UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

In the Matter of:

Destilería Serrallés, Inc.
PO Box 198
Mercedita, PR 00715

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

CAA-02-2010-1233

Complaint

The United States Environmental Protection Agency (EPA) issues this Complaint and Notice of Opportunity for Hearing (Complaint) to Destilería Serrallés, Inc. (Respondent) for violations of the Clean Air Act, 42 U.S.C. § 7401 *et seq.* (CAA or the Act), 42 U.S.C. § 7413(d), Section 113(d) of the Act, and proposes the assessment of penalties in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22 (CROP). The authority to find violations and issue Complaints has been delegated to the Director of the Caribbean Environmental Protection Division (CEPD) from the EPA Administrator through the Regional Administrator.

In this Complaint, EPA alleges that Respondent's facility, located at 331 Ahonoray Street, Mercedita, Ponce, Puerto Rico (Facility), violated requirements or prohibitions of Section 608, 42 U.S.C. § 7671(g) of the Act, the "Recycling and Emissions Reduction" regulations, 40 C.F.R. Part 82, Subpart F, 40 C.F.R. § 82.150 *et seq.* (CFC Regulations), and the Facility's Title V Operating Permit, which includes the CFC Regulations as applicable requirements.

On September 22, 2010, the Department of Justice (DOJ) granted EPA's request for a waiver of the twelve (12) month period limitation provided in Section 113(d) of the Act.

Statutory, Regulatory, and Permitting Background

1. Section 113(a)(3) and (d) of the Act authorizes the Administrator of EPA to issue an administrative penalty order, in accordance with Section 113(d) of the Act, against any person that has violated or is in violation of the Act.

2. Section 114(a)(1) of the Act authorizes the Administrator to require owners or operators of emission sources to submit specific information regarding facilities, establish and maintain records, make reports, sample emission points, and to install, use and maintain such monitoring equipment or methods in order to determine whether any person is in violation of the Act.

3. Section 302(e) of the Act defines the term "person" as an individual, corporation, partnership, association, state, municipality, political subdivision of a State, and any agency, department, or instrumentality of the United States and any officer, agent, or employee thereof.

4. Pursuant to Section 502(a) of the Act, after the effective date of any permit program approved or promulgated pursuant to Title V of the Act, it shall be unlawful for any person to violate any requirement of a permit issued under Title V of the Act or to operate a Title V affected source, except in compliance with a permit issued by a permitting authority under Title V of the Act.

5. Section 502(b) of the Act requires EPA to promulgate regulations establishing the minimum elements of a permit program to be administered by any air pollution control agency and sets forth the procedures by which EPA will approve, oversee, and withdraw approval of state operating permit programs.

6. Section 503(b)(2) of the Act provides that the regulations promulgated pursuant to Section 502(b) of the Act shall include requirements that the permittee periodically (but no less frequently than annually) certify that its facility is in compliance with any applicable requirements of the Title V Operating Permit and that the permittee promptly report any deviations from the operating permit requirements to the permitting authority.

7. Pursuant to Section 502(d) of the Act, each state is required to develop and submit to the Administrator a permit program meeting the requirements of Title V of the Act.

8. Pursuant to Section 502(d)(1) of the Act, the Commonwealth of Puerto Rico developed and submitted the Puerto Rico Title V Operating Permit Program, to meet the requirements of Title V of the Act and the requirements of 40 C.F.R. Part 70, promulgated pursuant to Section 502(b) of the Act. EPA granted approval of the Puerto Rico Title V Operating Permit Program on

February 26, 2002, 61 Fed. Reg. 7073 (February 26, 1996).

9. Pursuant to Section 502(e), EPA maintains its authority to enforce Title V operating permits issued by a state.

10. Pursuant to Section 504(a) of the Act and Section 603(a)(1) of the Puerto Rico Operating Permit Rules for Title V Sources, each Title V operating permit shall include, among other things, enforceable emissions limitations and standards to assure compliance with applicable requirements of the Act.

11. Section 608 of the Act requires that EPA promulgate regulations establishing standards and requirements for the use and disposal of class I and class II ozone-depleting substances (or class I or class II refrigerants) during the service, repair, or disposal of appliances and industrial process refrigeration (IPR) appliances. These regulations shall include requirements to: reduce the use and emission of class I and class II refrigerants to the lowest achievable level; and maximize the recapture and recycling of class I and class II refrigerants during the service, maintenance, repair, and disposal of appliances.

12. Section 602 of the Act required the EPA administrator to publish a list of "class II" substances within 60 days of November 15, 1990, and required inclusion of hydrochlorofluorocarbon (HCFC-22, also known as R-22) in that list.

13. Section 608 of the Act states that it shall be unlawful for any person, in the course of maintaining, servicing, repairing, or disposing of an appliance or IPR, to knowingly vent or knowingly release or dispose of any class I or class II refrigerant in such appliance in a manner which allows such refrigerant to enter the environment.

14. Section 608(a) of the Act, authorizes EPA to promulgate regulations establishing the standards and requirements regarding use and disposal of class I and class II substances during service, repair, or disposal of IPR appliances.

15. Pursuant to Sections 114, 604 and 608 of the Act, EPA promulgated the CFC Regulations. These regulations were revised on July 24, 2003.

16. Section 601(1) of the Act defines "appliance" as any device that contains and uses a class I or class II substance as a refrigerant for commercial purposes, including any air conditioner, refrigerator, chiller, or freezer.

17. Section 601(3) defines "class I substance" as each of the substances listed in Section 602(a) of the Act.

18. Section 601(4) defines "class II substance" as each of the substances listed in Section 602(b) of the Act.

19. Pursuant to 40 C.F.R. § 82.150(b), the CFC Regulations are applicable to, among other things, any person servicing, maintaining, or repairing appliances, and to persons disposing of appliances, including small appliances and motor vehicle air conditioners.

20. 40 C.F.R. § 82.152 defines "IPR," as complex customized appliances used in the chemical, pharmaceutical, petrochemical and manufacturing industries. These appliances are directly linked to the industrial process. This sector also includes industrial ice machines, appliances used directly in the generation of electricity, and ice rinks. Where one appliance is

used for both industrial process refrigeration and other applications, it will be considered industrial process refrigeration equipment if 50 percent or more of its operating capacity is used for industrial process refrigeration.

21. 40 C.F.R. § 82.152 defines "refrigerant" as any substance consisting in part or whole of a class I or class II ozone-depleting substance that is used for heat transfer purposes and provides a cooling effect.

22. 40 C.F.R. § 82.152 defines "industrial process shutdown" to mean, for purposes of § 82.156(i), that an industrial process or facility temporarily ceases to operate or manufacture whatever is being produced at that facility.

23. 40 C.F.R. § 82.152 defines "leak rate" as the rate at which an appliance is losing refrigerant, measured between refrigerant charges. The rate is calculated using only one of the two methods listed.

24. 40 C.F.R. § 82.152 defines "initial verification test" as those leak tests that are conducted as soon as practicable after the repair is completed. There are two (2) types of initial verification tests: a) with regard to the leak repairs that require the evacuation of the appliance or portion of the appliance: a test is conducted prior to the replacement of the full refrigerant charge and before the appliance or portion of the appliance has reached operation at normal operating characteristics and conditions of temperature and pressure; and
b) with regard to repairs conducted without the evacuation of the refrigerant charge: a test conducted as soon as practicable after the conclusion of repair work.

25. 40 C.F.R. § 82.152 defines "follow-up verification test" as tests that involve checking the repairs within thirty (30) days of the appliance's returning to normal operating characteristics and conditions. Follow-up verification tests for appliances from which the refrigerant charge has been evacuated means a test conducted after the appliance or portion of the appliance has resumed operation at normal operating characteristics and conditions of temperature and pressure, except in cases where sound professional judgment dictates that these tests will be more meaningful if performed prior to the return to normal operating characteristics and conditions. A follow-up verification test with respect to repairs conducted without evacuation of the refrigerant charge means a re-verification test conducted after the initial verification test and usually within thirty (30) days of normal operating conditions. Where an appliance is not evacuated, it is only necessary to conclude any required changes in pressure, temperature or other conditions to return the appliance to normal operating characteristics and conditions.

26. 40 C.F.R. § 82.152 defines "normally containing a quantity of refrigerant" as containing the quantity of refrigerant within the appliance or appliance component when the appliance is operating with a full charge of refrigerant.

27. 40 C.F.R. § 82.152 defines "full charge" as the amount of refrigerant required for normal operating characteristics and conditions of the appliance as determined by using one or a combination of the following four methods: (1) use the equipment manufacturer's determination of the correct full

charge for the equipment; (2) determine the full charge by making appropriate calculations based on component sizes, density of refrigerant, volume of piping, and other relevant considerations; (3) use actual measurements of the amount of refrigerant added or evacuated from the appliance; and/or (4) use an established range based on the best available data regarding the normal operating characteristics and conditions for the appliance, where the midpoint of the range will serve as the full charge, and where records are maintained in accordance with § 82.166(q).

28. 40 C.F.R. Part 82, Subpart A, Appendix B, in accordance with Section 602 of the Act, lists monochlorodifluoromethane (HCFC-22 or R-22), as a class II controlled substance.

29. Pursuant to 40 C.F.R. § 82.156(i)(2), owners or operators of IPR normally containing more than fifty (50) pounds of refrigerant, except as described in Section 82.156(i)(2)(i), (i)(2)(ii), (i)(6), (i)(7) and (i)(10), must have leaks repaired if an appliance is leaking at a rate such that the loss of refrigerant will exceed 35% of the total charge during a 12-month period, within thirty (30) days after discovery of the leak, or within thirty (30) days after when the leak should have been discovered (if the owner intentionally shielded himself from information that would reveal the leak) unless granted additional time pursuant to 40 C.F.R. § 82.156(i), or within one hundred and twenty (120) days where an industrial process shutdown in accordance with 40 C.F.R. § 82.156(i)(2)(ii) is required. Where the annualized leak rate of an IPR normally containing more than fifty (50) pounds of refrigerant exceeds 35% of the total charge during a 12-

month period, the owners or operators of the IPR must have the leaks repaired to bring the leak rate to below 35% during a 12-month period within thirty (30) days.

30. In addition, pursuant to 40 C.F.R. § 82.156(i)(2), if the owners or operators of an IPR determine that the leak rate cannot be brought to below 35% during a 12-month period within 30 days (or 120 days, where an industrial process shutdown in accordance with 40 C.F.R. § 82.156(i)(2)(ii) is required) and in accordance with 40 C.F.R. § 82.156(i)(9) determine that an extension in accordance with 40 C.F.R. § 82.156(i) applies, the owner or operators of the IPR must document all repair efforts, and notify EPA of the reason for the inability in accordance with 40 C.F.R. § 82.166(n) within 30 days of making these determinations.

31. 40 C.F.R. § 82.156(i)(2)(i) sets forth requirements in the event that necessary parts are unavailable or if requirements of other applicable federal, state, or local regulations make a repair within thirty (30) or one hundred and twenty (120) days impossible.

32. Pursuant to 40 C.F.R. § 82.156(i)(3), when repairs have been conducted without an IPR shutdown or system mothballing, an initial verification test must be conducted upon conclusion of repairs and a follow-up verification leak test must be conducted within thirty (30) days following the initial verification test. The follow-up verification test must be conducted at normal operating characteristics and conditions unless as otherwise specified in § 82.156(i)(3).

33. Pursuant to 82.156(i)(9), owners or operators must repair leaks pursuant to paragraphs (i)(1), (i)(2) and (i)(5) of this section within 30 days after

discovery, or within 30 days after when the leaks should have been discovered if the owners intentionally shielded themselves from information which would have revealed a leak, unless granted additional time pursuant to §82.156(i).

34. Pursuant to 40 C.F.R. § 82.166(k), owners or operators of IPRs normally containing fifty (50) pounds or more of refrigerant must keep servicing records documenting the date and type of service, as well as the quantity of refrigerant added. The owners or operators must keep records of refrigerant purchased and added to such appliances in cases where owners add their own refrigerant. Such records should indicate the date(s) when refrigerant is added.

35. Pursuant to 40 C.F.R. § 82.166(m), all records required to be maintained must be kept for a minimum of three years, unless otherwise indicated.

36. Pursuant to 40 C.F.R. § 82.166(n)(1), the owner or operator of IPRs must file a report under § 82.156(i)(2) explaining why more than thirty (30) days are needed to complete repairs that must meet the specifications provided in 40 C.F.R. § 82.166(n)(1).

37. The Puerto Rico Environmental Quality Board (PREQB) Regulation for the Control of Atmospheric Air Pollution (RCAP) contains under Part VI the operating permit rules regulations governing the Title V Permit Program as approved by EPA.

38. Rule 602(c)(2)(ix)(C) and (D) of Part VI of the RCAP requires that submission of Compliance Certifications shall be made annually during the permit term, or more frequently if required by the underlying applicable

requirement or by the Board; and a statement indicating the source's compliance status with any applicable enhanced monitoring and compliance certification requirements of the Act.

39. Rule 603(a)(4)(ii) of Part VI of the RCAP requires the retention of records of all required monitoring data and support information for a period of five (5) years from the date of the monitoring sample, measurement, report, or application. Support information includes all calibration and maintenance records and all original strip-chart recordings for continuous monitoring instrumentation, and copies of all reports required by the permit.

40. Rule 603(C)(5)(i) of Part VI of the RCAP specifies those requirements for compliance certification with terms and conditions contained in the permit, including emission limitations, standards, or work practices. Permits shall include each of the following: (i) The frequency of submissions of compliance certifications, as specified in paragraph (c)(2)(ix)(C) of Rule 602.

41. On February 25, 2006, PREQB issued the Facility a Title V Operating Permit (PFE-TV-2085-58-0397-0016).

42. Condition 33 of Respondent's Title V Operating Permit includes the CFC Regulations as applicable requirements.

43. Pursuant to Section III, "General Conditions of the Permit," Paragraph 33 of Respondent's Final Title V Operating Permit ("Refrigerant Requirements; Climate Protection and Protection of Stratospheric Ozone"), should the permit holder have cooling equipment or small cooling appliances in its installations, including air conditioners, that use refrigerants with class I or II

rating under 40 C.F.R. Part 82, Subpart A, Appendices A and B, the permittee must provide maintenance, service or repair records in accordance with the practices, personnel certification requirements, disposal requirements, and certification of recycling and recovery equipment pursuant to 40 C.F.R. Part 82, Subpart F. It also requires owners or operators of devices or equipment normally containing 50 or more pounds of refrigerant to keep records of refrigerant purchases and the refrigerant added to such appliances, pursuant to Section 82.166.

44. Condition 6 of Respondent's Title V Operating Permit promulgates that, pursuant to Rule 112(B) and 603(c)(5) of the RCAP, Respondent must submit an annual Certification of Compliance to both PREQB and EPA, on April 1st of each year, including the real emission calculations for the previous year.

Findings of Fact

45. Respondent is a for profit corporation duly incorporated under the laws of Puerto Rico.

46. Respondent is the owner and operator of the Facility, a plant which produces rum, located at 331 Ahonoray Street, Mercedita, Ponce, Puerto Rico, 00715.

47. Located at the Facility are appliances that contain and use class II controlled substances (R-22 and Foranne R-408A, also known as R-408A)[1] as refrigerants for industrial purposes.

[1] Foranne R-408A (also known as R-408A) is a blend of R-22 and other refrigerants.

48. On February 25, 2006, PREQB issued the Title V Operating Permit # PFE-TV-2085-58-0397-0016 (Facility's Title V Operating Permit) to Respondents.

49. On September 13, 2007, pursuant to Section 114(a)(1) of the Act, an EPA Enforcement Officer conducted a Full Compliance Evaluation (FCE) of the Facility.

50. The FCE included an inspection of the Facility to determine compliance with, among other things, the CFC Regulations and conditions of the Facility's Title V Operating Permit.

51. During the FCE, the EPA Enforcement Officer met with Mr. Henry Huertas, who identified himself as the Respondent's Compliance Director.

52. During the FCE, Mr. Huertas informed the EPA Enforcement Officer that the following appliances are used for industrial refrigeration operations at the Facility:

a. A Vitter Chiller (Vitter Chiller) with compressor model VML 450 XL, which operates at a normal charge of more than 50 pounds of R-22 refrigerant.

b. A Vitter Compressor (Vitter Compressor) located in the Facility's CO_2 plant, which operates at a normal charge of more than 50 pounds of R-408A refrigerant.

c. A Model Continental DSI chiller, with a refrigeration capacity of 75 pounds.

53. During the FCE, Mr. Huertas provided the EPA Enforcement Officer with records which identified the Facility's technicians as Edgardo Millán; Refrigeration Technician number 5307 and Carlos Collazo; Refrigeration Technician number 5955.

54. During the FCE, the EPA Enforcement Officer requested Mr. Huertas to provide any and all service documents for the Facility's IPR equipment, including records of initial and follow-up verifications.

55. During the FCE, Mr. Huertas provided the EPA Enforcement Officer with service records for the period of time from February 15, 2006, through June 21, 2007, containing the following information for the Facility's IPR equipment:

Vitter Chiller:

a. Service record dated February 15, 2006, signed by Mr. Edgardo Millán: This service record indicates that on February 15, 2006, Mr. Millán repaired the Vitter Chiller and added 250 pounds of R-22.

b. Service record dated September 11, 2006, signed by Mr. Edgardo Millán: This service records indicates that on September 11, 2006, Mr. Millán repaired a leak located at the Vitter Chiller's condenser. The leak had caused the loss of all its R-22 charge.[2]

c. Service record dated December 28, 2006, signed by

[2] The service record did not indicate the amount of refrigerant that had leaked out or the amount of refrigerant that was charged into the system after repairs were made. EPA estimates that more than 1100 lbs of refrigerant were released to the atmosphere in this event.

Mr. Edgardo Millán: This service record indicates that on December 28, 2006, Mr. Millán charged the Vitter Chiller with 250 pounds of R-22.

d. Service record dated February 6, 2007, signed by Mr. Edgardo Millán: This service record indicates that on February 6, 2007, Mr. Millán repaired the Vitter Chiller compressor and charged the unit with 1,125 lbs of R-22. This service does not indicate that the technician recovered any R-22.

e. Service record dated April 7, 2007, signed by Mr. Edgardo Millán: This service record indicates that on April 7, 2007, Mr. Millán repaired a leaking valve on the Vitter Chiller condenser and charged the unit with 125 lbs of R-22.

f. Service record dated May 24, 2007, signed by Mr. Carlos Collazo: This service record indicates that on May 24, 2007, Mr. Collazo made a "major repair" on the Vitter Chiller because of an HCFC leak that caused most of the refrigerant to be vented into the atmosphere. The record further indicates that he charged the system with 750 lbs of R-22 refrigerant.

g. Service record dated June 5, 2007, signed by Mr. Carlos Collazo: This service record indicates that on

June 5, 2007, Mr. Collazo repaired a refrigerant leak on the Vitter Chiller and charged the unit with 125 lbs of R-22 refrigerant.

56. During the EPA File Review, EPA did not find any service records indicating that Respondent conducted follow-up verification tests within thirty (30) days of completing the repairs.

57. After the FCE, EPA, using the information contained in Respondent's service records, calculated the lowest possible annualized leak rates of the Facility's Vitter Chiller. The results of those calculations are shown immediately below:

Service Date	**Leak Rate**
September 11, 2006	175%
December 28, 2006	75%
February 6, 2007	913%
April 7, 2007	68%
May 24, 2007	518%
June 5, 2007	338%

58. In the Facility's Title V Operating Permit Compliance Certifications for the years 2006 and 2007, Respondent certified that the Facility was in compliance with Condition 33 of its Title V Operating Permit, which includes the CFC Regulations as applicable requirements.

Count 1

59. Paragraphs 1–58 are repeated and re-alleged as if set forth fully herein. Respondent is a "person" within the meaning of Section 302(e) of the Act.

60. Respondent's Facility includes refrigeration appliances normally containing class II substances as a refrigerant for industrial purposes.

61. Respondent's Facility is subject to the CFC Regulations, promulgated pursuant to Sections 114 and 608 of the Act.

62. Respondent's Facility is subject to the conditions in its Title V Operating Permit.

63. Respondent is subject to the assessment of administrative penalties pursuant to Section 113(d) of the Act.

64. Respondent is the owner and operator of the Vitter Chiller with compressor model VML 450 XL, which normally contains more than fifty (50) pounds of class II refrigerant, R-22.

65. The Vitter Chiller is an IPR, within the meaning of 40 C.F.R. § 82.152.

66. Respondent, as the owner and operator of the Vitter Chiller, is subject to 40 C.F.R. § 82.156(i)(2).

67. Respondent, as the owner and operator of the Vitter Chiller, is subject to 40 C.F.R. § 82.156(i)(9).

68. Respondent's failure to repair the Vitter Chiller for the December 28, 2006 leak, which was above the annualized leak rate of 35% of

the total charge of R-22, to bring the annualized leak rate below 35% within thirty (30) days (or 120 days, where an industrial process shutdown is needed) is a violation of 40 C.F.R. § 82.156(i)(2) and (i)(9) and Condition 33 of the Facility's Title V Operating Permit.

69. Respondent's violations of 40 C.F.R. § 82.156(i)(2) and (i)(9) are violations of Section 608 of the Act.

70. Respondent's violation of condition 33 of the Facility's Title V Operating Permit is a violation of the PR Title V Operating Program and Title V of the Act.

Count 2

71. Paragraphs 1-70 are repeated and re-alleged as if set forth fully herein.

72. Respondent's failure to conduct the initial and follow-up verification tests and/or failure to keep records of the initial and follow up verification tests for the Vitter Chiller's September 11, 2006 leak, where the annualized leak rate was greater than 35% of the full charge of R-22, is a violation of 40 C.F.R. §§ 82.156(i)(3), 82.166(k) and Condition 33 of the Facility's Title V Operating Permit.

73. Respondent's violation of 40 C.F.R. § 82.156(i)(3) is a violation of Section 608 of the Act.

74. Respondent's violation of 40 C.F.R. § 82.166(k) is a violation of Sections 114 and 608 of the Act.

75. Respondent's violation of Condition 33 of the Facility's Title V Operating Permit is a violation of the PREQB Title V Operating Program and Title V of the Act.

Count 3

76. Paragraphs 1–75 are repeated and re-alleged as if set forth fully herein.

77. Respondent's failure to conduct the initial and follow-up verification tests and/or failure to keep records of the initial and follow up verification tests for the Vitter Chiller's December 28, 2006 leak, where the annualized leak rate was greater than 35% of the full charge of R-22, is a violation of 40 C.F.R. §§ 82.156(i)(3), 82.166(k) and Condition 33 of the Facility's Title V Operating Permit.

78. Respondent's violation of 40 C.F.R. § 82.156(i)(3) is a violation of Section and 608 of the Act.

79. Respondent's violation of 40 C.F.R. § 82.166(k) is a violation of Sections 114 and 608 of the Act.

80. Respondent's violation of Condition 33 of the Facility's Title V Operating Permit is a violation of the PREQB Title V Operating Program and Title V of the Act.

Count 4

81. Paragraphs 1-80 are repeated and re-alleged as if set forth fully herein.

82. Respondent's failure to conduct the initial and follow-up verification tests and/or failure to keep records of the initial and follow up verification tests for the Vitter Chiller's February 27, 2007 leak, where the annualized leak rate was greater than 35% of the full charge of R-22, is a violation of 40 C.F.R. §§ 82.156(i)(3), 82.166(k) and Condition 33 of the Facility's Title V Operating Permit.

83. Respondent's violation of 40 C.F.R. § 82.156(i)(3) is a violation of Section 608 of the Act.

84. Respondent's violation of 40 C.F.R. § 82.166(k) is a violation of Sections 114 and 608 of the Act.

85. Respondent's violation of Condition 33 of the Facility's Title V Operating Permit is a violation of the PREQB Title V Operating Program and Title V of the Act.

Count 5

86. Paragraphs 1-85 are repeated and re-alleged as if set forth fully herein.

87. Respondent's failure to conduct the initial and follow-up verification tests and/or failure to keep records of the initial and follow up verification tests for the Vitter Chiller's April 7, 2007 leak, where the annualized

leak rate was greater than 35% of the full charge of R-22, is a violation of 40 C.F.R. §§ 82.156(i)(3), 82.166(k) and Condition 33 of the Facility's Title V Operating Permit.

88. Respondent's violation of 40 C.F.R. § 82.156(i)(3) is a violation of Section 608 of the Act.

89. Respondent's violation of 40 C.F.R. § 82.166(k) is a violation of Sections 114 and 608 of the Act.

90. Respondent's violation of Condition 33 of the Facility's Title V Operating Permit is a violation of the PREQB Title V Operating Program and Title V of the Act.

Count 6

91. Paragraphs 1-90 are repeated and re-alleged as if set forth fully herein.

92. Respondent's failure to conduct the initial and follow-up verification tests and/or failure to keep records of the initial and follow up verification tests for the Vitter Chiller's May 24, 2007 leak, where the annualized leak rate was greater than 35% of the full charge of R-22, is a violation of 40 C.F.R. §§ 82.156(i)(3), 82.166(k) and Condition 33 of the Facility's Title V Operating Permit.

93. Respondent's violation of 40 C.F.R. § 82.156(i)(3) is a violation of Section 608 of the Act.

94. Respondent's violation of 40 C.F.R. § 82.166(k) is a violation of Sections 114 and 608 of the Act.

95. Respondent's violation of Condition 33 of the Facility's Title V Operating Permit is a violation of the PREQB Title V Operating Program and Title V of the Act.

Count 7

96. Paragraphs 1-95 are repeated and re-alleged as if set forth fully herein.

97. Respondent's failure to conduct the initial and follow-up verification tests and/or failure to keep records of the initial and follow up verification tests for the Vitter Chiller's June 4, 2007 leak, where the annualized leak rate was greater than 35% of the full charge of R-22, is a violation of 40 C.F.R. §§ 82.156(i)(3), 82.166(k) and Condition 33 of the Facility's Title V Operating Permit.

98. Respondent's violation of 40 C.F.R. § 82.156(i)(3) is a violation of Section 608 of the Act.

99. Respondent's violation of 40 C.F.R. § 82.166(k) is a violation of Sections 114 and 608 of the Act.

100. Respondent's violation of Condition 33 of the Facility's Title V Operating Permit is a violation of the PREQB Title V Operating Program and Title V of the Act.

Count 8

101. Paragraphs 1–100 are repeated and re-alleged as if set forth fully herein.

102. Each of Respondent's failures to identify non-compliance and certify the non-compliance with the CFC Regulations in its 2006 and 2007 Compliance Certifications is a violation of Condition 33 of the Facility's Title V Operating Permit.

103. Respondent's violations of Condition 33 of the Facility's Title V Operating Permit are violations of the PREQB Title V Operating Program and Title V of the Act.

Proposed Civil Penalty

Section 113(d) of the Act provides that the Administrator may assess a civil administrative penalty of up to $25,000 per day for each violation of the Act. The Debt Collection Improvement Act of 1996 (DCIA) requires EPA to periodically adjust its civil monetary penalties for inflation. On December 31, 1996, February 13, 2004, and January 7, 2009, EPA adopted regulations entitled Civil Monetary Penalties Inflation Adjustment Rule, 40 C.F.R. Part 19 (Part 19). The DCIA provides that the maximum civil penalty per day should be adjusted up to $27,500 for violations that occurred from January 30, 1997 through March 15, 2004, up to $32,500 for violations that occurred after March 15, 2004 through January 12, 2009, and up to $37,500 for violations that occurred after January 12, 2009. Part 19 provides that the maximum civil

penalty should be upwardly adjusted 10% for violations which occurred on or after January 30, 1997, further adjusted an additional 17.23% for violations which occurred March 15, 2004 through January 12, 2009, for a total of 28.95% and further adjusted an additional 9.83% for violations that occurred after January 12, 2009.

In determining the amount of penalty to be assessed, Section 113(e) of the Act requires that the Administrator consider the size of the business, the economic impact of the penalty on the business, the violator's full compliance history and good faith efforts to comply, the duration of the violation as established by any credible evidence, the payment by the violator of penalties previously assessed for the same violation, the economic benefit of noncompliance, the seriousness of the violation, and other factors as justice may require.

Respondent's violations alleged in Counts 1 through 8 resulted in Respondent being subject to the assessment of civil penalties pursuant to Section 113(d) of the Act. The proposed penalty has been prepared in accordance with the criteria in Section 113(e) of the Act, and in accordance with the guidelines set forth in EPA's "Clean Air Act Stationary Source Civil Penalty Policy" (CAA Penalty Policy), which reflects EPA's application of the factors set forth in Section 113(e) of the Act, and EPA's CAA Penalty Policy for Violations of 40 C.F.R. Part 82, Subpart F: Maintenance, Service, Repair, and Disposal of Appliances Containing Refrigerant, Appendix X of the CAA Penalty Policy (CAA Penalty Policy, Appendix X).

EPA proposes a total penalty of $179,060 for all counts alleged in this Complaint. Below are brief narratives explaining the reasoning behind the penalty proposed, along with the reasoning behind various general penalty factors and adjustments that were used in the calculation of the total penalty amount.

Preliminary Deterrence Component of Proposed Penalty

The CAA Penalty Policy indicates that the preliminary deterrence amount is determined by combining the gravity component and the economic benefit component of the penalty calculated. The gravity component includes, as applicable, penalties for actual harm, importance to the regulatory scheme, size of violator and adjustments to the gravity component for degree of willfulness or negligence, degree of cooperation, prompt reporting, correction, history of non-compliance and environmental damage. Actual harm is calculated, where applicable, in accordance with the level of the violation, the toxicity of pollutant, the sensitivity of the environment, and the length of time of violation.

Gravity Component

Count 1: Violation of 40 C.F.R. § 82.156(i)(2) and (i)(9) and the Facility's Title V Permit Condition 33 for VML 450 Vitter Chiller

1. EPA proposes a penalty of $25,145.00 for Respondent's failure to effectuate repairs on the Vitter Chiller leak(s) within 30 days of September 11, 2006, which resulted in a failure to reduce the annual leak rate below 35%, and

therefore, violated 40 C.F.R. § 82.156(i)(2) and (i)(9) and Section III, Paragraph 33 of the Facility's Title V Operating Permit, which included 40 C.F.R. Part 82, Subpart F, as an applicable requirement.

EPA determined that the "Potential Environmental Harm" is major because the CAA Penalty Policy, Appendix X, provides for an assessment of "major" for the failure to follow work practice requirements in 40 C.F.R. § 82.156. EPA determined that the "Extent of Deviation" is major because the CAA Penalty Policy, Appendix X provides for an assessment of "major" when a respondent deviates from requirements of the regulation to such an extent that most or important aspects of the requirements are not met, resulting in substantial noncompliance. The "Potential for Harm" and "Extent of Deviation" each form an axis on the penalty assessment matrix. For violations classified as major/major, the CAA Penalty Policy, Appendix X penalty matrix 1 provides for a $15,000 penalty, unadjusted for the title V violation and unadjusted for inflation.

EPA upwardly adjusted the unadjusted proposed penalty 30% for the violation of the Title V condition, which included the CFC Regulations as applicable requirements, resulting in a proposed penalty of $19,500. See explanation in the later part of this Section of the Complaint.

In addition, the DCIA and Part 19 direct EPA to adjust the gravity component 28.95% for violations occurring on March 15, 2004 through January 12, 2009. Therefore, EPA proposes a $5,645 inflationary adjustment which reflects the 28.95% inflation adjustment for violations that occurred during this period of time.

Therefore, the total proposed penalty for this Count is $25,145.00.

Count 2: Violations of 40 C.F.R. §§ 82.156(i)(3),166(k), and the Facility's Title V Permit Condition 33 for VML 450 Vitter Chiller

EPA proposes a penalty of $26,403 for Respondent's failure to conduct the initial and follow up verification tests and/or failure to keep records of the initial and follow up verification tests, after repairs to the Vitter Chiller on September 11, 2006, as required in 40 C.F.R. §§ 82.156(i)(3) and 82.166(k).

EPA determined that the "Potential Environmental Harm" is major because the CAA Penalty Policy, Appendix X provides for an assessment of "major" for not repairing leaks of equipment normally containing fifty (50) pounds or more of class II refrigerant. EPA determined that the "Extent of Deviation" is major because the CAA Penalty Policy, Appendix X provides for an assessment of "major" when a respondent deviates from requirements of the regulation to such an extent that most or important aspects of the requirements are not met, resulting in substantial noncompliance. The "Potential for Harm" and "Extent of Deviation" each form an axis on the penalty assessment matrix. For violations classified as major/major, the CAA Penalty Policy, Appendix X penalty matrix 2 provides for a $15,000 penalty for failure to conduct the verification tests and a $750 penalty for failure to keep records. The proposed penalty unadjusted for the title V violation and unadjusted for inflation, is $15,750.

EPA upwardly adjusted the unadjusted proposed penalty 30% for the violation of the Title V condition, which included the CFC Regulations as

applicable requirements, resulting in a proposed penalty of $20,475. See explanation in the later part of this Section of the Complaint.

In addition, the DCIA and Part 19 direct EPA to adjust the gravity component 28.95% for violations occurring on March 15, 2004 through January 12, 2009. Therefore, EPA proposes a $ 5,646 inflationary adjustment which reflects the 28.95% inflation adjustment for violations that occurred during this period of time.

Therefore the total proposed penalty for this Count is $26,403.

Count 3: Violation of 40 C.F.R. §§ 82.156(i)(3), 166(k) and the Facility's Title V Permit Condition 33 for VML 450 Vitter Chiller

EPA proposes a penalty of $5,197 for Respondent's repeated failure to conduct the initial and follow up verification tests and/or to keep records of the initial and follow up verification tests, after repairs to the Vitter Chiller on December 28, 2006, as required in 40 C.F.R. § 82.156(i)(3) and 40 C.F.R. § 82.166(k).

EPA determined that the "Potential Environmental Harm" is major because the CAA Penalty Policy, Appendix X provides for an assessment of "major" for not repairing leaks of equipment normally containing fifty (50) pounds or more of class II refrigerant. EPA determined that the "Extent of Deviation" is major because the CAA Penalty Policy, Appendix X provides for an assessment of "major" when a respondent deviates from requirements of the regulation to such an extent that most or important aspects of the requirements are not met, resulting in substantial noncompliance. The "Potential for Harm" and "Extent of

Deviation" each form an axis on the penalty assessment matrix. For repeated violations classified as major/major, the CAA Penalty Policy, Appendix X penalty matrix 2 provides for a $3,000 penalty for failure to conduct verification tests and a $100 penalty for failure to keep records. The proposed penalty unadjusted for the title V violation and unadjusted for inflation is $3,100.

EPA upwardly adjusted the unadjusted proposed penalty 30% for the violation of the Title V condition, which included the CFC Regulations as applicable requirements, resulting in a proposed penalty of $4,030. See explanation in the later part of this Section of the Complaint.

In addition, the DCIA and Part 19 direct EPA to adjust the gravity component 28.95% for violations occurring on March 15, 2004 through January 12, 2009. Therefore, EPA proposes a $1,167 inflationary adjustment which reflects the 28.95% inflation adjustment for violations that occurred during this period of time.

Therefore the total proposed penalty for Count 3 is $5,197.

Count 4: Violation of 40 C.F.R. §§ 82.156(i)(3), 166(k) and the Facility's Title V Permit Condition 33 for VML 450 Vitter Chiller

EPA proposes a penalty of $5,197 for Respondent's repeated failure to conduct the initial and follow up verification tests and/or to keep records of the initial and follow up verification tests after repairs to the Vitter Chiller on February 6, 2007, as required in 40 C.F.R. § 82.156(i)(3) and 40 C.F.R. § 82.166(k). EPA determined that the "Potential Environmental Harm" is major because the CAA

Penalty Policy, Appendix X provides for an assessment of "major" for not repairing leaks of equipment normally containing fifty (50) pounds or more of class II refrigerant. EPA determined that the "Extent of Deviation" is major because the CAA Penalty Policy, Appendix X provides for an assessment of "major" when a respondent deviates from requirements of the regulation to such an extent that most or important aspects of the requirements are not met, resulting in substantial noncompliance. The "Potential for Harm" and "Extent of Deviation" each form an axis of the penalty assessment matrix. For repeated violations classified as major/major, the CAA Penalty Policy, Appendix X penalty matrix 2 provides for a $ 3,000 penalty for failure to conduct verification tests and a $100 penalty for failure to keep records. The proposed penalty unadjusted for the title V violation and unadjusted for inflation, is $3,100.

EPA upwardly adjusted the unadjusted proposed penalty 30% for the violation of the Title V condition, which included the CFC Regulations as applicable requirements, resulting in a proposed penalty of $4,030. See explanation in the later part of this Section of the Complaint.

In addition, the DCIA and Part 19 direct EPA to adjust the gravity component 28.95% for violations occurring on March 15, 2004 through January 12, 2009. Therefore, EPA proposes a $1,167 inflationary adjustment which reflects the 28.95% inflation adjustment for violations that occurred during this period of time.

Therefore, the total proposed penalty for this Count violation is $5,197.

Count 5: Violation of 40 C.F.R. §§ 82.156(i)(3), 166(k) and the Facility's Title V Permit Condition 33 for VML 450 Vitter Chiller

EPA proposes a penalty of $5,197 for Respondent's repeated failure to conduct the initial and follow up verification tests and/or to keep records of the initial and follow up verification tests after repairs to the Vitter Chiller on April 7, 2007, as required in 40 C.F.R. § 82.156(i)(3) and 40 C.F.R. § 82.166(k). EPA determined that the "Potential Environmental Harm" is major because the CAA Penalty Policy, Appendix X provides for an assessment of "major" for not repairing leaks of equipment normally containing fifty (50) pounds or more of class II refrigerant. EPA determined that the "Extent of Deviation" is major because the CAA Penalty Policy, Appendix X provides for an assessment of "major" when a respondent deviates from requirements of the regulation to such an extent that most or important aspects of the requirements are not met, resulting in substantial noncompliance. The "Potential for Harm" and "Extent of Deviation" each form an axis on the penalty assessment matrix. For repeated violations classified as major/major, the CAA Penalty Policy, Appendix X penalty matrix 2 provides for a $3,000 penalty for failure to conduct verification tests and a $100 penalty for failure to keep records. The proposed penalty unadjusted for the title V violation and unadjusted for inflation is $3,100.

EPA upwardly adjusted the unadjusted proposed penalty 30% for the violation of the Title V condition, which included the CFC Regulations as applicable requirements, resulting in a proposed penalty of $4,030. See explanation in the later part of this Section of the Complaint.

In addition, the DCIA and Part 19 direct EPA to adjust the gravity component 28.95% for violations occurring on March 15, 2004 through January 12, 2009. Therefore, EPA proposes a $1,167 inflationary adjustment which reflects the 28.95% inflation adjustment for violations that occurred during this period of time.

Therefore the total proposed penalty for this Count is $5,197.

Count 6: Violation of 40 C.F.R. §§ 82.156(i)(3), 166(k) and the Facility's Title V Permit Condition 33 for VML 450 Vitter Chiller

EPA proposes a penalty of $5,197 for Respondent's repeated failure to conduct the initial and follow up verification tests and/or to keep records of the initial and follow up verification tests after repairs to the Vitter Chiller on May 24, 2007, as required in 40 C.F.R. § 82.156(i)(3) and 40 C.F.R. § 82.166(k). EPA determined that the "Potential Environmental Harm" is major because the CAA Penalty Policy, Appendix X provides for an assessment of "major" for not repairing leaks of equipment normally containing fifty (50) pounds or more of class II refrigerant. EPA determined that the "Extent of Deviation" is major because the CAA Penalty Policy, Appendix X provides for an assessment of "major" when a respondent deviates from requirements of the regulation to such an extent that most or important aspects of the requirements are not met, resulting in substantial noncompliance. The "Potential for Harm" and "Extent of Deviation" each form an axis on the penalty assessment matrix. For repeated violations classified as major/major, the CAA Penalty Policy, Appendix X penalty

matrix 2 provides for a $ 3,000 penalty for failure to conduct verification tests and a $100 penalty for failure to keep records. The proposed penalty unadjusted for the title V violation and unadjusted for inflation is $3,100.

EPA upwardly adjusted the unadjusted proposed penalty 30% for the violation of the Title V condition, which included the CFC Regulations as applicable requirements, resulting in a proposed penalty of $4,030. See explanation in the later part of this Section of the Complaint.

In addition, the DCIA and Part 19 direct EPA to adjust the gravity component 28.95% for violations occurring on March 15, 2004 through January 12, 2009. Therefore, EPA proposes a $1,167 inflationary adjustment which reflects the 28.95% inflation adjustment for violations that occurred during this period of time. The total proposed penalty for this violation is $5,197 for Count 6.

Count 7: Violation of 40 C.F.R. §§ 82.156(i)(3), 166(k) and the Facility's Title V Permit Condition 33 for VML 450 Vitter Chiller

EPA proposes a penalty of $ 3,100 for Respondent's repeated failure to conduct the initial and follow up verification tests and/or to keep records of the initial and follow up verification tests after repairs to the Vitter Chiller on June 5, 2007, as required in 40 C.F.R. § 82.156(i)(3) and 40 C.F.R. § 82.166(k). EPA determined that the "Potential Environmental Harm" is major because the CAA Penalty Policy, Appendix X provides for an assessment of "major" for not repairing leaks of equipment normally containing fifty (50) pounds or more of

class II refrigerant. EPA determined that the "Extent of Deviation" is major because the CAA Penalty Policy, Appendix X provides for an assessment of "major" when a respondent deviates from requirements of the regulation to such an extent that most or important aspects of the requirements are not met, resulting in substantial noncompliance. The "Potential for Harm" and "Extent of Deviation" each form an axis on the penalty assessment matrix. For repeated violations classified as major/major, the CAA Penalty Policy, Appendix X penalty matrix 2 provides for a $ 3,000 penalty for failure to conduct verification tests and a $100 penalty for failure to keep records. The proposed penalty unadjusted for the title V violation and unadjusted for inflation is $3,100.

EPA upwardly adjusted the unadjusted proposed penalty 30% for the violation of the Title V condition, which included the CFC Regulations as applicable requirements, resulting in a proposed penalty of $4,030.
See explanation in the later part of this Section of the Complaint.

In addition, the DCIA and Part 19 direct EPA to adjust the gravity component 28.95% for violations occurring on March 15, 2004 through January 12, 2009. Therefore, EPA proposes a $1,167 inflationary adjustment which reflects the 28.95% inflation adjustment for violations that occurred during this period of time.

Therefore the total proposed penalty for this Count is $5,197.

Count 8: Violation of Rule 603 , Title V and the Facility's Title V Permit Condition 33 for year 2006 and 2007

EPA proposes a penalty of $12,895 for Respondent's failures to identify non-compliance and certify the non-compliance with the CFC Regulations in its 2006 annual compliance certifications for 2006 and 2007, as required by the Facility's Title V Permit Condition 33, Rule 603 of the RCAP and Title V of the Act.

In the "Importance to Regulatory Scheme," the CAA Penalty Policy provides for an assessment of $5,000 - $15,000 for an incomplete report or notice. EPA proposes a total unadjusted penalty of $10,000.00 for Respondent's failures to identify non-compliance and certify the non-compliance with the CFC Regulations for the years of 2006 and 2007.

The DCIA and Part 19 direct EPA to adjust the gravity component 28.95% for violations occurring on March 15, 2004 through January 12, 2009. EPA proposes $2,895, which is a 28.95% inflation adjustment for the proposed penalty for this violation.

Therefore the total proposed penalty for Count 8 is $12,895.

Size of Violator

The CAA Penalty Policy directs that a penalty be proposed that takes into account the size of the violator, determined by the violator's net worth. Based on the Independent Audit Report of 2007, submitted by Respondent to the PR State Department, Respondent's net worth is estimated at $192,666,378. The CAA Penalty Policy, Appendix X states that the gravity component will be scaled for size of violator using a multiplier. The CAA Penalty Policy, Appendix X directs

that for businesses with a net worth of more than $300,000, the net worth be divided by $300,000 to determine the multiplier. In accordance with the Policy, generally, the size of violator component should not be more than 50% of the penalty (i.e., no multiplier greater than 2 would be used). The penalty for environmental harm/importance to regulatory scheme multiplied by the size of violator factor becomes the adjusted gravity component. The proposed penalty is $91,626 which is not more than 50% of the final penalty of $183,252.

Title V Adjustment

The CAA Penalty Policy indicates that the gravity component of a penalty can be aggravated up to 100% in consideration of, among other things, the extent to which the violator knew of the legal requirement. In this instance, Respondent included its obligation to comply with the CFC Regulations in its Title V application and was further put on notice of the requirements in its Title V Operating Permit. The permit was in effect throughout the entire period of time in which the CFC Regulation violations, alleged here, occurred. Therefore, in accordance with the Policy and Region 2's practice with regard to Title V violations, EPA proposes the penalties for the alleged violations of the CFC Regulations be aggravated by 30% (or by $13,500).

Inflation Adjustment

Pursuant to the DCIA, 31 U.S.C. §§ 3701 *et seq.*, and 40 C.F.R. Part 19, the regulation promulgated pursuant to the DCIA, the CAA Penalty Policy

"preliminary deterrence" amount should be adjusted 10% for inflation for all violations occurring January 30, 1997 through March 15, 2004, further adjusted an additional 17.23% for all violations occurring on March 15, 2004 until January 12, 2009, and further adjusted an additional 9.83% for all violations occurring after January 12, 2009. For purposes of this Complaint, the total adjustment is 28.95%. Respondent's violations began, as early as, February 2006 and continue to June 2007. Inflation adjustments for violations were done in accordance with the DCIA requirements, which resulted in a total inflation adjustment of $19,332.

Economic Benefit

In addition to the gravity component of the proposed penalties, the CAA Penalty Policy directs that EPA determine the economic benefit derived from noncompliance. The CAA Penalty Policy explains that the economic benefit component of the penalty should be derived by calculating the amount the violator benefited from delayed and/or avoided costs. EPA calculates the economic benefit using a computer program that is called the BEN Model. The CAA Penalty Policy, Appendix X states that although the CAA Penalty Policy indicates that it is EPA's goal to collect the violator's economic benefit and that EPA may elect not to assess an economic benefit component in enforcement actions where the violator's economic benefit is less than $5,000 and in Section 608 enforcement actions, it states that EPA may elect not to assess an economic benefit component where the economic benefit is less than $500.

The Region calculated the economic benefit component of the proposed penalty, which reflects the avoided cost for leak verification testing and for failing to submit accurate annual Compliance Certifications. Upon reviewing the EPA CAA Penalty Policy and EPA practice in national IPR leak violation cases, the Region determined the cost avoided for leak verification testing is $200 per failed leak verification test. The Region determined that there were six (6) failed leak verification tests; therefore the Region calculated the total economic benefit component as $1,200.

Total Proposed Penalty for All Counts

In summary, EPA proposes a total penalty of $179,060 for the violations alleged in this Complaint.

Notice of Opportunity to Request a Hearing

The hearing in this matter is subject to the Administrative Procedure Act, 5 U.S.C. §§ 552 *et seq.* The procedures for this matter are found in EPA's Consolidated Rules of Practice, a copy of which is enclosed with the transmittal of this Complaint. References to specific procedures in this Complaint are intended to inform you of your right to contest the allegations of the Complaint and the proposed penalty and do not supersede any requirement of the CROP.

You have a right to request a hearing: (1) to contest any material facts set forth in the Complaint; (2) to contend that the amount of the penalty proposed in the Complaint is inappropriate; or (3) to seek a judgment with respect to the law

applicable to this matter. In order to request a hearing you must file a written Answer to this Complaint along with the request for a hearing with the EPA Regional Hearing Clerk within thirty (30) days of your receipt of this Complaint. The Answer and request for a hearing must be filed at the following address:

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

A copy of the Answer and the request for a hearing, as well as copies of all other papers filed in this matter, are to be served on EPA to the attention of EPA counsel at the following address:

Carolina Jordán-García
Office of Regional Counsel
U.S. Environmental Protection Agency - Region 2
1492 Ponce de Leon Ave.
Centro Europa Building, Suite 417
Santurce, Puerto Rico 00907-4127
jordan-garcia.carolina@epa.gov
Tel.: (787) 977-5834
Fax: (787)729-7748

Your Answer should, clearly and directly, admit, deny, or explain each factual allegation contained in this Complaint with regard to which you have any knowledge. If you have no knowledge of a particular factual allegation of the Complaint, you must so state and the allegation will be deemed to be denied. The Answer shall also state: (1) the circumstances or arguments which you allege constitute the grounds of a defense; (2) whether a hearing is requested; and (3) a concise statement of the facts which you intend to place at issue in the hearing.

If you fail to serve and file an Answer to this Complaint within thirty (30) days of its receipt, Complainant may file a motion for default. A finding of default constitutes an admission of the facts alleged in the Complaint and a waiver of your right to a hearing. The total proposed penalty becomes due and payable without further proceedings thirty (30) days after the issue date of a Default Order.

Settlement Conference

EPA encourages all parties against whom the assessment of civil penalties is proposed to pursue the possibility of settlement by informal conferences. However, conferring informally with EPA in pursuit of settlement does not extend the time allowed to answer the Complaint and to request a hearing. Whether or not you intend to request a hearing, you may confer informally with the EPA concerning the alleged violations or the amount of the proposed penalty. If settlement is reached, it will be in the form of a written Consent Agreement which will be forwarded to the Regional Administrator with a proposed Final Order. You may contact EPA counsel, Carolina Jordán-García at (787) 977-5834, or at the address listed above, to discuss settlement. If Respondent is represented by legal counsel in this matter, Respondent's counsel should contact EPA.

Payment of Penalty in lieu of Answer, Hearing and/or Settlement

Instead of filing an Answer, requesting a hearing, and/or requesting an informal settlement conference, you may choose to pay the full amount of the penalty proposed in the Complaint. Such payment should be made by a cashier's or certified check payable to the Treasurer, United States of America, marked with the docket number and the name of the Respondent which appear on the first page of this Complaint. The check must be mailed to:

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

A copy of your letter transmitting the check and a copy of the check must be sent simultaneously to EPA counsel assigned to this case at the address provided under the section of this Complaint entitled Notice of Opportunity to Request a Hearing. Payment of the proposed penalty in this fashion does not relieve one of responsibility to comply with any and all requirements of the Clean Air Act.

Dated: 09-28-10

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

To: Félix J. Serrallés
President
Destileria Serrallés, Inc.
PO Box 198
Mercedita, PR 00715

cc: Pedro J. Nieves, Chairman
Puerto Rico Environmental Quality Board
PO Box 11488
San Juan, PR 00910

IN THE MATTER OF:

Destilería Serrallés, Inc.
PO Box 198
Mercedita, PR 00715

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

CAA-02-2010-1233

CERTIFICATE OF SERVICE

I certify that the foregoing Administrative Complaint was sent to the following persons, in the manner specified, on the date below:

Original & Copy UPS:

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

Copy by Certified Mail
Return Receipt

Félix J. Serrallés
President
Destileria Serrallés, Inc.
PO Box 198
Mercedita, PR 00715

&

Pedro J. Nieves, Chairman
Puerto Rico Environmental Quality Board
P.O. Box 11488
San Juan, PR 00910

Dated: 9/29/10

Aileen Sanchez ORC-CT