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, (also known as the Rio Piedras CDT)** 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-02-2007-7112

I. STATUTORY AUTHORITY

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.

This COMPLAINT, COMPLIANCE ORDER AND NOTICE OF OPPORTUNITY FOR HEARING ("Complaint") serves as notice of EPA's preliminary determination that the Municipality of San Juan (hereinafter "Respondent") has violated requirements of RCRA and regulations implementing RCRA, concerning the management of hazardous waste at its main medical facility, the Dr. Javier J. Antón Hospital San Juan Center For Diagnostic And Treatment, in Río Piedras, Puerto Rico (hereinafter the "CDT").

Pursuant to Section 3006(b)of the Act, 42 U.S.C. § 6926(b), 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.

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, and the maximum penalty to $32,500 for violations occurring after March 15, 2004. 69 Fed. Reg. 7121 (February 13, 2004).

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:

II. GENERAL ALLEGATIONS

Jurisdiction

1. This Tribunal has jurisdiction 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 the Municipality of San Juan, a municipal government authority governed under the "Ley de Municipios Autónomos" Public Law # 81, August 30, 1991, as amended.

3. Respondent owns and/or operates the Dr. Javier J. Antón Hospital, San Juan Center For Diagnostic and Treatment (also known as the "Rio Piedras CDT" (hereinafter "San Juan "CDT"), one of its main medical facilities. Respondent's facility is located at Number 1 Piñero Street corner of Vallejo Street, Río Piedras, Puerto Rico.

4. The San Juan CDT is part of the Municipality of San Juan's Department of Health. The San Juan CDT provides a broad spectrum of healthcare programs and services to the general public residing in and around the Río Piedras area of the Municipality of San Juan.

5. The CDT is situated in a densely populated area of metropolitan San Juan, which has a population of approximately 1.6 million people.

6. 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.[1]

7. 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.

8. The CDT is a "facility," within the meaning of 40 C.F.R. § 260.10.

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

9. Upon information and belief, Respondent is the owner and operator of the Facility as those terms are defined in 40 C.F.R. § 260.10.

Respondent's Generation of Waste

10. 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 at all times relevant to this Complaint.

11. As part of the above activities and maintenance operations, pursuant to records provided by Respondent to EPA, Respondent has generated solid waste in various areas of the facility since at least March 3, 2005, and it continues to do so.

12. 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, in various areas of the Facility "hazardous waste," as defined in 40 C.F.R. § 261.3, at all times relevant to this Complaint.

13. 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.

14. The CDT constitutes an "existing hazardous waste management facility" (or "existing facility") within the meaning of 40 C.F.R. § 260.10.

15. The CDT is and has been a "storage" facility for "hazardous waste," as those terms are defined in 40 C.F.R. § 260.10.

Notification of Hazardous Waste Generation

16. Pursuant to Section 3010 of RCRA, 42 U.S.C. § 6930, 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.

17. The notification was prepared by an employee and/or agent of Respondent in the course of carrying out his/her employment or duties.

18. 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.

19. In response to the Notification, EPA provided Respondent with EPA Identification Number PRD987381563 for the facility referred to in the Notification.

20. The location described in the Notification is the Río Piedras CDT described in this Complaint.

EPA Investigative Activities

21. 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").

22. 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.

23. During the 1st Inspection, EPA also evaluated Respondent's compliance with applicable requirements of RCRA and its implementing regulations.

24. On or about December 8, 2005, duly designated representatives of EPA held an inspection closing conference with Respondent's representatives at the Facility.

25. 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 (see paragraph 49 below for an identification and location of the above-referenced containers, drums, and plastic bags).

26. The first incident occurred on or around March 3, 2005 during a fire incident at the hallway of the third floor of the Facility.

27. During the fire approximately 1-3 sphygmomanometers broke, causing the metallic mercury reservoir to spill and contaminate the surrounding areas.

28. 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.

29. 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. Respondent's representatives indicated that while washing some of the equipment used to cleanup the spill, some of the collected spilled mercury was disposed down the drain of a sink located at the janitorial room, from which it entered the sewer system. Air monitoring samples from mops, brooms, bags and the sink showed elevated mercury vapor concentrations. None of the bags were properly contained or identified with its content.

30. 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.

31. On or about June 7, 2006, duly designated representatives of EPA conducted another inspection of the Facility, pursuant to Section 3007 of RCRA, 42 U.S.C. § 6927, (the "2nd Inspection").

32. 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.

33. During the 2nd Inspection, EPA re-evaluated Respondent's compliance at the Facility with applicable requirements of RCRA and its implementing regulations.

34. On or about June 7, 2006, duly designated representatives of EPA held an inspection closing conference with Respondent's representatives at the Facility.

35. 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 December 8, 2005 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 were not in good conditions, some were open and were not properly labeled and maked 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.

36. During the course of the 1st and 2nd inpections, Respondent admited 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 garbage.

37. 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.

38. 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.

39. On or about December 15, 2006, Respondent submitted its response (the "Response") to the NOV and Information Request Letter.

40. The Response was prepared by an employee or agent of Respondent in the course of carrying out his/her employment or duties.

41. 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.

42. 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 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.

43. 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.

44. 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.

COUNT 1 - Failure to Make Hazardous Waste Determinations

45. Complainant realleges each applicable allegation contained in paragraphs "1" through "44" inclusive, as if fully set forth herein.

46. 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 using the procedures specified in that provision.

47. Pursuant to 40 C.F.R. § 261.2, subject to certain applicable exclusions, a "solid waste" is any "discarded material" that includes "abandoned," "recycled" or "inherently waste-like materials," as those terms are further defined therein.

48. 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."

49. Prior to at least December 8, 2005, the CDT generated at least the following waste streams on-site for which determinations were not made:

    a. General Warehouse (Hospital Basement) - Eight (8) 55-gallon plastic drums and five (5) 55-gallon steel drums containing mercury contaminated waste, from 2nd and 3rd spills, and eight (8) decommissioned sphygmomanometers;

    b. Electric Power Room (Hospital Basement) - Four (4) 55-gallon plastic drums and one (1) 15-gallon container with mercury contaminated waste from the 2nd and 3rd spill, dated August 30, 2005;

    c. Biomedical Waste Storage Area (Hospital Basement)- Two (2) 60-gallon bags containing contaminated mercury waste (discarded brooms, mops, and cleaning equipment) from 2nd and 3rd spills; and,

    d. Throughout the Hospital Areas - Boxes of spent fluorescent lamps bulbs and scattered individual spent lamps, some broken into pieces spread all

over the floor areas, without any breakage protection means and not properly labeled.

50. Prior to at least December 8, 2005, Respondent discarded or disposed the wastes identified in paragraph "49" by either placing them in the municipal trash or pouring liquid mercury waste down a sink drain, or accumulating or storing the material before or in lieu of it being disposed of without making a hazardous waste determination.

51. Each of the materials identified in paragraphs "49" above is a "discarded material" and "solid waste," as defined in 40 C.F.R. § 261.2.

52. Respondent's failures to determine if each the solid waste it generated at its Facility constituted a hazardous waste is a violation of 40 C.F.R. § 262.11.

COUNT 2 - Failure To Minimize Risks

53. 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.

54. Pursuant to 40 C.F.R. § 261.5(b), a conditionally exempt small quantity generator's hazardous wastes are 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. § Part 262.11.

55. Even if Respondent qualified as a "conditionally exempt small quantity generator" as that term is defined at 40 C.F.R. § 261.5(a), Respondent's failure to determine if the the materials identified in paragraph "49" above 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. 40 C.F.R Part 262 includes requirements for generators that generate more than 100 kg but less than 1000 kg of hazardous waste in a calendar month, including 40 CFR Part 265.31.

56. Pursuant to 40 C.F.R. § 265.31 (of 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.

57. Prior to at least December 8, 2005, the Respondent failed 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 through numerous actions or inactions including but not limited to the following incidents:

    a. A Mercury Spill that occurred on or around March 3, 2005 on the 3rd floor of Facility;

    b. A 2nd Mercury Spill incident that occurred on August 25, 2005, at the Emergency Room of Facility;

    c. A 3rd Mercury Spill incident that occurred on September 6, 2005, in the Diagnostic Office of the Facility's 2nd floor of the CDT and,

    d. A 4th Mercury Spill incident that occurred on June 6, 2006, in the Emergency Room and the Basement of the Facility

58. Respondent's manner of attempting to clean up the spilled material as describe in paragraph "29" above resulted in the spreading of the mercury contamination and the exposure of employees and visitors to mercury contaminated material.

59. Respondent's failure to maintain and operate its facility in order 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, constitutes a violation of 40 C.F.R. § 265.31.

III. 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 Section 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 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 **Eighty-Five Thousand One Hundred and Fifty Dollars ($85,150)** as follows:

Count 1: **$ 33,150**

Count 2: **$ 52,000**

Total Proposed Penalty: **$ 85,150**

IV. 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 still possible, make the required determinations whether solid wastes previously generated at the Facility 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 Facility is 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 metallic mercury 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. Respondent shall submit to EPA within forty (40) calendar days of the effective date of this Compliance Order 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 and 2 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.

4. All responses, documentation, and evidence submitted in response to this Compliance Order should be sent to:

Eduardo R. González, P.E.
Response & Remediation Branch
Caribbean Environmental Protection Division
U.S. Environmental Protection Agency, Region 2
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 Facility. 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 Facility.

V. 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, as amended, a violator failing to take corrective action within the time specified in a compliance order is liable for a civil penalty of up to $32,500 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.

VI. 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 Assessments 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 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 affirmatively to 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. §§ 551-559, 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). 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). 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.

VII. 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:

Lourdes del Carmen Rodríguez, 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) 977-5819
Facsimile: (787) 729-7748.

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 the 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.

VIII. 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 VII.

IX. FILING OF DOCUMENTS

The Answer and any Hearing Request and all subsequent documents filed in this action shall be sent to:

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

A copy of the Answer, any Hearing Request and all subsequent documents filed in this action shall be sent to:

Lourdes del Carmen Rodríguez, 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) 977-5819
Facsimile: (787) 729-7748.

COMPLAINANT:

DATE: 09-27-07

Carl Axel-Peter Soderberg, Director
Caribbean Environmental Protection Division
U.S. Environmental Protection Agency, Region 2

To: Honorable Jorge Santini Padilla
Mayor of San Juan
P.O. Box 9024100
San Juan, P.R. 00902-4100

Dr. Evelyn González, Medical Director
Dr. Javier J. Antón Hospital
San Juan Center for Diagnostic and Treatment (CDT)
#1 Piñero Street, Vallego Street Corner
Río Piedras, P.R. 00928

cc: Mr. Julio I. Rodríguez, Director
Land Pollution Regulation Program
Puerto Rico Environmental Quality Board
P.O. Box 11488
Santurce, PR 00910

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, (also known as the Rio Piedras CDT)** 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-02-2007-7112

CERTIFICATE OF SERVICE

This is to certify that on this date, I caused to be mailed a true and correct copy of the foregoing "Complaint, Compliance Order and Notice of Opportunity for Hearing," bearing Docket Number RCRA-02-2006-XXXX, together with Attachments I and II (collectively henceforth referred to as the "Complaint"), and with a copy of the "Consolidated Rules of Practice Governing the Administrative Assessments of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits," 40 C.F.R. Part 22, by:

A copy by Certified Mail/Return Receipt Requested, to:

Honorable Jorge Santini Padilla
Mayor of San Juan
P.O. Box 9024100
San Juan, P.R. 00902-4100
and
Dr. Evelyn González,
Medical Director
Dr. Javier J. Antón Hospital
San Juan Center for Diagnostic and Treatment (CDT)
#1 Piñero Street, Corner of Vallejo Street
Rio Piedras, PR 00928

The Original and a copy for filing by Federal Express to:

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

Dated: 10/1/07

San Juan, Puerto Rico