UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 Broadway
New York, NY 10007

In the Matter of:

IN THE MATTER OF:

Ponce Airlines Services, Inc.
Box 37688
San Juan, Puerto Rico 00937
PWS-ID No. PR0518015

Respondents.

Docket No. RCRA-02-2004-7113

DEFAULT ORDER AND INITIAL DECISION

This is a proceeding under Section 3008(a) of the Resource Conservation and Recovery Act, 42 U.S.C. § 6928(a). The proceeding is governed by procedures set forth in the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules") codified at 40 C.F.R. Part 22. The Complainant, the Director of the Caribbean Environmental Protection Division for Region 2 of the United States Environmental Protection Agency ("EPA"), has moved for a Default Order finding the Respondent, Ponce Airlines Services, Inc., a/k/a Ponce Air Services, liable for the violation of Section 3008 of the Solid Waste Disposal Act ("SWDA"), as amended by various laws including the Resource Conservation and Recovery Act and the Hazardous and Solid Waste Amendments of 1984 ("HSWA"), 42 U.S.C. § 6901 et seq.

(referred to collectively as the "Act" or "RCRA"), and its implementing regulations.

The Complainant requests assessment of a civil penalty in the amount of Sixteen Thousand and Thirty-one Dollars ($16,031) and that Respondent be ordered to comply with the provisions of the Compliance Order, as proposed in the Complaint.

Pursuant to the Consolidated Rules, and based upon the record of this matter and the following Findings of Fact, Conclusions of Law and Determination of Remedy, Complainant's Motion for Entry of Default is hereby GRANTED. The Respondent is hereby found in default and a civil penalty is assessed against it in the amount of $16,031. In addition, Respondent is ordered to perform the injunctive relief requested by Complainant.

BACKGROUND

Complainant initiated this proceeding by filing a Complaint, Compliance Order, and Notice of Opportunity for Hearing ("Complaint") on September 30, 2004 against Respondent. In its Complaint, the Complainant alleged that Respondent violated provisions of the Act as well as regulations promulgated there under, governing the handling and management of hazardous waste, at 40 C.F.R. Parts 260 through 279.

The Complaint explicitly stated on pages 11-12, in the section entitled Failure to Answer, that

> If Respondent fails to file a timely [i.e. in accordance with the 30-day period set forth in 40 C.F.R. § 22.15(a)] Answer to the Complaint, Respondent may be found in default upon motion. 40 C.F.R. § 22.17(a). Default by Respondent constitutes, for purposes of the pending proceeding only, an admission of all of the facts alleged in the Complaint and a waiver of Respondent's right to contest such factual allegations. 40 C.F.R. § 22.17(a). Following a default by Respondent for

failure to timely file an Answer to the Complaint, any order issued therefore shall be issued pursuant to 40 C.F.R. § 22.17(c). Any penalty assessed in the default order shall become due and payable by Respondent without further proceedings thirty (30) days after the Default Order becomes final pursuant to 40 C.F.R. § 22.27(c). 40 C.F.R. § 22.17(d). If necessary, EPA may then seek to enforce such Final Order of Default against Respondent, and to collect the assessed penalty amount, in federal court. Any default order requiring compliance action shall be effective and enforceable against Respondent without further proceedings on the date the default order becomes final under 40 C.F.R. § 22.27(c). 40 C.F.R. § 22.17(d).

The Complaint was served upon Respondent on October 1, 2004. To date, an Answer has not been filed by the Respondent.

On April 7, 2005, Complainant filed a Motion for Entry of Default. It was served on Respondent by certified return receipt requested. To date, the Respondent has not filed a Response to the Motion for Entry of Default.

FINDINGS OF FACT

Pursuant to 40 C.F.R. §§ 22.17(c) and 22.27(a), and based upon the entire record, I make the following findings of fact:

1. Respondent is a corporation that was organized pursuant to, and has existed under, the laws of the Commonwealth of Puerto Rico. Respondent is a tenant of the Puerto Rico Ports Authority at the Luis Munoz Marin International Airport ("LMMIA") in Carolina, Puerto Rico. Respondent provides cargo and ground handling services at the LMMIA.

2. Respondent owns and/or operates the Ponce Airlines Mechanic Shop, located in a corner next to a disposal site of the Puerto Rico Ports Authority ("PRPA") at the LMMIA. Respondent's shop is a privately owned shop which provides, among other things,

preventive maintenance and mechanic services for Respondent's ground support equipment and vehicles, including oil changes.

3. On June 29, 1998, EPA issued a "Complaint, Compliance Order and Notice of Opportunity for Hearing" ("1998 Complaint"), Docket No. II-RCRA-98-0305, against the Respondent for a different facility owned and/or operated by the Respondent at the LMMIA. The Complaint alleged violations under RCRA and the used oil management program, specifically, releases of used oil at that facility.

4. On May 13, 1999, the Regional Administrator approved and signed a Consent Agreement and Consent Order settling the abovementioned 1998 Complaint. The Respondent agreed, as part of the settlement, to comply and maintain compliance with any applicable requirements of 40 C.F.R. Part 279.

5. On or about April 25, 2002, an EPA representative, Miguel Batista, conducted a RCRA Compliance Evaluation Inspection of Respondent's facility to determine Respondent's compliance with the applicable federal regulations for the management of used oil ("First Inspection").

6. At the time of the First Inspection, what appeared to be used oil releases were discovered at the following areas of the facility: on the floor next to Safety Kleen's Parts Washer (used to collect spent degreaser generated from the parts cleaning operations); on the concrete floor around a pit area used to service vehicles in Respondent's facility; along the area where Respondent kept three (3) 55-gallon containers holding used oil; and, on the ground near machinery located in Respondent's facility.

7. EPA notified Respondent's representative of the discoveries summarized above during a

closing meeting at the end of the inspection. At the closing meeting, Respondent's representative did not indicate that the releases observed were not used oil releases.

8. On May 30, 2003, EPA issued a Notice of Violation ("NOV") against the Respondent for the violations the EPA representatives observed during the First Inspection. The EPA's findings were based in part on statements made by Respondent's representative to EPA's representative at the time of the First Inspection. The NOV required Respondent to provide a response within 30 days of receipt of the NOV, or to request an extension within 10 days. The response was to include a description of the actions that had been taken to correct the violations specified in the NOV. In addition, the Respondent was required to provide documentation showing that the violations had been corrected.

9. The NOV was received by Respondent on June 2, 2003.

10. EPA did not receive a response within 30 days of receipt of the NOV by Respondent or a request by Respondent for an extension.

11. On October 2, 2003, EPA's Miguel Batista contacted the Respondent by phone and sent a copy of the NOV by facsimile, reminding Respondent that a response was past due.

12. EPA did not receive any response from Respondent.

13. On October 27, 2003, EPA sent a second NOV to Respondent requiring Respondent to take immediate action to correct the violations described in the initial NOV and to submit a response describing the actions taken to correct the violations within 30 days of receipt of the NOV.

14. The second NOV was received by Respondent on October 31, 2003.

15. EPA did not receive a response from Respondent within 30 days of receipt of the NOV or

a request by Respondent for an extension.

16. On December 23, 2003, EPA issued a third NOV and an Information Request pursuant to Section 3007 of RCRA, 42 U.S.C. § 6927 (the "Request"). The Request required Respondent to provide to EPA the information and documentation requested in the initial and third NOV concerning actions taken to correct the identified violations.

17. The Request was received by Respondent on December 26, 2003.

18. Respondent failed to submit to EPA any response to any of the NOVs or the Request.

19. On or about April 30, 2004, a representative of EPA, Miguel Batista, conducted a second RCRA Compliance Evaluation Inspection of Respondent's facility (hereinafter, "Second Inspection") to determine Respondent's compliance with the applicable federal regulations for the management of used oil and to determine if any of the violations identified during the First Inspection and set forth in the May 2003 NOV had been corrected.

20. At the time of the Second Inspection, used oil was discovered at the facility on the ground and on the concrete floor beneath an above-ground storage tank of approximately 700 gallons, which was labeled "Used Oil", and which was used by Respondent to store used oil.

21. During the Second Inspection, the EPA representative also observed a 55-gallon container, located on the ground in the facility. Respondent's representative stated that he did not know the contents of this 55-gallon container. The soil around the container was heavily impacted, the container appeared to be full, and there was discarded equipment located in the area of the container.

22. As set forth above, Complainant found that Respondent has violated RCRA and the regulations promulgated there under governing the handling and management of hazardous waste at 40 C.F.R. Parts 260 through 279. For these violations, Complainant filed a Complaint against Respondent pursuant to Section 3008 of the Act, 42 U.S.C. § 6928 on September 30, 2004, seeking a civil penalty of Sixteen Thousand and Thirty-one Dollars ($16,031) and injunctive relief as set forth in the Compliance Order included in the Complaint.

23. Respondent was served with a copy of the Complaint and a copy of the Consolidated Rules by certified mail return receipt requested on October 1, 2004.

24. Respondent did not file an answer to the Complaint within 30 days of receipt and has not filed an answer as of the date of this Order.

25. On April 7, 2005, Complainant filed a Motion for Entry of Default ("Motion"). It was served on Respondent by certified return receipt requested.

26. To date, the Respondent has not filed a Response to the Motion for Entry of Default.

CONCLUSIONS OF LAW

Pursuant to 40 C.F.R. §§ 22.17(c) and 22.27(a), and based upon the entire record, I reach the following conclusions of law:

1. Jurisdiction is conferred by Section 3008 of RCRA, 42 U.S.C. § 6928.

2. Respondent is a "person" as defined in Section 1004(15) of the Act, 42 U.S.C. § 6903(15) and 40 C.F.R. § 260.10.

3. Respondent owns or operates a "facility", the Ponce Airlines Mechanic Shop

("Respondent's Facility") as that term is defined in 40 C.F.R. § 260.10.

4. "Used oil" is any oil that has been refined from crude oil, or any synthetic oil, that has been used and as a result of such use is contaminated by physical or chemical impurities, as that term is defined in 40 C.F.R. § 279.1.

5. A "used oil generator" is any person, by site, whose act or process produces used oil or whose act first causes used oil to become subject to regulation, as that term is defined in 40 C.F.R. § 279.20(a).

6. The used oil generated and stored at Respondent's facility is subject to the requirements of 40 C.F.R. Part 279, Subpart C.

7. By reason of its activities at the facility, Respondent is a "used oil generator".

8. Pursuant to 40 C.F.R. § 279.22(d), upon detection of a release of used oil to the environment, a used oil generator must stop the release, contain the released used oil, clean up and manage properly the released used oil and other materials, and if necessary to prevent future releases, repair or replace any leaking used oil storage containers or tanks prior to returning them to service.

9. The used oil detected at the facility on the ground and on the concrete floor beneath an above-ground storage tank which was used by Respondent to store used oil, as identified in paragraph 20 of the Findings of Fact, above, constituted a release of used oil to the environment.

10. The release of used oil was not from an underground storage tank ("UST") as that term is defined in 40 C.F.R. § 280.12.

11. At the time of the Second Inspection, Respondent had detected the release of used oil to

the environment, but had failed to stop the release, contain the released used oil, clean up and manage properly the released used oil and other used oil contaminated materials.

12. Respondent's failure to stop the release, contain the released used oil, clean up and manage properly the released used oil and other used oil contaminated material is a violation of 40 C.F.R. § 279.22(d).

13. Pursuant to 40 C.F.R. § 262.11, a person who generates a solid waste, as defined in 40 C.F.R. § 261.2, must determine if the solid waste is a hazardous waste using the procedures specified in that provision.

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

15. Pursuant to 40 C.F.R. § 261.2(b), materials are solid wastes if they are "abandoned" by being "disposed of", "burned or incinerated" or "accumulated, stored, or treated before or in lieu of being abandoned by being disposed of, burned or incinerated."

16. As set forth in paragraph 20 of the Findings of Fact, above, during the Second Inspection, the EPA representative observed a 55-gallon container, located on the ground, in the facility. The Respondent did not know the contents of this container.

17. As of at the date of the Second Inspection, the contents of this container appeared to be "discarded material" and "solid waste" as defined in 40 C.F.R. § 261.2.

18. As of at least the date of the Second Inspection, Respondent had not determined if the contents of the container mentioned above constituted a hazardous waste.

19. Respondent's failure to determine if the solid waste generated at its facility constituted a

hazardous waste is a violation of 40 C.F.R. § 262.11.

20. Section 3008(a)(3) of the Act, 42 U.S.C. § 6928(a)(3), as amended by the Debt Collection Act of 1996, implemented by the Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19, provides that any person who violates any requirement of this subchapter shall be liable to the United States for a civil penalty up to $27,500 for each day of noncompliance for violations occurring between January 31, 1997 and March 14, 2004, and the maximum penalty to $32,500 for each day of noncompliance for violations occurring on or after March 15, 2004.

21. The Complaint in this proceeding was lawfully and properly served upon Respondent in accordance with 40 C.F.R. § 22.5(b)(1).

22. Respondent was required to file an answer to the Complaint within thirty (30) days of service of the Complaint. 40 C.F.R § 22.15(a).

23. Respondent's failure to file an Answer to the Complaint, or otherwise respond to the Complaint, constitutes a default by Respondent pursuant to 40 C.F.R. § 22.17(a)

24. Respondent's default constitutes an admission of the allegations set forth in the Complaint and a waiver of the Respondent's right to a hearing on such factual allegations. 40 C.F.R. §§ 22.17(a) and 22.15(d).

25. Complainant's Motion for Default Order was lawfully and properly served on Respondent. 40 C.F.R. § 22.5(b)(2).

26. Respondent was required to file any response to the motion within fifteen (15) days of service. 40 C.F.R. § 22.16(b).

27. Respondent's failure to respond to the motion is deemed to be a waiver of any objection

to the granting of the motion. 40 C.F.R. § 22.16(b).

28. Respondent's failure to file a timely Answer or otherwise respond to the Complaint is grounds for the entry of an Order on Default against the Respondent assessing a civil penalty and ordering injunctive relief for the aforementioned violations pursuant to 40 C.F. R. § 22.17(a).

DETERMINATION OF REMEDY

According to 40 C.F.R. § 22.17(c), "[when the Presiding Officer finds that default has occurred he shall issue a default order against the defaulting party as to any or all parts of the proceeding unless the record shows good cause why a default order should not be issued." 40 C.F.R. § 22.17(c) also states, "[the relief proposed in the complaint or the motion for default shall be ordered unless the requested relief is clearly inconsistent with the record of the proceeding or the Act."

As more fully set out below, I find that the Complainant's proposed civil penalty of Sixteen Thousand and Thirty-One Dollars ($16,031), as well as the injunctive relief which Complainant requests, is fair and consistent with the statutory factors under RCRA 3008(a)(3) and EPA's 2003 RCRA Civil Penalty Policy.[1]

In this case, the relief proposed in the Complaint and requested in the Motion includes the performance of injunctive relief as follows:

> (a) Within thirty (30) days of the effective date of this Default Order, clean up and manage properly all used oil releases at the facility, including the release described above, in compliance with 40 C.F.R. § 279.22;

[1] 40 C.F.R. § 22.27(b) directs that the Presiding Officer consider, in addition to any factors enumerated in the statute, any civil penalty guidelines issued under the statute.

(b) Within thirty (30) days of the effective date of this Default Order, determine whether the solid waste contained in the 55-gallon container, as described above, is a hazardous waste. If the contents of the container are no longer at the facility or a hazardous waste termination is no longer feasible for this waste, Respondent shall provide information as to the status of such waste. Respondent shall also comply with 40 C.F. R. § 262.11 for any newly generated solid waste; and

(c) Within thirty (30) days of the effective date of this Default Order, comply with the applicable regulations and standards governing the handling and management of hazardous waste and used oil as set forth in 40 C.F.R. Parts 260-272 and Part 279.

The injunctive relief proposed in paragraphs (a), (b) and (c), above, is consistent with the record of this proceeding and the Act, and will be ordered.

The relief proposed in the Complaint and requested in the Motion also includes the assessment of a penalty of $16,031.00. With respect to penalty, 40 C.F.R. § 22.27(b) provides that the Presiding Officer shall determine the amount of the civil penalty

> ". . . based on the evidence in the record and in accordance with any penalty criteria set forth in the Act. The Presiding Officer shall consider any civil penalty guidelines issued under the Act. The Presiding officer shall explain in detail in the initial decision how the penalty to be assessed corresponds to any penalty criteria set forth in the Act . . . If the Respondent has defaulted, the Presiding Officer shall not assess a penalty greater than that proposed by Complainant in the complaint, the prehearing exchange, or the motion for default, whichever is less."

In the Complaint and in its Motion, Complainant proposed that Respondent be assessed a civil penalty of $16,031.00 for the violations alleged in the Complaint. Complainant based its proposed penalty upon the facts alleged in the Complaint and upon those factors which EPA must consider pursuant to section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), including the seriousness of the violations and any good faith efforts by the Respondent to comply with

applicable requirements. As set forth in the Complaint and Motion, in developing the proposed penalty, the Complainant considered the particular facts and circumstances of the case, and the factors identified in EPA's 2003 RCRA Civil Penalty Policy ("Penalty Policy"), including the gravity component, any applicable adjustment factors and the economic benefit of noncompliance.

Complainant based its proposed penalty on calculations it performed under the Penalty Policy, attaching a penalty calculation worksheet and narrative explaining the reasoning behind the penalty proposed for the violations alleged in the Complaint as Attachment I to the Complaint. Matrices employed in the determination of individual and multi-day penalties were included as Attachments II and III to the Complaint (Exhibit I attached to the Complainant's Motion).

Under the Penalty Policy, two factors are considered in determining the gravity-based component, the potential for harm and the extent of deviation from a statutory or regulatory requirement. Each factor is assigned a value of major, moderate, or minor. A matrix then provides a penalty range for the gravity-based component. The matrix includes a range of penalties from a high of $32,500 for a violation that is found to be major/major to a low of $110 for a violation that is considered minor/minor.

Once the gravity-based component is determined, a multi-day component is added, as appropriate, to account for the duration of violations. That sum, consisting of the gravity-based and multi-day components, is then adjusted for case specific circumstances, and an amount is added to reflect the economic benefit, if any, gained through noncompliance.

Count I, Response to Releases - 40 C.F.R.§ 279.22: As set forth above, Respondent

failed to stop and contain the release of used oil and failed to clean up and manage properly the released used oil and other contaminated materials in violation of 40 C.F.R. § 279.22(d). For this violation, alleged by the Complainant in Count I of the Complaint, Complainant proposes a penalty of $8,906.00.

Complainant's calculation using the Penalty Policy formula is $7,125 (gravity-based component) + $1,781 (twenty five percent [25%] increase for history of noncompliance) = $8,906. Complainant made no adjustments for good faith or lack of good faith efforts to comply; degree of willfulness and/or negligence; or economic benefit. In addition, there were no adjustments for multiple or multi-day violations, as the used oil spill was only observed on the day of the inspection. For the reasons set forth below, I find Complainant's proposed penalty for Count I clearly consistent with the record in this case and the Act.

In arriving at its assessment for the gravity-based component, Complainant reasonably found the potential for harm presented by Count I was moderate. At the time of the Second Inspection, April 30, 2004, Respondent was aware of the release of used oil but no visible effort had been made to clean up the release. However, the used oil spill appeared to be confined to a limited area of the facility and did not appear to involve a substantial amount of such substance.

I believe that Complainant reasonably found the extent of deviation from requirements was moderate in arriving at its assessment for the gravity-based component. The Penalty Policy provides that the "extent of deviation" relates to the degree to which the violation renders inoperative the requirement violated. In its analysis of the extent of deviation, Complainant considered that although the Respondent was aware of the release of used oil at the time of the April 30, 3004 inspection, no visible effort had been made to clean up the release. Respondent

failed to clean up the spill despite numerous formal notifications, including the May 3, 2003 NOV, the October 27, 2003 NOV and the December 23, 2003 NOV and Information Request, that the regulations required such a clean up. However, Complainant does note that there was only one area where there was a used oil spill.

The Penalty Assessment Matrix in the Penalty Policy provides a penalty range from $5,500 to $8,799 for a violation with a potential for harm classified as moderate and an extent of deviation classified as moderate. Complainant chose the midpoint of the range, $7,125 for the gravity-based component of the penalty for Count I, based on its assessment of relevant factors summarized above.

Because the used oil release was only observed on the day of the inspection, no adjustments were made to reflect multiple days of violation. The only factor for which Complainant made an adjustment was history of compliance. Noting that Respondent had been previously subject to EPA enforcement action for used oil violations, Complainant applied a twenty five percent (25%), or $1,781, upward adjustment factor.

The Complainant concluded that any economic benefit resulting from this violation was negligible. As stated above, Complainant made no further adjustments, up or down, in the penalty amount for other adjustment factors provided in the Penalty Policy. I agree that the record in this case does not support making adjustments for the listed factors.

Count II, Hazardous Waste Determination - 40 C.F.R.§ 262.11: As set forth above, Respondent failed to determine if the solid waste generated at its facility constituted a hazardous waste in violation of 40 C.F.R. § 262.11. Complainant proposes a penalty of $7,125.00 for the violation alleged in Count II. Complainant's calculation using the Penalty Policy formula made

no adjustments in the penalty amount for other adjustment factors provided in the penalty policy to the gravity-based component of $7,125. For the reasons set forth below, I find Complainant's proposed penalty for Count II is clearly consistent with the record in this case and the Act.

In arriving at its assessment for the gravity-based component, Complainant reasonably found the potential for harm presented by Count II was moderate. The RCRA Civil Penalty Policy provides that the potential for harm should be based on two factors: 1) the adverse impact of the noncompliance on the regulatory scheme: and 2) the risk of human or environmental exposure. The RCRA regulatory scheme is undermined when an owner/operator of a facility generating solid waste fails to determine whether the solid waste is hazardous waste. Failure to make hazardous waste determinations increases the likelihood that the hazardous waste is managed as a non-hazardous waste, outside of the RCRA regulatory universe. This type of violation can result in multiple sequential violations involving the unidentified hazardous waste stream. Failure to manage a hazardous waste pursuant to the RCRA regulatory scheme increases the risk of human and environmental exposure.

Complainant notes that, in this instance, there was a release into the soil of the solid waste for which a hazardous waster determination was not made. However, the potential for harm was deemed moderate because there was only one 55-gallon drum of the solid waste in question.

As to the second prong of its assessment for the gravity-based component, Complainant reasonably found the extent of deviation from requirements was moderate. In its analysis of the extent of deviation, Complainant considered that Respondent failed to make a hazardous waste determination for only one 55-gallon drum.

As stated above, the Penalty Assessment Matrix in the Penalty Policy provides a penalty range from $5,500 to $8,799 for a violation with a potential for harm classified as moderate and an extent of deviation classified as moderate. Complainant chose the midpoint of the range, $7,125 for the gravity-based component of the penalty for Count II, based on its assessment of relevant factors summarized above.

Because failure to make a hazardous waste determination is considered a one time event, no calculations were made to reflect multiple days of violation. The Complainant concluded that any economic benefit resulting from this violation was negligible. As stated above, Complainant made no further adjustments, up or down, in the penalty amount for other adjustment factors provided in the penalty policy, including good faith efforts to comply/lack of good faith; degree of willfulness or negligence; history of compliance; ability to pay, environmental project and other unique factors. I agree that the record in this case does not support making adjustments for the listed factors.

I conclude that the penalty sought in the amount of $16,031 and the requested injunctive relief is fully supported by the application of the statutory factors for determining a civil penalty in Section 3008(a)(3) of RCRA as well as the applicable Penalty Policy. Further, the record supports the penalty amount as well as the ordering of injunctive relief.

DEFAULT ORDER

Pursuant to the Consolidated Rules at 40 C.F.R. Part 22, including 40 C.F.R. § 22.17, an Initial Decision and Default Order is hereby ISSUED. Respondent is hereby ORDERED as follows:

1. Respondent is assessed a civil penalty in the amount of $16,031.00.

   a. Respondent shall pay the civil penalty by certified or cashier's check payable to the "Treasurer of the United States of America" within thirty (30) days after this default order has become a final order pursuant to 40 C.F.R. § 22.27(c). The check shall be identified with a notation of the name and docket number of this case, set forth in the caption on the first page of this document. Such payment shall be remitted to:

   Regional Hearing Clerk
   EPA Region 2
   P.O. Box 360188M
   Pittsburgh, Pennsylvania 15251

   b. A copy of the payment shall be mailed to:

   Regional Hearing Clerk
   EPA Region 2
   290 Broadway, 16th Floor
   New York, New York 10007

2. Respondent shall take the following actions and provide evidence of compliance within the time periods specified below pursuant to section 3008(a) of RCRA, 42 U.S.C. § 6928(a):

   a. Within thirty (30) days of the effective date of this Default Order, clean up and manage properly all used oil releases at the facility, including the release described above, in compliance with 40 C.F.R. § 279.22;

   b. Within thirty (30) days of the effective date of this Default Order, determine

whether the solid waste contained in the 55-gallon container (described above) is a hazardous waste. If the contents of the container are no longer at the facility or a hazardous waste termination is no longer feasible for this waste, Respondent shall provide information as to the status of such waste. Respondent shall also comply with 40 C.F. R. § 262.11 for any newly generated solid waste; and

c. Within thirty (30) days of the effective date of this Default Order, comply with the applicable regulations and standards governing the handling and management of hazardous waster and used oil as set forth in 40 C.F.R. Parts 260-272 and Part 279.

d. For subparagraphs a through c above, Respondent shall provide EPA with a written submission within forty-five (45) days of the effective date of this Default Order, certifying that the ordered actions have been taken in compliance with the applicable regulations.

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

Miguel A. Batista
Enforcement & Superfund Branch
Caribbean Environmental Projection Division
U. S. Environmental Protection Agency, Region 2
Centro Europa Building, Suite 417
1492 Ponce deLeon Avenue
San Juan, Puerto Rico 00907

3. This Default Order constitutes an Initial decision pursuant to 40 C.F.R. §§ 22.17(c) and 22.27(a). Pursuant to 40 C.F.R. § 22.27(c), this Initial Decision shall become a final order forty-five (45) days after its service upon the parties unless (1) a party moves to reopen the

hearing, (2) a party appeals the initial decision to the Environmental Appeals Board, (3) a party moves to set aside the default order, or (4) the Environmental Appeals Board chooses to review the initial decision sua sponte.

IT IS SO ORDERED.

Dated: June 8, 2006

Helen S. Ferrara
Presiding Officer

CERTIFICATE OF SERVICE

I hearby certify that the **Default Order and Initial Decision** by Regional Judicial Officer Helen Ferrara in the matter of **Ponce Airlines Services, Inc., Docket No. RCRA-02-2004-7113** is being served on the parties because the respondent's mail was returned unclaimed by the post office. This order is being reserved on the parties as indicated below:

Over Night Mail - and Regular Mail

Mr. Lazaro Canto Portal, President
Ponce Airlines Services
P.O. Box 37688
San Juan, Puerto Rico 00937-0688

Environmental Appeals Board
U.S. Environmental Protection Agency
Colorado Building, Suite 600
1341 G. Street, N.W.
Washington, D.C. 20005

Pouch Mail -

Assistant Administrator for
Enforcement & Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W. (2201A)
Washington, D.C. 20460

Regular Mail -

Lourdes del Carmen Rodriguez, Esq.
Office of Regional Counsel
USEPA - Region II
Caribbean Field Division
Centro Europa Bldg.
1492 Ponce de Leon Avenue, Suite 417
San Juan, Puerto Rico 00907

Karen Maples
Regional Hearing Clerk
USEPA - Region II

Dated: June 9, 2006