

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

U.S. Environmental
Protection Agency-Reg 2

2015 SEP 11 PM 12:14

REGIONAL HEARING
CLERK

In the Matter of:

BECTON DICKINSON CARIBE LTD
Diagnostics Facility
Vick's Drive Lot 6
Cayey, Puerto Rico 00737

NOE Tracking Number PRNOEC109

RESPONDENT

Proceeding pursuant to Section 309(g) of the Clean
Water Act, 33 U.S.C. § 1319(g)

**CONSENT AGREEMENT
AND FINAL ORDER**

**DOCKET NUMBER
CWA-02-2015-3354**

I. PRELIMINARY STATEMENT

1. This is a civil administrative proceeding for the assessment of a civil penalty instituted pursuant to Section 309(g) of the Clean Water Act ("CWA" or "the Act"), 33 U.S.C. § 1319(g).
2. The following Findings of Fact are made and Order issued pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency ("EPA") by the Act, as amended, 33 U.S.C. § 1251 *et. seq.*, and in particular Section 309(g) of the Act, 33 U.S.C. § 1319(g). This authority has been duly delegated by the Administrator to the Regional Administrator of Region 2 of EPA, which authority has been duly delegated to the undersigned Director of the Caribbean Environmental Protection ("CEPD") of Region 2 of EPA.
3. EPA is initiating and concluding this proceeding for the assessment of a civil penalty, pursuant to Section 309(g) of the Clean Water Act, 33 U.S.C. §1319(g); and 40 C.F.R. § 22.13(b) of 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"), which set forth procedures for simultaneous commencement and conclusion of administrative civil penalty assessment proceedings through issuance of a consent agreement and final order pursuant to 40 C.F.R. §§ 22.18 (b)(2) and (3).

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

4. Becton Dickinson Caribe Ltd. (Respondent) is a corporation organized under the laws of the Commonwealth of Puerto Rico. Respondent is registered in the Puerto Rico Department of State under registration number 10,561.
5. Respondent is a “person” pursuant to Section 502(5) of the CWA, 33 U.S.C. § 1362(5).
6. Respondent is the owner and operator, as defined in 40 C.F.R. § 122.2, of a diagnostics facility located at Vick’s Drive Lot 6, Cayey, Puerto Rico (the “Facility”).
7. Respondent’s operations at the Facility primarily consist of the manufacture of microbiology and serology diagnostics products.
8. The operations at the Facility are best described by the Standard Industrial Classification (SIC) Code 2835 (In Vitro and In Vivo Diagnostic Substances). SIC Code 3841 covers establishments primarily engaged in manufacturing in vitro and in vivo diagnostics substances, whether or not packaged for sale.
9. Respondent’s operations at the Facility are classified as an “industrial activity,” as defined in 40 C.F.R. § 122.26(b)(14)(xi).
10. 40 C.F.R. § 122.26(b)(14)(xi) includes those facilities identified with SIC Code 2835.
11. Respondent’s Facility has a storm water runoff collection and conveyance system, which is used to discharge storm water associated with industrial activity into the Cayey Municipal Separate Storm Sewer Systems (MS4), which in turn discharges into the Montellano Creek, a tributary of the La Plata River.
12. At relevant times, Respondent “discharged pollutants,” as defined in 40 C.F.R. § 122.2, from the Facility into the Cayey MS4, which in turn discharges into the Montellano Creek, a tributary of the La Plata River.
13. Respondent’s Facility is a “point source” pursuant to Section 502(14) of the CWA, 33 U.S.C. § 1362(14).
14. The Montellano Creek and the La Plata River are waters of the United States within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7).
15. Section 402(p) of the Act, 33 U.S.C. § 1342(p), authorizes the Administrator of EPA to issue permits for the discharge of pollutants subject to certain requirements of the Act and conditions which the Administrator determines are necessary.
16. Section 402(p)(2)(B) of the Act, 33 U.S.C. § 1342(p)(2)(B), authorizes the Administrator of EPA to issue a permit for storm water discharges associated with industrial activity.

17. The Administrator of EPA promulgated regulations at 40 C.F.R. §§ 122.21, 122.26(b), and 122.26(e), which require that a National Pollutant Discharge Elimination System (“NPDES”) permit shall be obtained for storm water discharges associated with industrial activity, unless an exclusion from NPDES storm water permitting had been granted.
18. The NPDES storm water permit application regulations at 40 C.F.R. § 122.26(g) provide a conditional exclusion for “no exposure” of industrial activities and materials to storm water. Discharges composed entirely of storm water are not storm water discharges associated with industrial activity, if there is “no exposure” of industrial materials and activities to rain, snow, snowmelt and/or runoff, and the discharger satisfies the conditions in 40 C.F.R. §§ 122.26(g)(1)-(4).
19. Respondent’s Facility is covered by the NPDES application regulation for storm water discharges associated with industrial activity pursuant to 40 C.F.R. § 122.26.
20. Respondent was required to apply for an NPDES permit for its storm water discharges associated with industrial activity pursuant to 40 C.F.R. §§ 122.21 and 122.26(e)(1), unless an exclusion from NPDES storm water permitting had been granted pursuant to 40 C.F.R. § 122.26(g).
21. Respondent is therefore subject to the provisions of the CWA, 33 U.S.C. § 1251 *et seq.*
22. On December 16, 2014, a duly-authorized EPA enforcement officer (“Inspector”) conducted a Compliance Evaluation Inspection (“Inspection”) of the Facility. The findings of the Inspection are included in the Inspection Report dated February 11, 2015.
23. During the Inspection, the EPA official reviewed the EPA NOI Processing Center database (the “EPA Review”) to determine if Respondent had obtained NPDES permit coverage for the Facility.
24. The findings of the Inspection and EPA Review revealed that Respondent:
 - a. had not filed an individual NPDES permit application, as required by 40 C.F.R. § 122.21; or
 - b. a complete and accurate Notice of Intent (“NOI”) form seeking coverage under the 2008 NPDES Storm Water Multi-Sector General Permit for Industrial Activities (“MSGP”) for its storm water discharges associated with industrial activity from the Facility into waters of the United States.
25. On February 3, 2015, the EPA official performed an additional review of the EPA NOI Processing Center database (the “EPA 2nd Review”) to further evaluate Respondent’s NPDES storm water permitting status for the Facility.

26. The findings of the EPA 2nd Review revealed that:
- a. on November 28, 2005, Respondent submitted a No Exposure Waiver form (“NOE”) to obtain conditional exclusion from NPDES storm water permitting for the Facility;
 - b. the NOE tracking number assigned to the Facility was PRNOE0026;
 - c. the conditional exclusion coverage for the Facility became effective on November 28, 2005, and expired on November 28, 2010, subject to maintaining its status of conditional exclusion;
 - d. on January 5, 2009, Respondent filed an NOE electronically in an effort to obtain conditional exclusion from NPDES permitting pursuant to 40 C.F.R. § 122.26(g);
 - e. Respondent did not complete the NOE certification process by failing to submit the electronic certification to EPA as required by 40 C.F.R. § 122.26(g)(4)(iv); therefore, Respondent failed to obtain the conditional exclusion from NPDES storm water permitting for the Facility;
 - f. on December 15, 2014, Respondent filed another NOE (“2nd NOE”) electronically to obtain conditional exclusion from NPDES permitting pursuant to 40 C.F.R. § 122.26(g);
 - g. the tracking number assigned to the Facility for this 2nd NOE was PRNOEC109;
 - h. the conditional exclusion coverage for the Facility became effective on December 15, 2014, and expires on December 15, 2019, subject to maintaining its status of conditional exclusion;
 - i. Respondent failed to seek for a conditional exclusion from NPDES storm water permitting for the Facility from November 29, 2010 to December 14, 2014; and
 - j. Respondent also failed to obtain MSGP coverage for its storm water discharges associated with industrial activities from the Facility into waters of the United States from November 29, 2010 and December 14, 2014.
27. Respondent discharged pollutants without an NPDES permit from November 29, 2010 (date after the expiration of the conditional exclusion from NPDES storm water permitting) to December 14, 2014 (date before Respondent submitted the 2nd NOE form seeking conditional exclusion from NPDES storm water permitting), in violation of Sections 301(a) and 402(p) of the Act, 33 U.S.C. §§ 1311(a) and 1342(p).

28. Based upon the findings of facts and conclusions of law set forth above, EPA has jurisdiction over the subject matter of this action, pursuant to Section 309(g) of the Act, 33 U.S.C. § 1319(g), and over the Respondent.

III. CONSENT AGREEMENT

29. Paragraphs 1 through 28 are re-alleged and incorporated herein by reference.

30. EPA and Respondent agree that it is in the public interest to resolve the issues alleged in this CA/FO without further litigation and the expense and effort that litigation entails.

31. Based upon the foregoing and pursuant to Section 309(g) of the Act, 33 U.S.C. § 1319(g), and the CROP, it is hereby agreed by and between EPA and Respondent, and Respondent voluntarily and knowingly agrees as follows:

IV. TERMS OF SETTLEMENT

32. For the purpose of this proceeding, Respondent

- a. admits the jurisdictional allegations of this CA/FO;
- b. neither admits nor denies the factual allegations contained herein;
- c. waives its right to contest the allegations, a judicial or administrative hearing, or to appeal this CA/FO; and
- d. consents to the payment of the civil penalty in the amount of twenty two thousand five hundred dollars (\$22,500), as stated in in Section V. below.

V. PAYMENT OF CIVIL PENALTY

33. No later than thirty (30) days after the Effective Date of this Order, as defined in the Final Order (at the end of this document), Respondent shall pay a civil penalty in the amount of **TWENTY TWO THOUSAND FIVE HUNDRED DOLLARS (\$22,500)**.

34. Respondent shall pay the penalty of **twenty two thousand five hundred (\$22,500) dollars** by check, payable to the "Treasurer of the United States of America", electronically (i.e. wire or automated clearinghouse) or on line payment.

35. Respondent shall clearly identify, regardless of the form of payment, the name and docket number of the case, set forth in the caption on the first page of this document. The payment methods are described below:

BY U.S. POSTAL SERVICE

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

BY OVERNIGHT MAIL

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2C
ATTN Box 979077
St. Louis, MO 63101
Contact: Natalie Pearsce
Tel.: (314) 418-4087.

- b. If Respondent chooses to pay electronically, the transfer shall be made to:

BY WIRE TRANSFER

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045.

Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency."

BY AUTOMATED CLEARINGHOUSE (ACH) (also known as REX or remittance express)

ACH for receiving US currency
PNC Bank
808 17th Street, NW
Washington, DC 20074
ABA = 051036706
Transaction Code 22 - checking
Environmental Protection Agency
Account 310006—CTX Format
Contact: Jesse White
Tel.: (301) 887-6548.

- c. On Line Payment Option is available through the Department of Treasury. This payment option can be accessed through WWW.PAY.GOV. Enter sfo 1.1 in the search field. Open form and complete required fields.

Respondent shall send prove of payment as specified in paragraph 34 above to each of the following:

José A. Rivera, BSCE
Enforcement Officer
Multimedia Permits and Compliance Branch
Caribbean Environmental Protection Agency
United States Environmental Protection Agency Region 2
City View Plaza II
48 CARR 165 STE 7000
Guaynabo, PR 00968-8073,

Héctor L. Vélez, Esq.
Lead General Attorney
Associate Regional Counsel for Caribbean Programs
Office of Regional Counsel
United States Environmental Protection Agency, Region 2
City View Plaza II
48 CARR 165 STE 7000
Guaynabo, PR 00968-8073,

and

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

36. Failure to pay the penalty in full according to the above provisions will result in referral of this matter to the United States Department of Justice or the United States Department of the Treasury for Collection.
37. Further, if the payment is not received on or before the due date, interest will be assessed at the annual rate established by the Secretary of Treasury pursuant to the Debt Collection Act, 31 U.S.C. § 3717, on the overdue amount from the due date through the date of payment. In addition, a late payment handling charge of \$15.00 will be assessed for each 30-day period (or any portion thereof) following the due date in which the balance remains unpaid. A 6% per annum penalty also will be applied on any principal amount not paid within ninety (90) days of the due date.
38. In addition, pursuant to Section 309(g)(9) of the Clean Water Act, 33 U.S.C. § 1319(g)(9), if payment is not received by the due date, a quarterly nonpayment penalty will be imposed for each calendar quarter during which such nonpayment persists. The quarterly nonpayment penalty is 20% of the aggregate amount of penalties and quarterly nonpayment penalties, which are unpaid as of the beginning of such quarter. Respondent may also be required to pay attorneys fees and costs for collection proceedings in

connection with nonpayment.

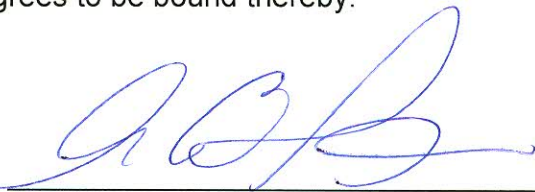
39. The penalty to be paid is a civil penalty assessed by the EPA and shall not be deductible from Respondent's federal or Commonwealth of Puerto Rico taxes.

VII. GENERAL PROVISIONS

40. The provisions of this CA/FO shall be binding upon Respondent, its officers, directors, agents, servants, authorized representatives and successors or assigns, including but not limited to, subsequent purchasers. No transfer of ownership or operation shall relieve Respondent of its obligation to comply with this CA/FO.
41. The Respondent waives any right it may have pursuant to 40 C.F.R. § 22.8 to be present during discussions with or to be served with and to reply to any memorandum or communication addressed to the Director or the Regional Administrator where the purpose of such discussion, memorandum, or communication is to discuss a proposed settlement of this matter or to recommend that such official accept this Consent Agreement and issue the accompanying Final Order.
42. Nothing in this agreement shall be construed as prohibiting, altering or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this agreement or of the statutes and regulations upon which this agreement is based, or for Respondent's violation of any applicable provision of law.
43. This CA/FO shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit.
44. This CA/FO constitutes a settlement by EPA of all claims for civil penalties pursuant to the CWA for the violations by the Respondent alleged herein. Nothing in this CA/FO is intended to nor shall be construed to operate in any way to resolve any criminal liability of the Respondent. Compliance with this CA/FO shall not be a defense to any actions subsequently commenced pursuant to Federal laws and regulations administered by EPA, and it is the responsibility of Respondent to comply with such laws and regulations.
45. Each undersigned representative of the parties to this CA/FO certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this CA/FO and to execute and legally bind that party to it.
46. Each party shall bear its own costs and attorney's fees in connection with the action resolved by this CA/FO.

For Respondent: Becton Dickinson Caribe Ltd. hereby consents to the issuance of the ORDER and agrees to be bound thereby.

BY:



ALEJANDRO BLANCO

Vice President

Becton Dickinson Caribe Ltd.

P. O. Box 372860

Cayey, Puerto Rico 00737-2860

DATE:

01 July 2015

For the Complainant, the United States Environmental Protection Agency:

BY: 

JOSE C. FONT

Director

Caribbean Environmental Protection Division

United States Environmental Protection Agency, Region 2

City View Plaza II

48 CARR 165 STE 7000

Guaynabo, PR 00968-8073

DATE: Sept 5, 2015

VIII. FINAL ORDER

The Regional Administrator of the United States Environmental Protection Agency, Region 2, ratifies the foregoing Consent Agreement. The Agreement entered into by the parties is hereby approved, incorporated herein, and issued as an Order. The effective date of this Order shall be the date of filing with the Regional Hearing Clerk, United States Environmental Protection Agency, Region 2.

BY:



JOSE C. FONT

Director

Caribbean Environmental Protection Division

United States Environmental Protection Agency, Region 2

City View Plaza II

48 CARR 165 STE 7000

Guaynabo, PR 00968-8073

DATE:

Sept 15, 2015