmental Health & Sanitation, Mental Health, and Drug and Substance Abuse Prevention.
4. The VIDOH conducts ongoing, periodic assessments of public health related to pandemics, outbreaks, chemical & biological events, and other public health emergencies, in order to improve the planning, coordination, and implementation of such activities.
5. As part of Respondent’s periodic assessments, numerous plague controlling chemicals and pesticides are purchased and stored at various chemical storage buildings located throughout the USVI. Many of these pesticides and vector control agents contain toxic and harmful chemicals.
6. Respondent owns and/or operates its chemical storage buildings located at the Old Municipal Facility, Charlotte Amalie, St. Thomas, and at 3500 Estate Richmond, Christiansted, St. Croix (referred collectively as “the VIDOH facilities”).

7. The VIDOH facilities consist of a complex of government buildings used as administrative offices and chemical storage buildings. The yards of these facilities are used as parking space for VIDOH employees.
8. The VIDOH facilities are surrounded by a number of sensitive populations including a preschool, public schools, residential housing and other government agencies.
9. To the best of EPA's knowledge, Respondent has been conducting assessments of public health system related to pandemics, outbreaks, chemical and biological events, which required the use and direct application of various pesticides, rodenticides, insecticides, fogging agents, mosquito control agents, ultra low volume (ULV) biological oil mist and oxidizer, flammable and corrosive solvents, since at least 1998.
10. Upon information and belief, Respondent has purchased, stored and managed during the last 10 years a high inventory of various pesticide chemical products that were allegedly used to control plagues and vector diseases throughout the USVI. Nonetheless, EPA learned through information provided by VIDOH representatives that many of the chemical products were never used and were negligently and indiscriminately abandoned at various chemical storage buildings.
11. Respondent continues to purchase, store and manage a large inventory of several pesticide chemical products at its chemical storage buildings throughout the USVI.

The 1998 Removal Action

12. On or about March 27, 1998, EPA received an oral request from the former director of the VIDOH, asking for immediate assistance in the removal and proper disposal of out-dated ("discarded/abandoned") chemical products stored in one of its chemical storage building at the Old Municipal Facility in Charlotte Amalie, St. Thomas.
13. This action involved removal and disposal of outdated chemicals (including malathion pesticide) stored in a VIDOH chemical storage building. EPA carried out the removal between July and October, 1998.¹
14. As part of EPA's removal action, and based upon analytical results of environmental samples from six unknown containers with abandoned chemical products, the presence of pesticides, oxidizers, and flammable liquid solvents was confirmed. Other abandoned containers with out-dated pesticides were identified by their label and historical information provided by the VIDOH. Specifically, four 55-gallon drums, two hundred

¹ Since the VIDOH had agreed in advance to reimburse EPA for the costs of the requested removal action, EPA submitted to VIDOH a proposed Agreement for costs recovery of more than \$76,000. VIDOH did not execute this Agreement. In September, 1999, after several communications from EPA seeking VIDOH's execution of the Agreement, VIDOH's legal counsel, Robert Leycock, wrote to EPA requesting a waiver of VIDOH's "obligation to pay for the services rendered by EPA." At that time, EPA provided an updated documentation of the expenditures in the amount of approximately \$139,000 in connection with this removal action.

and forty-one small containers, and one thousand forty-two aerosol cans were filled with various pesticides such as Malathion, and chlordane. Among other hazardous substances identified by EPA were calcium hypochlorite, pyrethrin, and chlorpyrifos which are known to be toxic and corrosive substances. Some of these containers were leaking or ruptured.

15. An estimated 858 gallons of liquid pesticides and 1,782 pounds of solid pesticides were removed by EPA from the chemical storage building, contained in five drums and approximately 579 smaller containers. EPA also removed 1,042 aerosol cans with approximately 532 gallons and 120 pounds of non-hazardous chemicals located within the building.
16. During the removal action EPA confirmed the potential of environmental contamination posed by these hazardous substances to soil, surface water and air from the leaking and rupturing containers.
17. On or about September 17, 1998, EPA completed the removal action and documented hazardous waste violations pursuant to Section 3008 of the RCRA.
18. Once EPA's removal action was completed, VIDOHI was strongly recommended to develop and adhere to a pesticide storage and handling program in order to avoid recurrence of this environmental crisis. These recommendations were made both orally, in the course of EPA's meetings with Respondent, and in writing, such as on August 6, 2001, via letter addressed to USVI's Attorney General.
19. As a result of the 1998 incident, EPA expected that VIDOHI would implement internal policies and procedures for the proper management and disposal of pesticide chemical products stored at its chemical storage buildings. EPA also instructed VIDOHI to institute corrective measures on a continuing and government-wide basis for the protection of the public health and the environment.
20. Upon information and belief, Respondent was and still is the operator of the chemical storage building at the Old Municipal Facility in Charlotte Amalie, St. Thomas, from at least March 27, 1998 to the present.
21. 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.
22. Each one of the VIDOHI facilities aforementioned constitute a "facility," within the meaning of 40 C.F.R. § 260.10.
23. Respondent is the "owner" and "operator" of the VIDOHI facilities as those terms are defined in 40 C.F.R. § 260.10.

Notification of Hazardous Waste Generation

24. At the time of the inspections (August 19 and August 21, 2008) neither the St. Thomas facility nor the St. Croix facility, had an EPA ID nor had filled the Notifications of Regulated Waste Activity Forms (the Notifications), as required by Section 3010 of RCRA, 42 U.S.C. § 6930.
25. The Notifications for the St. Thomas and the St. Croix facility were prepared by EPA in order to maintain and implement administrative records of facilities that handle hazardous waste and that have never notified EPA's RCRA program. The Notifications were dated September 24, 2008 and October 7, 2008, respectively, and filed in the course of carrying out removal and disposal activities by EPA at the VIDOH facilities.
26. EPA filed two Notifications for the VIDOH facilities. The Notifications identified the sites as; "*VI Department of Health – Division of Environment Health St. Thomas Facility*," EPA Identification Number VIN008020133; and "*VI Department of Health – Division of Environment Health St. Croix Facility*," EPA Identification Number VIN008020042.
27. In the Notifications, EPA reported the VIDOH facilities as generators of hazardous waste described as waste codes D001 and D002. The Notifications also indicate that, based upon observations made at the sites and the best practices that should be implemented by a complying facility, they may generate less than 100 kg/month of hazardous waste at each facility.

Respondent's Generation and Storage of Waste

28. Respondent has been generating "solid waste," as defined in 40 C.F.R. § 261.2, in various chemical storage buildings, and other areas of the VIDOH facilities at all times relevant to this Complaint.
29. Upon information and belief, the main solid waste generated by Respondent consisted of obsolete, expired, spilled or abandoned chemical products used to control plagues and vector diseases. Some of the chemical products contain toxic and/or extremely hazardous substances that when disposed of are considered hazardous waste. Among the hazardous waste identified by EPA at the VIDOH facilities were pesticides, rodenticides, insecticides, fogging agents, oxidizers, flammables, corrosives, mosquito control agents, ULV biological oil mist among others vector controlling agents.
30. Respondent has also generated other solid wastes at the VIDOH facilities, such as Universal Waste (UW) associated with the management of spent fluorescent lamps, spent batteries, discarded computer monitors, and disposal of unused sanitation, maintenance and housekeeping products.
31. During the course of its chemical products-related activities, Respondent generated "acute hazardous waste," as listed in 40 C.F.R. §§ 261.31, 261.32, or 261.33(e).

32. At all times mentioned in this Complaint and subsequent thereto, Respondent has been a hazardous waste "generator," as that term is defined in 40 C.F.R. § 260.10.
33. Each one of the VIDOII facilities constitutes an "existing hazardous waste management facility" (or "existing facility") within the meaning of 40 C.F.R. § 260.10.
34. Each one of the VIDOII facilities is and has been a "storage" facility for "hazardous waste," as those terms are defined in 40 C.F.R. § 260.10.

EPA Investigative Activities

VIDOH facility at St. Thomas

35. The St. Thomas facility is located at approximately 100 meters above mean sea level. The closest superficial water body is the Long Bay of the St. Thomas Harbor located approximately 500 meters to the south of the site. The facility consists of a complex of government buildings used as administrative offices and a chemical storage building. The yard of the facility is used as parking space for VIDOII employees.
36. There are a number of sensitive populations surrounding and adjacent to the St. Thomas facility. These include a pre-school, Head Start, and a day care service housed in the adjoining Department of Human Services facility as well as the Lionel Robert Stadium, the Winston Raymo Recreation Center, and the DOH employees' parking.
37. The St. Thomas facility consists of a structure divided in two rooms. One of the rooms is an abandoned pesticides storage room. The other one is divided in the following way: (a) a pesticide storage room: deodorizers and rodenticides (South); (b) a pesticide storage room: insecticides and pesticides (East); and (c) a pesticide storage room: fogging equipment (West).
38. On August 19, 2008, EPA conducted a Compliance Evaluation Inspection (CEI) pursuant to Section 3007 of RCRA, 42 U.S.C. § 6927, at the VIDOII facility in St. Thomas (the "St. Thomas Inspection"). The purpose of the St. Thomas Inspection was to perform a hazardous waste management investigation, since EPA had previously conducted a removal action under the Comprehensive Environmental Recovery and Liability Act (CERCLA). On that occasion, EPA discovered that pesticide chemical products were negligently and indiscriminately abandoned and had spilled throughout the Facility.
39. As part of the St. Thomas Inspection, EPA also evaluated Respondent's current compliance of the St. Thomas facility with the applicable requirements of RCRA and its implementing regulations.
40. During the St. Thomas Inspection, EPA inspectors upon opening the door to the chemical storage building, detected a strong odor of pesticides and discovered the presence of various spills and deteriorated containers (e.g. drums, pails). EPA inspectors were informed by VIDOII's director that the storage building contained chemicals stored for as

long as ten years. Respondent also indicated that some of the containers were corroded and missing labels. As stated by the Respondent, this portion of the building was considered abandoned by the VIDOH.

41. EPA's inspectors observed that the drums and containers were not in good condition, were not sealed to prevent potential releases of waste content, and were not separated by physical means to protect each other from incompatibility of waste. Therefore, VIDOH failed to maintain and operate the St. Thomas facility to minimize the possibility of fires, explosions, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water which could threaten human health or the environment.
42. On August 19, 2008, EPA representatives held a closing conference with Ms. Francine E. Lang, VIDOH-DEH Director, to inform her of EPA's findings during the St. Thomas Inspection. Among the findings, EPA expressed a major concern regarding the failure to make hazardous waste determinations on hazardous chemical products abandoned for more than 10 years at the chemical storage building. EPA indicated that Respondent should procure the services of a certified cleanup contractor and proceed with a removal action.
43. On August 21, 2008, and as warranted by the threat of a hazardous waste release, EPA issued a Field Notice of Federal Interest (FNFI), under CERCLA, requesting the Respondent to take immediate corrective actions. Additionally, EPA requested that hazardous waste be disposed of as required by RCRA.
44. On September 4, 2008, EPA's inspectors toured the area again and observed that conditions had not changed regarding the abandoned chemical products and the release of waste materials within the chemical storage building. EPA observed, among others, the presence of two 55-gallon drums of 100% mineral oils, one 30-gallon drum of 5% pyrethrin based insecticide, one 5-gallon pail of deodorizer known as Scentrous, one empty 5 gallon pail, 3 cans of spray paint and two 50 pound cans of military grade bleaching agent (calcium hypochlorite). EPA observed stained wooden pallets and carpets.
45. On September 8, 2008, EPA commenced the removal action, under CERCLA, 42 U.S.C. § 9604, in order to address the release and/or threatened release of the abandoned chemical product material at the St. Thomas facility. The abandoned material was analyzed prior to disposal and was discarded as hazardous waste.
46. From approximately September 8, 2008 to April 22, 2009, EPA conducted removal actions at the St. Thomas facility. EPA concluded its removal actions at the facility on April 22, 2009. The waste streams were accepted by the disposal facility on May 1, 2009, which completed the removal action.
47. As part of the removal action, EPA disposed of the following hazardous waste material:

- a. 140 gallons of hazardous waste flammable liquids;
 - b. 2 yd³ of hazardous waste solids;
 - c. 55 gallons of hazardous waste corrosive liquids;
 - d. 55 gallons of waste calcium hypochlorite oxidizer mixture, dry; and.
 - e. 85 gallons of environmentally hazardous waste substances.
48. At the end of EPA's removal action, during process and closing meetings, EPA reiterated to Respondent the need for the development and adherence to a pesticide storage and handling program in order to avoid recurrence of this environmental crisis. EPA reserved the right to pursue removal action cost recovery from the Respondent.

VIDOH facility at St. Croix

49. The St. Croix facility is located at approximately 80 meters above mean sea level. The closest superficial water body is the Gallows Bay of the Christiansted Harbor located approximately 500 meters to the northeast of the site. The facility consists of a complex of government building used as administrative offices and a chemical storage facility. The yard of the facility is used as parking space for VIDOH employees.
50. There are a number of sensitive populations in close proximity to the site. These include the adjoining Department of Human Services facility, public schools, residential housing, commercial places, and the DOH employees.
51. The St. Croix facility consists of two rooms. The first room is divided in the two distinct areas: (a) insecticides and deodorizers storage (West); (b) insecticides and fogging agents storage (West). The second room is a maintenance shop.
52. During the St. Croix Inspection, EPA inspectors discovered the presence of an ongoing uncontrolled release resulting from a leaking 5-gallon container filled with a corrosive solvent stored next to a 5-gallon container filled an oxidizer substance (i.e., calcium hypochlorite UN 2880 RQ). Nearby, there was one 30-gallon drum filled to a third of its volume with Pyrenone. Another 5-gallon container was bent and appeared to be leaking a wax stripper corrosive substance placed on a wooden pallet inside the chemical storage building. Also in this area was one box filled with 4 aerosol cans of spray deodorizer known as Scentrous that had an old spill on the bottom. Spills and releases observed inside the chemical storage area required immediate attention.
53. As observed by EPA's inspectors, Respondent left behind chemical containers (e.g. drums and pails), along with related ancillary equipment.
54. The integrity of other site containers was questionable at the time of the St. Croix Inspection. The same were stored disregarding chemical compatibility, thus posing an immediate threat due to, among other things, possible adverse reactions that may generate harmful vapors that could migrate from the facility and/or react with other chemicals stored in the facility and/or react by ignition impacting the adjacent population.

55. As evidenced by EPA, VIDOH failed again to maintain and operate the facility to minimize the possibility of fires, explosions, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water.
56. On August 21, 2008, EPA representatives held a closing conference with Ms. Francine E. Lang, DEH Director, to inform her of EPA's findings during the St. Croix Inspection. EPA reiterated the concern regarding the failure to make hazardous waste determinations on hazardous chemical products abandoned for over a year at the St. Croix facility. EPA indicated that the Respondent should procure the services of a certified cleanup contractor and proceed with a materials removal action.
57. At the end of EPA's closing conference, EPA reiterated to Respondent the need for the development and adherence to a pesticide storage and handling program in order to avoid recurrence of this environmental crisis.
58. On August 21, 2008, and as warranted by the threat of a hazardous waste release, EPA issued a FNFI requesting the Respondent to take immediate corrective action. Additionally, EPA requested that hazardous waste be disposed of as required by RCRA.
59. On or about August 28, 2008, VIDOH answered EPA's FNFI via letter, denying its responsibility for the releases and/or threatened releases of hazardous waste constituents in the chemical storage building.
60. Respondent accepted the detrimental conditions that were found by EPA at the chemical storage building in St. Croix, and as discussed by EPA at the closing conference, and later on as stated by the Respondent on its August 28th letter, VIDOH would be responsible for cleaning up and removing all unused or expired chemicals at the storage area
61. As stated in Respondent's letter:

(...) we [Respondent] do accept that the condition of the storeroom is deplorable. We will be utilizing the services of the V.I. HAZMAT Team Leader (HTL) to assist in conducting the inventory of the chemicals and assist in developing proper storage protocols for the chemicals in the storeroom. Once that is complete we will submit a report along with the attachments and photographs. Any expired chemicals will be disposed of via a certified hazardous waste disposal company.
62. However, up to the date of this Complaint, Respondent has never informed or notified EPA about any removal action undertaken at the St. Croix facility.

COUNT 1 – Failure to Make Hazardous Waste Determinations

63. Complainant re-alleges each applicable allegation contained in paragraphs "1" through "62", as if fully set forth herein.

64. Pursuant to 40 C.F.R. § 261.2, subject to certain exclusions, a "solid waste" is any "discarded material" that includes "abandoned," "recycled" or "inherently waste-like materials," as those terms are further defined therein.
65. Pursuant to 40 C.F.R. § 261.2(b), materials are solid wastes if they are "abandoned" by being "disposed of," "burned or incinerated" or "accumulated, stored, or treated before or in lieu of being abandoned by being disposed of, burned or incinerated."
66. Pursuant to 40 C.F.R. § 262.11, a person who generates "solid waste," as defined in 40 C.F.R. § 261.2, must determine if the solid waste is a hazardous waste by using the procedures specified in that provision.
67. Prior to, at least, August 19, 2008, Respondent generated at its St. Thomas facility at least the following materials for which hazardous waste determinations were not made:

Pesticide Abandoned Room

- a. 2 - 50 pound containers with decontaminating agent (i.e., military grade bleaching agent - calcium hypochlorite);
- b. 1 - 30-gallon drum containing Pyrethrin based insecticide and marked on one side as weighing 220 pounds;
- c. 2 - 55-gallon drums labeled as minerals oils.
- d. 1 - 55-gallon drum with an unknown content solution and labeled as, "SP Vaporizer;"
- e. 1 - 5-gallon pail of deodorizer known as Scentrous;
- f. 1 - empty 5-gallon pail with residuals; and,
- g. 3 aerosol cans of spray paint.

Pesticide Storage Room - South Area (Deodorizer & Rodenticides)

- a. 3 - 5-gallon containers with Parathione;
- b. 6 - 5-gallon pails with Refresher Deodorizer;
- c. 4 - boxes of Airlift (Fresh Scent);
- d. 3 - 1-gallon of Bleach;
- e. 4 - 1-gallon containers of paints;
- f. 3 - 1-gallon of unknown content inside a metal cabinet;
- g. 10 - boxes labeled as "Jaguar" containing poison bait; and,
- h. 3 - 5-gallon pails with rodenticide.

Pesticide Storage Room - East Area (Insecticides & Pesticides)

- a. 19 - 5 gallon containers with Aquacide;
- b. 4 - 1-gallon of Bleach;
- c. 3 - boxes filled with nine 1-gallon bottles of fogging insecticide in each box;
- d. 10 - 3-gallon containers with ULD BP-50;
- e. 10 - 1-gallon containers with Patrol Insecticide;
- f. 4 - 5-gallon pails with Patrol Insecticide;
- g. 3 - 55-gallon drums with Polyheed 744 R (cement liquid agent);

- h. 1 – 3-gallon containers with Diazone;
- i. 2 – 3-gallon containers with Aqua-Resin; and,
- j. 2 – 3-gallon containers with Dursbam Pro Insecticide.

Pesticide Storage Room - West Area (Fogging Equipment)

- a. Two fogging machines and/or mount spray devices. One of the machines contained fogging insecticide; and,
- b. One metal cabinet filled with bleach containers.

68. Prior to, at least, August 21, 2008, Respondent generated at its chemical St. Croix facility at least the following materials for which determinations were not made:

West Room Area – Insecticides & Deodorizers

- a. 32– 1-gallon containers with Pyrenone;
- b. 8 – 1-gallon containers with ULD BP-50 LC Insecticide;
- c. 16 – boxes labeled as “Wellmark” containing poison fly bait;
- d. 32 – 1-liter bottles containing Battery Water (diluted sulfuric acid);
- e. 4 – boxes filled with 4 1-liter bottles each of Refresher Deodorizer (odor granules);
- f. 3 – 1-gallon of Auto Coolant; and,
- g. 3 – Cathode Ray Tube (CRT) computer monitors discarded on the floor.

North Room Area – Insecticides & Fogging Agents

- a. 13 – 5 gallon containers with Scourge Insecticide;
- b. 1 – Discarded car battery;
- c. 1 – 5-gallon cracked pail leaking its solid granular content on floor labeled as Scatter (i.e., granulated odor used to deodorize and desiccate dead animal carcasses);
- d. 4 – 55-gallon drums with ULV oil fogging insecticide;
- e. 1 – 55-gallon drum with unknown content covered with a plastic bag;
- f. 1- 5-gallon container leaking filled with a corrosive solvent;
- g. 1- 5-gallon container filled with an oxidizer substance (i.e., calcium hypochlorite UN 2880 RQ);
- h. 1 - 30-gallon drum 1/3 filled with Pyrenone; and
- i. 1 - 5-gallon container bent that appeared to be leaking and containing a wax stripper corrosive substance placed on a wooden pallet inside the storeroom.

Maintenance Shop

- a. 1 - 30-gallon container abandoned with unknown content that seemed leaking its content on ground located at the entrance of the shop.

69. Prior to at least August 21, 2008, Respondent abandoned, accumulated or stored the materials identified in paragraphs “67” through “68”, instead of disposing of it without making a hazardous waste determination at its chemical storage buildings.

70. Each of the materials identified in paragraphs "67" through "68" is an "abandoned material" and "solid waste," as defined in 40 C.F.R. § 261.2.
71. As of, at least, August 21, 2008, Respondent had not determined if the materials identified in paragraphs "67" through "68" constituted hazardous wastes.
72. Respondent's failure to determine whether each solid waste generated and/or abandoned at the VIDOH facilities constitute a hazardous waste is a violation of 40 C.F.R. § 262.11.

COUNT 2 – Failure to Minimize Risks of a Fire, Explosion, or Release

73. Complainant re-alleges each allegation contained in paragraphs "1" through "72", inclusive, as if fully set forth herein.
74. Pursuant to Section 40 C.F.R. § 261.5(a), a generator is a conditionally exempt small quantity generator if it generates no more than 100 kilograms of hazardous waste in a calendar month, does not generate more than 1 kilogram of acute hazardous waste in a calendar month, and does not accumulate more than 1000 kilograms of hazardous waste at any time.
75. Pursuant to Section 40 C.F.R. § 261.5(b), a conditionally exempt small quantity generator's hazardous waste is not subject to regulation under 40 C.F.R. Parts 262 through 266, 268, and Parts 270 and 124, and the notification requirements of Section 3010 of RCRA, provided the generator complies with the requirements of 40 C.F.R. § 261.5(f), (g), and (j), which includes 40 C.F.R. § 262.11.
76. Even if the Respondent qualified as a "conditionally exempt small quantity generator" as the term is defined at 40 C.F.R. § 261.5(a), Respondent's failure to determine if the materials identified in paragraphs "67" through "68" constituted a hazardous waste, subjected the Respondent to full regulation under 40 C.F.R. Parts 262 through 266, 268, and 270 and 124, and the notification requirements of § 3010 of RCRA, 42 U.S.C. § 6930.
77. Respondent is a generator of hazardous waste in its St. Thomas' and St. Croix's facilities, as defined in § 260.10
78. Pursuant to 40 C.F.R. § 262.34(d)(4), a generator must comply with the requirements for owners or operators in Subparts C, 40 C.F.R Part 265.
79. Pursuant to 40 C.F.R. § 265.31 (Subpart C), a facility must be maintained and operated to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil or surface water which could threaten human health or the environment.

80. Respondent failed to implement practices to satisfactorily maintain and operate its VIDOH facilities to minimize the possibility of fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste at the following areas:

- a. St. Thomas Chemical Storage Building area - On or about August 19, 2008 and again on September 4, 2008, EPA's inspectors toured the area and discovered the presence of various spills and deteriorated containers (e.g. drums, pails), and upon opening the doors, a strong pesticides odor was detected. As observed, various abandoned chemical products were stored in corroded containers, exposed to rain water (due to roof leaks), releasing its waste materials on stained wooden pallets and carpets. The drums and containers were not in good condition and were not sealed to prevent any potential releases of waste content. They were also not separated by physical means to protect each other from incompatibility of waste. EPA was informed by a VIDOH representative that the area contained chemicals from at least 10 years ago. EPA observed, at least, the following spilled materials:
 1. Calcium hypochlorite, CAS No. 7778-54-3, the material safety data sheet (MSDS) describes it as a strong oxidizer which reacts with water and acids giving off toxic chlorine gas. It is incompatible with organic materials, nitrogen compounds and combustible materials.
 2. Pyrethrin, the MSDS describes it as an organic compound that has potent insecticidal activity. It is extremely toxic to aquatic life, and care should be taken when using around humans and animals.
 3. Mineral Oil (ULV fogging biological oil mist), this product is toxic to humans and animals, including fish and aquatic invertebrates. It is flammable and should not be used or stored near heat or open flame.
 4. SP Vaporizers and Scentrous Deodorizers, the MSDS describes them as flammable solvents that when burned can produce carbon monoxide and/or carbon dioxide and trace phosgene gas. Contact with strong oxidizing agents or chlorinated solvents should be avoided.
 5. Parathione, CAS No. 56-38-2, the MSDS describes it as a potent organic insecticide and acaricide. It has been banned or restricted in many countries.

- b. St. Croix Chemical Storage Building area - On or about August 21, 2008, EPA's inspectors discovered an ongoing uncontrolled release resulting from a leaking 5-gallon container filled with a corrosive solvent stored next to a 5-gallon container filled with an oxidizer substance (i.e., calcium hypochlorite UN 2880 RQ). Nearby, there was one 30-gallon drum filled to a third of its volume with Pyrenone. Another 5-gallon container was bent and appeared to be leaking a wax stripper corrosive substance placed on a wooden pallet. Also, in this area there was one box filled with 4 aerosol cans of spray deodorizer known as Scentrous that had an old spill on the bottom. The integrity of other containers was questionable at the time of the inspection. These containers were stored disregarding chemical compatibility, thus, posing an immediate threat due to,

among other things, possible adverse reactions that may generate harmful vapors that could migrate from the facility and/or react with other chemicals stored in the facility and/or react by ignition, impacting the adjacent population. EPA observed, at least, the following spilled materials:

1. Calcium hypochlorite, CAS No. 7778, the MSDS describes it as a strong oxidizer which reacts with water and acids giving off toxic chlorine gas. It is incompatible with organic materials, nitrogen compounds and combustible materials.
 2. Pyrenone, the MSDS describes it as an organic compound that has potent insecticidal activity. It is extremely toxic to aquatic life, and care should be taken when using around humans and animals.
 3. Corrosive solvents, the MSDS describes them as substances causing immediate and serious toxic effects that may form toxic and corrosive gases such as carbon dioxide, carbon monoxide and various hydrocarbons. Avoid contact in uncontrolled conditions with strong oxidizing agents.
 4. Scentrous Deodorizers - the MSDS describes them as flammable solvents that when burning can produce carbon monoxide and/or carbon dioxide and trace phosgene gas. Contact with strong oxidizing agents or chlorinated solvents should be avoided.
81. Respondent's failure to properly manage the contents of the containers, which contained incompatible hazardous waste, to protect the containers from deterioration, and to properly manage the spills as described in paragraph "80", evidences that Respondent did not maintain or operate its facilities in a way that would minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water which could threaten human health or the environment. This failure constitutes a violation of 40 C.F.R. § 265.31, as referenced by § 262.34(d)(4).

II. PROPOSED CIVIL PENALTY

The proposed civil penalty has been determined in accordance with Section 3008(a)(3) of the Act, 42 U.S.C. § 6928(a)(3). For purposes of determining the amount of any penalty assessed, Section 3008(a)(3) requires EPA to "take into account the seriousness of the violation and any good faith efforts to comply with applicable requirements." To develop the proposed penalty in this Complaint, the Complainant has taken into account the particular facts and circumstances of this case and used EPA's 2003 RCRA Civil Penalty Policy, a copy of which is available upon request or can be found on the Internet at the following address:

<http://www.epa.gov/compliance/resources/policies/civil/rcra/rcpp2003-fnl.pdf>

This policy provides a rational, consistent and equitable calculation methodology for applying the statutory penalty factors to particular cases.

The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, required EPA to adjust its penalties for inflation on a periodic basis. The penalty amounts were amended for violations occurring between January 31, 1997 and March 14, 2004. The maximum civil penalty under Sections 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), for those violations is \$27,500 per day of violation. For violations after March 15, 2004, the maximum penalty is \$32,500 per day of violations. The maximum civil penalty for violations after January 12, 2009, is \$37,500 per day of violation. 40 C.F.R. Part 19.

The Complainant proposes, subject to receipt and evaluation of further relevant information from the Respondent, that the Respondent be assessed the following civil penalty for the violations alleged in this Complaint. A penalty calculation worksheet and narrative explanation to support the penalty figure for each violation cited in this Complaint is included in Attachment I, below. Matrices employed in the determination of individual and multi-day penalties are included as Attachments II, and III, below.

In view of the above-cited violations, and pursuant to the authority of Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), and the RCRA Civil Penalty Policy, including the seriousness of the violations and any good faith efforts by the Respondent to comply with applicable requirements, the Complainant herewith proposes the assessment of a civil penalty in the total amount of one hundred six thousands, nine hundred and six dollars with fifty cents (\$106,906.50) as follows:

| | |
|-------------------------|--------------|
| Count 1: | \$61,290.00 |
| Count 2: | \$45,616.50 |
| Total Proposed Penalty: | \$106,906.50 |

III. COMPLIANCE ORDER

Based upon the foregoing, and pursuant to the authority of Section 3008 of the Act, Complainant herewith issues the following Compliance Order to the Respondent, which shall take effect (i.e., the effective date) thirty (30) days after service of this Order, unless by that date Respondent has requested a hearing pursuant to 40 C.F.R. § 22.15. See 42 U.S.C. § 6928(b) and 40 C.F.R. §§ 22.37(b) and 22.7(c):

1. Within thirty (30) calendar days of the effective date of this Compliance Order, Respondent shall, to the extent it has not already done so, and to the extent possible, make required determinations whether solid wastes generated by VIDOH are hazardous wastes. Respondent shall comply with 40 C.F.R. § 262.11 for any newly generated solid waste.
2. Within thirty (30) days of the effective date of this Compliance Order, Respondent shall, to the extent it has not already done so, take sufficient measures as to insure that the Facilities are maintained and operated to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil or surface water. At a minimum, these measures must include:

- a. Ensuring that hazardous materials are managed and stored in a manner designed and operated to minimize the possibility of a fire, explosion, and/or release including minimizing the potential for releases of hazardous waste or hazardous constituents to the environment; and,
 - b. Ensuring that all otherwise unusable chemicals and hazardous waste are properly managed and disposed of in a timely manner consistent with the hazardous waste management requirements.
3. Within ten (10) calendar days of the effective date of this Compliance Order, Respondent shall maintain closed, except when adding or removing waste, containers used to accumulate and/or store hazardous wastes or hazardous constituents at the Facilities.
 4. Within ten (10) calendar days of the effective date of this Compliance Order, if containers holding hazardous waste or hazardous constituents are not in good condition or begin to leak, Respondent shall, to the extent it has not done so, transfer the hazardous waste or hazardous constituents to a container that is in good condition or manage the waste in some other way that complies with the applicable requirements.
 5. Within thirty (30) calendar days of the effective date of this Compliance Order, to the extent it has not done so, Respondent shall develop and adhere to a chemical storage and handling program including a contingency plan in order to avoid recurrence of this environmental violations.
 6. Respondent shall, within forty (40) calendar days of the effective date of this Compliance Order, submit to EPA written notice of its compliance (accompanied by a copy of all appropriate supporting documentation) or noncompliance for each of the requirements cited in Paragraphs 1 through 5 of this Compliance Order, above. If Respondent is in noncompliance with a particular requirement, the notice shall state the reasons for noncompliance and shall provide a schedule for achieving prompt compliance with the requirement.
 7. All responses, documentation, and evidence submitted in response to this Compliance Order should be sent to:

Eduardo R. González, P.E.
U.S. Environmental Protection Agency, Region 2
Caribbean Environmental Protection Division
Response & Remediation Branch
Centro Europa Building, Suite 417
1492 Ponce de Leon Avenue
San Juan, Puerto Rico 00907

Compliance with the provisions of this Compliance Order does not waive, extinguish or otherwise affect Respondent's obligation to comply with all other applicable RCRA statutory or regulatory (federal and/or Commonwealth) provisions, nor does such compliance release

Respondent from liability for any violations at the Facilities. In addition, nothing herein waives, prejudices or otherwise affects EPA's right to enforce any applicable provision of law, and to seek and obtain any appropriate penalty or remedy under any such law, regarding Respondent's generation, handling and/or management of hazardous waste at the Facilities.

IV. NOTICE OF LIABILITY FOR ADDITIONAL CIVIL PENALTIES

Pursuant to the terms of Section 3008(c) of RCRA and the Debt Collection Improvement Act of 1996, a violator failing to take corrective action within the time specified in a compliance order is liable for a civil penalty of up to \$37,500 for each day of continued noncompliance. Such continued noncompliance may also result in suspension or revocation of any permits issued to the violator whether issued by EPA.

V. PROCEDURES GOVERNING THIS ADMINISTRATIVE LITIGATION

The rules of procedure governing this civil administrative litigation have been set forth in the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits" ("CROP") and which are codified at 40 C.F.R. Part 22. A copy of these rules accompanies this "Complaint, Compliance Order and Notice of Opportunity for Hearing."

A. Answering the Complaint

Where Respondent intends to contest any material fact upon which the Complaint is based, to contend that the proposed penalty and/or the Compliance Order is inappropriate or to contend that Respondent is entitled to judgment as a matter of law, Respondent must file with the Regional Hearing Clerk of EPA, Region 2, both an original and one copy of a written answer to the Complaint, and such Answer must be filed within 30 days after service of the Complaint (40 C.F.R. §§ 22.15(a) and 22.7(c)). The address of the Regional Hearing Clerk of EPA, Region 2, is:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th floor - Room 1631,
New York, New York 10007-1866

Respondent shall also then serve one copy of the Answer to the Complaint upon Complainant and the Assistant Regional Counsel mentioned in Section VI below and any other party to the action (40 C.F.R. § 22.15(a)).

Respondent's Answer to the Complaint must clearly and directly admit, deny, or explain each of the factual allegations that are contained in the Complaint and with regard to which Respondent has any knowledge (40 C.F.R. § 22.15(b)). Where Respondent lacks knowledge of a particular factual allegation and so states in its Answer, the allegation is deemed denied (40 C.F.R. § 22.15(b)).

The Answer shall also set forth: (1) the circumstances or arguments that are alleged to constitute the grounds of defense, (2) the facts that Respondent disputes (and thus intends to place at issue in the proceeding) and (3) whether Respondent requests a hearing (40 C.F.R. § 22.15(b)).

Respondent's failure to affirmatively raise in the Answer facts that constitute or that might constitute the grounds of their defense may preclude Respondent, at a subsequent stage in this proceeding, from raising such facts and/or from having such facts admitted into evidence at a hearing.

B. Opportunity To Request A Hearing

If requested by Respondent, a hearing upon the issues raised by the Complaint and Answer may be held (40 C.F.R. § 22.15(c)). If, however, Respondent does not request a hearing, the Presiding Officer (as defined in 40 C.F.R. § 22.3) may hold a hearing if the Answer raises issues appropriate for adjudication (40 C.F.R. § 22.15(c)). With regard to the Compliance Order in the Complaint, unless Respondent requests a hearing pursuant to 40 C.F.R. § 22.15 within thirty (30) days after the Compliance Order is served, the Compliance Order shall automatically become final (40 C.F.R. § 22.37).

Any hearing in this proceeding will be held at a location determined in accordance with 40 C.F.R. § 22.21(d). A hearing of this matter will be conducted in accordance with the provisions of the Administrative Procedure Act, 5 U.S.C. §§ 551-59, and the procedures set forth in Subpart D of 40 C.F.R. Part 22.

C. Failure To Answer

If Respondent fails in its Answer to admit, deny, or explain any material factual allegation contained in the Complaint, such failure constitutes an admission of the allegation (40 C.F.R. § 22.15(d)). If Respondent fails to file a timely [i.e. in accordance with the 30-day period set forth in 40 C.F.R. § 22.15(a)] Answer to the Complaint, Respondent may be found in default upon motion (40 C.F.R. § 22.17(a)). Default by Respondent constitutes, for purposes of the pending proceeding only, an admission of all facts alleged in the Complaint and a waiver of Respondent's right to contest such factual allegations (40 C.F.R. § 22.17(a)). Following a default by Respondent for a failure to timely file an Answer to the Complaint, any order issued therefore shall be issued pursuant to 40 C.F.R. § 22.17(c).

Any penalty assessed in the default order shall become due and payable by Respondent without further proceedings 30 days after the default order becomes final pursuant to 40 C.F.R. § 22.27(c) as set forth in 40 C.F.R. § 22.17(d). If necessary, EPA may then seek to enforce such final order of default against Respondent, and to collect the assessed penalty amount, in federal court. Any default order requiring compliance action shall be effective and enforceable against Respondent without further proceedings on the date the default order becomes final under 40 C.F.R. § 22.27(c) as set forth in 40 C.F.R. § 22.17(d).

D. Exhaustion Of Administrative Remedies

Where Respondent fails to appeal an adverse initial decision to the Agency's Environmental Appeals Board ("EAB"; see 40 C.F.R. § 1.25(e)) pursuant to 40 C.F.R. § 22.30, and that initial decision thereby becomes a final order pursuant to the terms of 40 C.F.R. § 22.27(c), Respondent waives its right to judicial review. (40 C.F.R. § 22.27(d)).

To appeal an initial decision to the EAB, Respondent must do so "[w]ithin thirty (30) days after the initial decision is served" (40 C.F.R. § 22.30(a)). Pursuant to 40 C.F.R. § 22.7(c), where service is effected by mail, "five days shall be added to the time allowed by these rules for the filing of a responsive pleading or document." Note that the 45-day period provided for in 40 C.F.R. § 22.27(c) [discussing when an initial decision becomes a final order] does not pertain to or extend the time period prescribed in 40 C.F.R. § 22.30(a) for a party to file an appeal to the EAB of an adverse initial decision.

VI. INFORMAL SETTLEMENT CONFERENCE

Whether or not Respondent requests a formal hearing, EPA encourages settlement of this proceeding consistent with the provisions of the Act and its applicable regulations (40 C.F.R. § 22.18(b)). At an informal conference with a representative(s) of Complainant, Respondent may comment on the charges made in the Complaint, and Respondent may also provide whatever additional information that it believes is relevant to the disposition of this matter, including: (1) actions Respondent has taken to correct any or all of the violations herein alleged, (2) any information relevant to Complainant's calculation of the proposed penalty, (3) the effect the proposed penalty would have on Respondent's ability to continue in business and/or (4) any other special facts or circumstances Respondent wishes to raise.

Complainant has the authority to modify the amount of the proposed penalty, where appropriate, to reflect any settlement agreement reached with Respondent, to reflect any relevant information previously not known to Complainant, or to dismiss any or all of the charges, if Respondent can demonstrate that the relevant allegations are without merit and that no cause of action as herein alleged exists. Respondent is referred to 40 C.F.R. § 22.18.

Any request for an informal conference or any questions that Respondent may have regarding this complaint should be directed to:

Carolina Jordán-García, Esq.
Assistant Regional Counsel
U.S. Environmental Protection Agency, Region 2
Centro Europa Building, Suite 417
1492 Ponce de León Avenue
San Juan, PR 00907
Telephone: (787) 977-5834

The parties may engage in settlement discussions irrespective of whether Respondent has requested a hearing (40 C.F.R. § 22.18(b)(1)). Respondent's requesting a formal hearing does not prevent it from also requesting an informal settlement conference; the informal conference procedure may be pursued simultaneously with the formal adjudicatory hearing procedure. A request for an informal settlement conference constitutes neither an admission nor a denial of any of the matters alleged in the Complaint. Complainant does not deem a request for an informal settlement conference as a request for a hearing as specified in 40 C.F.R. § 22.15(c). A request for an informal settlement conference does not affect Respondent's obligation to file a timely Answer to the Complaint pursuant to 40 C.F.R. § 22.15. No penalty reduction, however, will be made simply because an informal settlement conference is held.

Any settlement that may be reached as a result of an informal settlement conference will be embodied in a written consent agreement (40 C.F.R. § 22.18(b)(2)). In accepting the consent agreement, Respondent waives its right to contest the allegations in the Complaint and waive its right to appeal the final order that is to accompany the consent agreement (40 C.F.R. § 22.18(b)(2)). To conclude the proceeding, a final order ratifying the parties' agreement to settle will be executed (40 C.F.R. § 22.18(b)(3)).


Respondent's entering into a settlement through the signing of such Consent Agreement and its complying with the terms and conditions set forth in such Consent Agreement terminate this administrative litigation and the civil proceedings arising out of the allegations made in the complaint. Respondent's entering into a settlement does not extinguish, waive, satisfy or otherwise affect its obligation and responsibility to comply with all applicable statutory and regulatory requirements, and to maintain such compliance.

VII. RESOLUTION OF THIS PROCEEDING WITHOUT HEARING OR CONFERENCE

If, instead of filing an Answer, Respondent wishes not to contest the Compliance Order in the Complaint and wants to pay the total amount of the proposed penalty within thirty (30) days after receipt of the Complaint, Respondent should promptly contact the Assistant Regional Counsel identified in Section VI.

COMPLAINANT:

DATE: September 29, 2010



CS Carl Axel P. Soderberg, Director
Caribbean Environmental Protection Division
U.S. Environmental Protection Agency, Region 2

To: Ms. Julia Sheen Aaron
Commissioner
U.S. Virgin Islands Department of Health
Charles Harwood Memorial Hospital 3500 Richmond
Christiansted St. Croix, Virgin Islands 00820-4370

cc: Dr. Nadine Noorhasan, Director
Division of Environmental Protection
Department of Planning & Natural Resources
45 Mars Hill, Frederiksted
St.Croix, VI 00840

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

IN THE MATTER OF:

USVI Department of Health - Division of
Environmental Health -St. Thomas & St. Croix

Respondent:

Proceeding under Section 3008 of the Solid
Waste Disposal Act, as amended,
42 U.S.C. § 6928

COMPLAINT, COMPLIANCE ORDER,
AND NOTICE OF OPPORTUNITY FOR
HEARING

Docket No. RCRA-02-2010-7111

CERTIFICATE OF SERVICE

This is to certify that I have on this day caused to be mailed a copy of the foregoing Complaint, with attachments, bearing docket number RCRA-02-2010-7111 and a copy of the Consolidated Rules of Practice which are codified at 40 C.F.R. Part 22, as follows:

Certified Mail/Return Receipt Requested, to:


Ms. Julia Sheen Aaron
Commissioner
U.S. Virgin Islands Department of Health
Charles Harwood Memorial Hospital 3500 Richmond
Christiansted St. Croix, Virgin Islands 00820-4370

Original and a copy of the Complaint for filing by Fed Ex:

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

Dated:

September 30, 2010



ORC-CT, San Juan, Puerto Rico

ATTACHMENT I

NARRATIVE EXPLANATION TO SUPPORT COMPLAINT AMOUNT
Penalty Computation Worksheet
COUNT 1 - Failure to Make Hazardous Waste Determination

Respondent: V. I. Department of Health (DOH) - Division of Environmental Health (DEH)
St. Thomas & St. Croix Facilities

Facility Address: 1303 Hospital Ground, Suite 10
Third Floor Tower Building
Charlotte Amalie, St. Thomas, USVI 00802-6722

Requirement Violated: 40 CFR § 262.11

Failure to make hazardous waste determination

PENALTY AMOUNT FOR COMPLAINT

| | | |
|---|------------|--------------|
| Gravity based penalty from matrix | | \$ 32,500.00 |
| a) Potential for harm | | Major |
| b) Extent of deviation | | Major |
| Select an amount from the appropriate multi-day matrix | | \$1,290 |
| Multiply line 2 by number of waste streams minus 1 | <u>10</u> | \$ 12,900.00 |
| 11 waste streams - 1 | | |
| Add line 1 and line 3 | | \$ 45,400.00 |
| Percent increase/decrease for good faith | <u>0%</u> | \$ - |
| Percent increase/decrease for willfulness/negligence | <u>10%</u> | \$ 4,540.00 |
| Percent increase for history of non-compliance | <u>25%</u> | \$ 11,350.00 |
| Calculate economic benefit | | |
| Add lines 4, 5, 6, 7 and 8 for penalty amount to be inserted in the complaint | | \$ 61,290.00 |

NARRATIVE EXPLANATION TO SUPPORT COMPLAINT AMOUNT
Penalty Computation Worksheet
COUNT 1- FAILURE TO MAKE HAZARDOUS WASTE DETERMINATION

1. Gravity Based Penalty

- a. Potential for Harm – The potential for harm for a failure to conduct a hazardous waste determination is deemed MAJOR. The RCRA Civil Penalty Policy provides that the potential for harm should be based on two factors: 1) the adverse impact of the noncompliance on the regulatory scheme; and 2) the risk of human or environmental exposure. The RCRA regulatory program is undermined when an owner/operator of a facility abandoned several streams of solid waste at a facility. Failure to make hazardous waste determinations and disposing as appropriate increases the likelihood that the hazardous waste is managed as a non-hazardous waste, outside of the RCRA regulatory universe. Further, failure to manage a hazardous waste pursuant to the RCRA regulatory scheme increases the risk of human and environmental exposure. In this instance, failure to make hazardous waste determinations may have resulted in illegal, improper disposal and may have exposed investigators, technicians and others to hazardous waste.
- b. Extent of Deviation – The extent of deviation present in this violation was determined to be MAJOR. Respondent failed to make hazardous waste determinations for eleven (11) waste streams, each of which was generated by Respondent negligent action of abandoning the unwanted chemical material.

The applicable cell ranges from \$25,791 to \$ 32,500. The high point selected.

- c. Multiple/Multi-day – Failure to make a hazardous waste determination is considered, initially, a one-time event. However, there were approximately eleven (11) distinct waste streams for which hazardous waste determinations were not made. EPA used its discretion in applying the multi-day penalty matrix to waste streams (2 through 11). The applicable cell ranges from \$1,290 to \$6,448. The mid point of the MAJOR/MAJOR cell is \$3,900. We selected this number given the amount of solid waste for which hazardous waste determinations were not made.

Adjustment Factors

- d. Good Faith – Based upon facility specific factors and information available to date, no adjustment has been made at this time.
- e. Willfulness/Negligence – Respondent had knowledge of EPA investigation's outcome, but it did not correct the violations or demonstrate its intentions to comply with the applicable regulations. Consequently, a ten percent increase (10%) was considered reasonable due to Respondent's negligence.
- f. History of Compliance – Respondent had been inspected by EPA in the past at different site locations, and found to be out of compliance of applicable regulations. In 1998 EPA conducted a cleanup of pesticides at the exact same facility for the Respondent.

NARRATIVE EXPLANATION TO SUPPORT COMPLAINT AMOUNT

Penalty Computation Worksheet

COUNT 1- FAILURE TO MAKE HAZARDOUS WASTE DETERMINATION

Consequently, a twenty five increase (25%) was considered reasonable due to Respondent's history of non compliance and recurring violations at different instances and locations.

- g. Ability to Pay – Respondent has not provided information to demonstrate its inability to pay.
- h. Environmental Project – Respondent has not provided information about an environmental project that may decrease the amount of the penalty.
- i. Other Unique Factors – There are no other unique factors that were brought to the attention of the EPA or that EPA has knowledge of that may increase or decrease the amount of the penalty.

2. **Economic Benefit**

After running the BEN model, it was determined that the economic benefit for not complying with the above mentioned requirement is \$ 5,000.

NARRATIVE EXPLANATION TO SUPPORT COMPLAINT AMOUNT
Penalty Computation Worksheet
COUNT 2 – Failure to Minimize Risks of a Fire, Explosion, or Release

Respondent: **V. I. Department of Health (DOH) - Division of Environmental Health (DEH)**
St. Thomas & St. Croix Facilities

Facility Address: 1303 Hospital Ground, Suite 10
 Third Floor Tower Building
 Charlotte Amalie, St. Thomas, USVI 00802-6722

Requirement Violated: **40 C.F.R. § 264.31**

Failure to Operate Facility so as to Minimize the Possibility of a Fire, Explosion, or Release

PENALTY AMOUNT FOR COMPLAINT

| | | | |
|---|--|------------|--------------|
| 1 | Gravity based penalty from matrix | | \$ 32,500.00 |
| | a) Potential for harm | | Major |
| | b) Extent of deviation | | Major |
| 2 | Select an amount from the appropriate multi-day matrix | | \$1,290 |
| 3 | Multiply line 2 by number of days of violation minus 1 2 events - 1 | <u>1</u> | \$ 1,290.00 |
| 4 | Add line 1 and line 3 | | \$ 33,790.00 |
| 5 | Percent increase/decrease for good faith | <u>0%</u> | \$ - |
| 6 | Percent increase/decrease for willfulness/negligence | <u>10%</u> | \$ 3,379.00 |
| 7 | Percent increase for history of non-compliance | <u>25%</u> | \$ 8,447.50 |
| 8 | Calculate economic benefit | | |
| 9 | Add lines 4, 5, 6, 7 and 8 for penalty amount to be inserted in the complaint | | \$ 45,616.50 |

NARRATIVE EXPLANATION TO SUPPORT COMPLAINT AMOUNT
Penalty Computation Worksheet
COUNT 2– Failure to Minimize Risks of a Fire, Explosion, or Release

1. Gravity Based Penalty

a. Potential for Harm – The potential for harm is deemed MAJOR. The RCRA Civil Penalty Policy provides that the potential for harm should be based on two factors: 1) the adverse impact of the noncompliance on the regulatory scheme; and 2) the risk of human or environmental exposure. The RCRA regulatory program is undermined when an owner/operator of a facility fails to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste, have equipment to control spills, designate an emergency coordinator and provide training to the employees in the handling of hazardous waste. Further, failure to manage a hazardous waste pursuant to the RCRA regulatory scheme increases the risk of human and environmental exposure. In this instance, operator abandoned hazardous and non-hazardous waste in open and deteriorated containers, numerous of them were leaking and spills of unknown substances were noticed throughout the facility. The integrity conditions of other site containers were questionable at the time of the inspection but the same were stored disregarding chemical compatibility thus posing an immediate threat due to, among other things possible adverse reactions that may generate harmful vapors that could migrate from the facility and/or react with other chemicals stored in the facility and/or react by ignition impacting the adjacent population. The facility is surrounded by a number of sensitive populations including a pre-school, a public school, Head Start, residential housing, and a day care service as well as recreational centers, and employees which were seen at a short distances. At the time of the inspections, the facility posed as an immediate threat to human health and the environment.

b. Extent of Deviation – The extent of deviation present in this violation was determined to be MAJOR. Respondent failed to prevent any unplanned or sudden release of hazardous waste at every possible aspect.

The applicable cell ranges from \$25,791 to \$32,500. The high point for the cell matrix (\$32,500) was selected.

c. Multiple/Multi-day – This violation occurred at different locations and subsequently repeated in 2 occasions that required independent and immediate removal actions in order to minimize the possibility of a fire, explosion, or releases into the environment, and to protect the public health. EPA used its discretion in applying the multi-day penalty matrix to spill incidents identified during the 1st and 2nd Inspections that were not repetitive. A total number of 2 non repetitive spill incidents were identified and used for the computation as part of this factor.

d. The low end of the MAJOR/MAJOR multi-day matrix range was selected. The applicable cell ranges from \$1,290 to \$6,448. The low point (\$1,290) of the MAJOR/MAJOR matrix range was selected.

2. Adjustment Factors

- a. Good Faith – EPA does not have information to demonstrate good faith from the Respondent.
- b. Willfulness/Negligence – EPA informed Respondent of the risks associated to the abandonment of a large quantity of chemical materials, but Respondent failed to act upon it. Consequently, a ten percent increase (10%) was considered reasonable due to Respondent's negligence.
- c. History of Compliance – Respondent had been inspected by EPA in the past at different site locations, and found to be out of compliance of applicable regulations. In 1998 EPA conducted a cleanup of pesticides at the exact same facility for the Respondent. Consequently, a twenty five increase (25%) was considered reasonable due to Respondent's history of non compliance and recurring violations at different instances and locations.
- d. Ability to Pay – Respondent has not provided information to demonstrate its inability to pay.
- e. Environmental Project – Respondent has not provided information about an environmental project that may decrease the amount of the penalty.
- f. Other Unique Factors – There are no other unique factors that were brought to the attention of the EPA or that EPA has knowledge of that may increase or decrease the amount of the penalty.

3. Economic Benefit

After running the BEN model, it was determined that the economic benefit for not complying with the above mentioned requirement is \$ 5,000.

ATTACHMENT II

PENALTY ASSESSMENT GRAVITY MATRIX

| | | Extent of Deviation from Requirement | | |
|-----------------------------------|----------|---|--------------------------|--------------------------|
| | | Major | Moderate | Minor |
| Potential for Harm | Major | \$32,500 to 25,791 | \$25,790 to 19,343 | \$19,342 to 14,185 |
| | Moderate | \$14,184 to 10,316 | \$10,315 to 6,448 | \$6,447 to 3,869 |
| | Minor | \$3,868 to 1,934 | \$1,933 to 645 | \$644 to 129 |

ATTACHMENT III

MULTI-DAY MATRIX

| | | Extent of Deviation from Requirement | | |
|-----------------------------------|-----------------|---|----------------------|----------------------|
| | | Major | Moderate | Minor |
| Potential for Harm | Major | \$6,448 to 1,290 | \$4,999 to 967 | \$3,869 to 709 |
| | Moderate | \$2,837 to 516 | \$2,063 to 322 | \$1,290 to 193 |
| | Minor | \$774 to 129 | \$387 to 129 | \$129 |