

FIDDLER GONZALEZ & RODRIGUEZ, P.S.C.

ATTORNEYS AND COUNSELORS AT LAW

PO BOX 363507

SAN JUAN, PR 00936-3507

TELEPHONE (787) 753-3113

FAX (787) 759-3123

MARIA LUISA GONZALEZ
Direct Dial No. (787) 759-3173
Direct Fax No. (787) 759-3108
E-mail address: mlgonzal@fglaw.com

**254 MUÑOZ RIVERA AVENUE
CORNER CHARDÓN STREET
6TH FLOOR
HATO REY, PR 00918**

October 19, 2009

**ORIGINAL AND COPIES
VIA UNITED PARCEL SERVICE**

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

U.S. ENVIRONMENTAL
PROTECTION AGENCY/REG-01
2009 OCT 21 PM 3:51
REGIONAL HEARING
CLERK

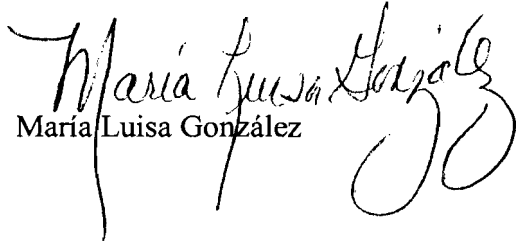
RE: Index No. CCA-02-2009-1220

Dear Ms. Maples:

Enclosed please find original and two copies of Answer to Complaint, Request for Hearing and Informal Settlement Conference. Please file the original and one copy, and return stamped copy to undersigned in the enveloped included.

Thank you.

Sincerely,


Maria Luisa González

tvv

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. 2
2009 OCT 21 PM 3: 51
REGIONAL HEARING
CLERK

IN THE MATTER OF:

Bacardí Corporation
P.O. Box 363549
San Juan, Puerto Rico 00936-3549

Respondent

In a proceeding under
Section 113(d) of the Clean Air Act
42 U.S.C. § 7413(d)

COMPLAINT
and
NOTICE OF OPPORTUNITY
TO REQUEST A HEARING

Index No. CAA-02-2009-1220

**ANSWER TO COMPLAINT, REQUEST FOR HEARING
AND INFORMAL SETTLEMENT CONFERENCE**

TO: **Regional Hearing Clerk**
U.S. EPA Region 2
290 Broadway, 16th Floor
New York, NY 10007-1866

COMES NOW, BACARDI CORPORATION (the "Respondent") through its undersigned attorneys and respectfully alleges, states and prays as follows:

Statutory Authority

Respondent acknowledges the authority of the Director of the Caribbean Environmental Protection Division (the "Director") of the United States Environmental Protection Agency (the "EPA") to issue administrative complaints, as alleged in the first paragraph of the Complaint and Notice of Opportunity to Request a Hearing dated September 18, 2009 (the "Complaint").

Based on Respondent's explanations below, Respondent denies the allegation in the second paragraph, that it violated requirements of the "Standards of Performance for Industrial-Commercial-Institutional Steam Generation Units of Volume 40 of the Code of Federal Register (the "40 C.F.R.") §§ 60.40b to 60.49b (the "NSPS Subpart Db").

Respondent has no knowledge on the allegation in the third paragraph, that the Department of Justice (DOJ) granted EPA a waiver of the statutory twelve (12) month period limitation.

Statutory, Regulatory and Permitting Background

1) The allegation in paragraph 1 does not require an answer since said allegation is a conclusion of law.

2) The allegation in paragraph 2 does not require an answer since said allegation is a conclusion of law.

3) The allegation in paragraph 3 does not require an answer since said allegation is a conclusion of law.

4) The allegation in paragraph 4 does not require an answer since said allegation is a conclusion of law. In addition, the allegation is not relevant to the findings of facts and alleged violations in the Complaint.

5) The allegation in paragraph 5 does not require an answer since said allegation is a conclusion of law.

6) The allegation in paragraph 6 does not require an answer since said allegation is a conclusion of law.

7) The allegation in paragraph 7 does not require an answer since said allegation is a conclusion of law.

8) The allegation in paragraph 8 does not require an answer since said allegation is a conclusion of law.

9) The allegation in paragraph 9 does not require an answer since said allegation is a conclusion of law.

10) The allegation in paragraph 10 does not require an answer since said allegation is a conclusion of law.

11) The allegation in paragraph 11 does not require an answer since said allegation is a conclusion of law.

12) The allegation in paragraph 12 does not require an answer since said allegation is a conclusion of law.

13) The allegation in paragraph 13 does not require an answer since said allegation is a conclusion of law.

14) The allegation in paragraph 14 does not require an answer since said allegation is a conclusion of law.

15) The allegation in paragraph 15 does not require an answer since said allegation is a conclusion of law.

16) The allegation in paragraph 16 does not require an answer since said allegation is a conclusion of law.

17) The allegation in paragraph 17 does not require an answer since said allegation is a conclusion of law.

18) The allegation in paragraph 18 does not require an answer since said allegation is a conclusion of law.

19) The allegation in paragraph 19 does not require an answer since said allegation is a conclusion of law.

20) The allegation in paragraph 20 does not require an answer since said allegation is a conclusion of law.

21) The allegation in paragraph 21 does not require an answer since said allegation is a conclusion of law.

22) The allegation in paragraph 22 does not require an answer since said allegation is a conclusion of law.

23) The allegation in paragraph 23 does not require an answer since said allegation is a conclusion of law. In addition, Respondent explains as follows. Respondent was required to conduct performance evaluation of the continuous emission monitoring systems and performance test for opacity and nitrogen oxides (NO_x) emission limits for Boiler 3. Respondent's Boiler 3 is not subject to the particulate matter (PM) emission limit and compliance with the sulfur dioxide (SO₂) emission limit can be demonstrated through fuel receipts and fuel analysis.

Findings of Facts

24) The responses in paragraphs 1-23, above, are re-alleged and incorporated by reference herein.

25) The allegation in paragraph 25 is admitted.

26) The allegation in paragraph 26 is admitted.

27) The allegation in paragraph 27 is explained. The November 16, 2005 construction permit PFE-17-0505-0692-II-C was superseded by a revised construction permit issued by the Puerto Rico Environmental Quality Board (the "PREQB") on April 4, 2006. Respondent's new cogeneration system effectively consumes a mixture of biogas (a gas generated from Respondent's waste water treatment plant), and fuel oil to generate high pressure steam, which will be used in a turbine to generate electricity.

Respondent's cogeneration project was designed to reduce Respondent's dependency on costly and inefficient fossil fuel to generate electricity, and to reduce the facility's actual emissions of criteria pollutants.

28) The allegation in paragraph 28 is explained. Respondent's new cogeneration system consists of the new 3000 hp steam generating Boiler 3 and the turbine. Boiler 1 is not part of nor is physically interconnected to the cogeneration system. Boiler 2 is not in operation and waiting to be removed from Respondent's facility.

29) The allegation in paragraph 29 is explained. Pursuant to scenario 1 (Section II, Condition 3) of the April 4, 2006 construction permit, Boiler 1 is allowed to burn up to 418,000 gallons per year of fuel number 6 or number 2, and Boiler 3 to burn 6,000,000 gallons per year minus the amount of such fuels burned in Boiler 1, as calculated in a rolling annual basis. Pursuant to the April 4, 2006 construction permit, both boilers shall not exceed the combined consumption of 1,500,000,000 cubic feet per year of biogas.

30) The allegation in paragraph 30 is explained. Boiler 1 has the capacity to consume fuel oil and biogas, as explained in paragraph 29, above, which explanation is re-alleged and incorporated by reference herein.

31) The allegation in paragraph 31 is admitted.

32) The allegation in paragraph 32 is explained. The PREQB letter dated February 1, 2006 was superseded by the April 4, 2006 revised construction permit, as explained in paragraph 27 above, re-alleged and incorporated by reference herein.

33) The allegation in paragraph 33 is explained. The explanation provided in paragraph 27 above is re-alleged and incorporated by reference herein.

34) The allegation in paragraph 34 is admitted.

35) The allegation in paragraph 35 is explained as follows:

a) The PREQB delay in the approval of the Certification Test Protocol was caused by some administrative typographical errors. PREQB sent a letter stating that the CEMS/COMS Certification Test Protocol was approved when it was supposed to instead approve the Certification Test Protocol. Respondent's actions lead PREQB to find the cause of the delay, and to issue the letter of approval of the

Certification Test Protocol. Respondent diligently provided copy of the Certification Test Protocol to the Caribbean Environmental Protection Division.

b) On February 28, 2005, EPA proposed amendments to NSPS Subpart Db. A final NSPS Subpart Db rule affecting steam generating units constructed after the February 28, 2005 date was promulgated on June 13, 2007. See 72 Federal Register 32742 (June 13, 2007). On August 17, 2007, Respondent diligently started communications with EPA to clarify the SO₂ and PM compliance and monitoring requirements of the revised NSPS Subpart Db to Boiler 3 since Respondent's facility is located in a non continental area, and the equipment was going to burn biogas and oil with a very low sulfur content of 0.05%. After several communications, on March 20, 2008, Conniesue Oldham, Group Leader Source Measurement Technology Group of EPA acknowledged as follows: the biogas from Respondent's waste water treatment plant is not regulated; the NSPS Subpart Db "low sulfur oil" definition does not address non continental units (like Boiler 3); Boiler 3 was not subject to the SO₂ or PM limits of the revised NSPS Subpart Db; the facility was not required to install PM and SO₂ continuous emissions monitoring systems; and continuous compliance with the SO₂ regulatory limit could be demonstrated through fuel receipts and the regulatory fuel analysis.

c) Respondent maintained in good faith communications with EPA and continuously consulted with the Caribbean Environmental Protection Division to discuss how the equipment could come in compliance with NSPS Subpart Db regulatory monitoring requirements. At Respondent's request, the Caribbean Environmental Protection Agency Division met with Respondent to determine Boiler 3 startup date. Respondent informed EPA that at that time, Boiler 3 was under the ownership and control of the manufacturer who was in the trial runs and debugging process of the equipment. Respondent notified EPA of the equipment mechanical problems which were preventing the Boiler from achieving the maximum production rate of 100,000 lbs/hr of steam. Respondent informed EPA that Boiler 3 was achieving 50% or less production rate. Viability of Respondent's emission reduction cogeneration project was predicated in Boiler 3 achieving the 100% maximum production rate. Respondent understood and informed EPA that a performance test conducted to Boiler

3 at such low production rate would most likely produce information and results inappropriate to demonstrate compliance with the NSPS Subpart Db applicable standards and that such requirement would force Respondent to revise the construction permit to limit unit's production rate, establish stringent emission limitations, and operational conditions that will adversely affect the feasibility of the project.

36) The allegation in paragraph 36 is explained. The response to allegation in paragraph 35, above, is realleged and incorporated by reference herein.

37) The allegation in paragraph 37 is explained. The May 7, 2008 meeting with EPA was conducted at Respondent's request. In several occasions, prior to May 7, 2008, Respondent met with and consulted EPA and PREQB on the equipment mechanical failures and Respondent's requests to manufacturer to revise Boiler 3 design in order to achieve the maximum production rate required by Section 60.8 of the 40 C.F.R. to conduct the source performance test during the startup period. Respondent notified EPA of the mechanical failure that prevented Boiler 3 from achieving the regulatory maximum production rate necessary to conduct the test.

38) The allegation in paragraph 38 is denied. On April 30, 2008, Respondent informed the Caribbean Environmental Protection Division that, if EPA does not consider that at the time Boiler 3 was still owned and under the control of the manufacturer and was operating at a 50% or less capacity, the initial startup date of Boiler 3 was December 1, 2007, and the performance test should be performed within 180 days of this event or no later than May 29, 2008. Respondent informed to the Caribbean Environmental Protection Division that Boiler 3 operational conditions were not under Respondent's control.

39) The allegation in paragraph 39 is admitted.

40) The allegation in paragraph 40 is explained as follows:

a) Respondent sent to EPA Lula Melton a letter dated May 1, 2008 explaining that Boiler 3 was assembled by the manufacturer at Respondent's facility, that the unit was started as part of the manufacturer's trial runs and equipment set up process to bring it to specifications, that Boiler 3 was unable to achieve the required design capacity due to mechanical failures, that significant modifications to the equipment may be required and that there was a strong possibility that the maximum production rate

could not be achieved during the 180 day startup period required to conduct performance test. Respondent also stated its understanding that the May 16, 2007 NSPS revision to the term *force majeure* allows facilities to request time extensions for conducting performance tests in response to events that cause unavoidable delays, and that the term *force majeure* includes events such as equipment failures caused by circumstances beyond the control of the affected facility which prevent the affected facility from conducting the required test on time despite their best efforts. See, 72 Federal Register 27437, May 16, 2007. In the May 1, 2008 letter, Respondent consulted with EPA if its particular situation could be considered a *force majeure* that would qualify for a time extension to complete the performance test. Lula Melton was identified as EPA's contact in the revised *force majeure* provision promulgated May 16, 2007. EPA Lula Melton forwarded Respondent's consultation to Mr. Robert Lischinsky on May 1, 2008. Respondent did not receive a response from EPA to its consultation.

b) Respondent then moved to request a meeting with Caribbean Environmental Protection Division and PREQB, in its good faith efforts, to resolve the issues within the 180 day startup period. At the May 7, 2008 meeting, the Caribbean Environmental Protection Division and PREQB recommended Respondent to file a written letter to EPA explaining Boiler 3's inability to reach design capacity, the equipment mechanical failures and to propose a date to conduct the performance test. Respondent diligently sent the letter that same day, May 7, 2008. EPA, on a letter dated May 30, 2008, received by Respondent on June 2, 2008, denied Respondent's request to extend the deadline of performance test of Boiler 3 which was May 29, 2008. EPA indicated that the reasons provided by Respondent were not considered *force majeure*, that if the test was not completed within the 180 day period, Respondent would be in violation of the stack testing requirement. EPA also indicated that it would proceed to issue an Administrative Order requiring completion of the performance test within 90 days after the compliance date or not later than August 27, 2008. EPA could have communicated verbally to Respondent its decision at anytime before the expiration of the 180 day period (May 29, 2008), since Respondent was continuously consulting with the agency.

c) Respondent promptly requested a meeting with the Caribbean Environmental Protection Division, which meeting was held on June 4, 2008. The Caribbean Environmental Protection Division stated that the Administrative Order was to be issued within one or two weeks after the meeting. The Administrative Order signed on September 12, 2008, was delivered by mail with a letter from the Caribbean Environmental Protection Division dated September 24, 2008. Respondent received the Administrative Order on September 26, 2008. The Administrative Order directed Respondent to conduct the performance test for Boiler 3 and submit the report of the test results by September 30, 2008.

d) On October 3, 2008, Respondent requested a meeting with EPA to discuss the violations alleged in the Administrative Order. The request was timely filed. Respondent and EPA met on November 5, 2008. EPA acknowledged that Respondent had diligently addressed and performed the test. Respondent recognized the importance of compliance with the performance test and did not wait for the EPA's issuance of the Administrative Order to conduct the test and to improve the production rate of the Boiler. Manufacturer of Boiler 3 conducted changes to the equipment that increased its production rate to 80%. Even though, such production rate still did not meet the Respondent's requirements for steam and electricity, Respondent scheduled the COMS/CEMS certification and the 30 day performance test for Boiler 3 to commence on June 24 and June 25, 2008, respectively. EPA and PREQB were notified of the scheduled test. The performance test was conducted from July 1 to July 31, 2008, after notifying a minor delay. Performance test was conducted with the presence of EPA and PREQB. Respondent submitted the written report of the test results to EPA and PREQB on September 24, 2008. The test results showed compliance with the NO_x and opacity standards of NSPS Subpart Db. Respondent has not received comments on the report.

41) The allegation in paragraph 41 is admitted.

42) The allegation in paragraph 42 is explained. The Administrative Order was signed by EPA on September 12, 2008, delivered by mail to Respondent with a letter from the Caribbean Environmental Protection Division dated September 24, 2008, and received at Respondent's facility on September 26, 2008. The Administrative Order directed Respondent to conduct the performance test for Boiler 3 and submit the report of

the test results by September 30, 2008. On October 3, 2008, Respondent requested a conference with EPA to discuss the violations alleged in the Administrative Order. The request was timely filed. Respondent and EPA met on November 5, 2008. EPA acknowledged that Respondent had diligently addressed and performed the test. Respondent recognized the importance of compliance with the performance test and conducted the test from July 1 to July 31, 2008. PREQB and EPA were present during the test. The equipment was operated at 80% production rate, not at the maximum production rate required by the NSPS regulation. Such production rate did not meet Respondent's requirements when designing the cogeneration project. The written report of the test results was submitted to EPA and PREQB on September 30, 2008. Respondent has not received comments to the report.

43) The allegation in paragraph 43 is admitted.

44) The allegation in paragraph 44 is explained. After completion of the performance test at Boiler 3 production rate of 80%, Respondent continued efforts with the manufacturer of the equipment to achieve the 100% maximum design production rate. Respondent notified EPA and PREQB of its efforts and specifically maintained communications with the Caribbean Environmental Protection Division, and it in turn with EPA Region 2, as to how to proceed in order to conduct a new performance test when the equipment achieves the maximum production rate. Boiler 3 was still owned and under the control of the manufacturer. On October 9, 2008, Respondent informed EPA that the manufacturer was going to correct the mechanical problems that were preventing Boiler 3 from achieving the design steam production capacity of 100,000 lb/hr, identified the activities to be performed, and the time period required to complete the works. Respondent proposed and agreed with EPA to shut down Boiler 3. Respondent prepared and submitted to EPA and PREQB on January 13, 2009 a test protocol for Boiler 3 operating at the maximum production rate. The performance test for Boiler 3 operating at the regulatory maximum production rate (100%) started on February 12, 2009, and was completed on March 19, 2009. Respondent submitted the written report of the performance test results to EPA and PREQB on May 1, 2009. The test results showed compliance with the NO_x and opacity standards of NSPS Subpart Db.

45) The allegation in paragraph 45 is admitted.

Count 1

46) The responses in paragraphs 1-45, above, are re-alleged and incorporated by reference.

47) The allegation in paragraph 47 is admitted.

48) The allegation in paragraph 48 is admitted.

49) The allegation in paragraph 49 is admitted. Respondent is the operator of Boiler 3.

50) The allegation in paragraph 50 is explained. EPA erroneously considered December 1, 2007 as the date of initial startup of Boiler 3, which according to EPA determined the 180 day startup period to conduct the performance test. On December 1, 2007, the manufacturer, who owned and controlled Boiler 3, was commencing trial and debugging of the equipment before setting it into normal operation. It was during this try out and debugging process that the manufacturer and Respondent found out that the unit was not able to reach even 50% of its design production rate. During this time the manufacturer experienced difficulties in determining the mechanical failures that were preventing the equipment from achieving the maximum operation rate. Under these circumstances, December 1, 2007 should not have been considered by EPA as the initial startup date that triggers the performance test compliance date. The mechanical failures that prevented Boiler 3 from achieving the maximum production rate were beyond Respondent's control, constituted *force majeure* and a time extension to conduct the performance test was more than warranted. Respondent, in good faith, kept EPA informed of all the problems Boiler 3 was experiencing, that solution was beyond Respondent's control and based on this conversation Respondent requested a time extension. Respondent's failure to conduct the test before May 29, 2008 should not have been considered a violation of 40 C.F.R. § 60.8.

51) The allegation in paragraph 51 is explained. The response to allegation in paragraph 50, above, is re-alleged and incorporated by reference herein. Respondent should not have been subject to administrative penalties under Section 113(d) of the Clean Air Act.

Proposed Civil Penalty

The proposed civil penalty of \$33,527 is unwarranted. The explanations above and the grounds for defense below present a case of impossibility to conduct the initial performance test at the regulatory maximum production rate within the EPA established 180 day startup period. At all times, Respondent recognized the importance of conducting the performance test, and its importance to the regulatory scheme and informed, consulted and sought advice from EPA. Respondent conducted a performance test even when Boiler 3 was not achieving maximum production rate. Respondent conducted a second performance test after equipment failures were corrected. The test results showed compliance with NO_x and opacity emission limits. EPA should have not proposed penalty increases for the length of the alleged violation or for the size of Respondent. Simply, the facts and circumstances of the case do not warrant the assessment of a penalty.

Grounds for Defense

As herein explained, at all times relevant Respondent acted diligently and in good faith, did not intentionally perform or authorize the alleged violation mentioned in the Complaint to the Clean Air Act (CAA) provisions; if any such violation to the CAA occurred was due to *force majeure*.

1) Respondent filed and obtained a construction permit for the cogeneration project from PREQB. Boiler 3 was constructed during a time period within which EPA revised NSPS Subpart Db and the *force majeure* definition of the NSPS regulation. Respondent, in good faith, consulted EPA about the applicability of the PM, SO_x, NO_x and opacity emission limitations to determine monitoring requirements. Respondent timely submitted to EPA and PREQB the CEMS/COMS Certification Test Protocol and the Certification Test Protocol for Boiler 3. Respondent did not ignore the importance of executing the performance test. Respondent kept good faith communications with EPA and continuously consulted the Caribbean Environmental Protection Division to discuss how the equipment could come into compliance with the NSPS Subpart Db regulatory monitoring requirements. At Respondent's request, the Caribbean Environmental Protection Agency Division met with Respondent to determine the startup date of Boiler

3. Respondent informed EPA that at that time, Boiler 3 was under the ownership and control of the manufacturer who was performing trial and debugging of the equipment. Respondent notified EPA about the equipment mechanical problems informed by the manufacturer which were preventing the Boiler from achieving the maximum production rate of 100,000 lbs/hr of steam. Respondent informed EPA that Boiler 3 was achieving 50% or less production rate. Respondent informed to the Caribbean Environmental Protection Division that Boiler 3 operational conditions were not under Respondent's control. Respondent consulted with EPA if its particular situation could be considered a *force majeure* that would qualify for a time extension to complete the performance test. Respondent recognized the importance of compliance with the performance test and did not wait for EPA's issuance of the Administrative Order to conduct the test and to improve the production rate of the Boiler. The performance test was conducted from July 1 to July 31, 2008. Performance test was conducted with the presence of EPA and PREQB. Respondent submitted the written report of the test results to EPA and PREQB on September 24, 2008 before the date ordered. The test results showed compliance with the NO_x and opacity standards of NSPS Subpart Db.

2) Respondent diligently sought advice on when performance test of Boiler 3 should be conducted. Respondent diligently notified and kept EPA informed of its efforts to solve the mechanical failures that kept Boiler 3 from achieving maximum production rate. Respondent, in good faith, understood that the performance test was to be conducted after Boiler 3 reached maximum production rate. Respondent, in good faith, understood that to conduct a performance test when Boiler 3 was still being debugging and in trail runs, under the control of manufacturers, may generate inappropriate results that may affect compliance with the NSPS Subpart Db regulatory requirements. Respondent did everything under its control to conduct the performance test within the EPA determined startup period. Respondent did everything under its control to make manufacturer detect and repair the mechanical failures affecting Boiler 3, at the earliest time possible. Respondent conducted the first performance test while Boiler 3 was achieving only 80% of the production rate as required by EPA.

3) The concerns on how to determine the startup date were addressed in EPA's document EPA-453/R-99-004b, entitled "National Emission Standards for

Hazardous Air Pollutants for Source Categories: Oil and Natural Gas Production and Natural Gas Transmission and Storage–Background Information for Final Standards: Summary of Public Comments and Responses". In this document a commenter (IV-D-6) requested that EPA clarify the difference between “initial startup” and “startup” for purposes of determining compliance with the performance test dates. The commenter explained that the time between the completion of construction and the day of initial startup is used to “try out” and “debug” the equipment. The commenter explained that these “trial runs” are not initial startups and should not trigger the compliance date. It is very important to note that EPA agreed that only initial startups (as explained) should trigger the compliance dates, defined initial startup to mean the first time a new or reconstructed source begins operation and proceeded to modify different sections of 63.760(f)(2) and 63.1270(d)(2), including the Definitions in §§ 63.761 and 63.1271 of 40 C.F.R. to clarify this matter. Respondent understands that the same technical rationale should reasonable be applied to § 60.8 of 40 C.F.R., since it is based on the fact that certain equipment, such as boilers (which normally required Factory Acceptance Tests to be performed), need to be tried out or debugged before being set into normal operation. Please note that the performance test provision of § 60.8 specifies initial startup, while § 60.2 (Definitions) of the General Provisions of NSPS provides a definition for startup. The initial startup of § 60.8 then should be after the trial runs are conducted and the first time a new source begins production.

4) Respondent diligently submitted to EPA a petition to extend the performance test deadline due to a *force majeure* event within the required timeframe. The petition included a description of the events and the mechanical failures beyond Respondent’s control that were causing the delay in testing within the EPA established deadline. Section 60.2 of 40 C.F.R. defines *force majeure* as “*an event that will be or has been caused by circumstances beyond the control of the affected facility, its contractors, ...that prevent the owner or operator from complying with the regulatory requirement to conduct performance tests within the specified timeframe despite the affected facility’s best efforts to fulfill the obligation. Examples of such events are...equipment failure beyond the control of the affected facility.*” The circumstances explained in the written request met the necessary requirements to be considered for a

time extension. The causes of the delay in this case and the malfunction of Boiler 3 were not under the control of Respondent. The mechanical failures which prevented the operation of Boiler 3 at maximum production rate are similar to the examples of equipment failures indicated in the definition of *force majeure* of the NSPS regulation. Respondent moved forward with the time extension request of May 7, 2008 based on the conversations with EPA and PREQB that same day, which lead Respondent to the understanding that the situation could be reasonably considered for a *force majeure* extension.

5) The Clean Air Act National Stack Testing Guidance of September 30, 2005, revised on April 27, 2009 (the "Guidance"), which mentions Mr. Rob Lischinsky as a contact for further information, indicated that insisting that a facility conducts the test within the required timeframe when the facility requests additional time to conduct the test because it is unable to obtain the maximum production rate within the startup period, may not be appropriate because the information obtained during the test would not be meaningful in determining compliance with the underlying requirements. According to the Guidance, the delegated agency made allow additional time and should take into consideration the facility's unique circumstances when choosing an appropriate response and whether penalties should be assessed. (See, the Guidance, at page 8.)

6) Under the circumstances described above, the finding by EPA of a violation and imposition of a penalty are totally unwarranted and unreasonable.

Facts at Issue

Factual allegations of violation that are denied and/or explained, as well as the appropriateness of the proposed penalty are at issue.

Hearing and Informal Conference

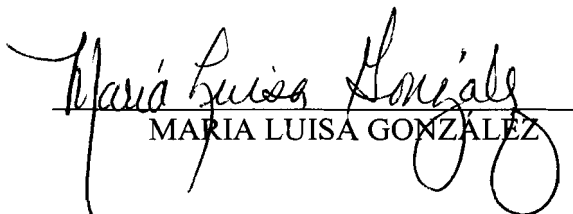
Respondent requests a formal hearing to contest the appropriateness of the findings of violation, as well as, the appropriateness of the penalty assessed. Respondent also requests an informal conference in order to discuss the facts of this case and the possibility of a settlement.

In San Juan, Puerto Rico, this 19th day of October 2009.

WE HEREBY CERTIFY that on this same date a copy of this Answer to the Complaint and Request for Hearing and Informal Settlement Conference has been mailed by certified mail to Héctor L. Vélez Cruz, Esq., Assistant Regional Counsel, Office of Regional Counsel, Caribbean Team, U.S. Environmental Protection Agency, Region 2, Centro Europa Building, Suite 417, 1492 Ponce de León Avenue, San Juan, Puerto Rico 00907; Mr. Luis Sierra, Chief, Enforcement Section Air Quality Area, Puerto Rico Environmental Quality Board, P.O. Box 11488, San Juan, Puerto Rico 00910.

BACARDI CORPORATION
FIDDLER GONZÁLEZ & RODRÍGUEZ PSC.
Eduardo M. Negrón Navas
María Luisa González
Juan C. Gómez Escarce
P.O. Box 363507
San Juan, Puerto Rico 00936-3507
Tel. (787) 759-3106, 787-759-3173
Fax (787) 759-3108

By:


MARIA LUISA GONZÁLEZ

By:


JUAN C. GÓMEZ ESCARCE