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FROM: Fehrenbach, John

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REFERENCE:

In re: Bacardi Corporation, NPDES Appeal No. 11-07

Total pages Including Cover Sheet: 12

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Ms. Eurika Durr, Clerk	Environmental Appeals Board, USE	12022330121

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COMMENTS:

Enclosed for filing is the Parties' Joint Motion for Disposition of the Permit Appeal.

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WASHINGTON, D.C.

March 14, 2012

Via Facsimile ((202) 233-0121) and Mail

Ms. Eurika Durr
Clerk of the Board
Environmental Appeals Board (1103B)
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460-0001

In re: Bacardi Corporation, NPDES Appeal No. 11-07

Dear Ms. Durr:

Enclosed for filing is the Parties' Joint Motion for Disposition of Permit Appeal.

Please do not hesitate to contact me if you have any questions.

Respectfully submitted,



John Fehrenbach
Counsel for Bacardi Corporation

DC:702746.1

BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.

In re:

Bacardi Corporation

NPDES Permit No. PR0000591

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NPDES Appeal No. 11-07

JOINT MOTION FOR DISPOSITION OF PERMIT APPEAL

I. INTRODUCTION

U.S. Environmental Protection Agency – Region 2 (“EPA”), and Bacardi Corporation (“Bacardi”), (collectively, the “Parties”) jointly request that the Environmental Appeals Board (“Board”) dispose of Bacardi’s Permit Appeal, NPDES Appeal 11-07, consistent with the Parties’ recommendations in Section IV below. This Joint Motion is based on a settlement reached by the Parties as a result of the negotiations pursuant to the Board’s Alternative Dispute Resolution (“ADR”) pilot program, as summarized below.

II. PROCEDURAL BACKGROUND

On September 27, 2011, EPA issued to Bacardi a National Pollutant Discharge Elimination System (“NPDES”) Permit No. PR000059 (the “Permit”). On November 17, 2011, Bacardi filed a Petition for Review of several conditions in the Permit pursuant to 40 C.F.R. § 124.19.

On December 7, 2011, the Parties notified the Board that the Parties agreed to participate in the Board’s Alternative Dispute Resolution (“ADR”) pilot program. By order dated December 20, 2011 (“Order Staying Proceedings to Allow Parties to Participate in ADR Pilot

Program”), the Board stayed all proceedings in this matter until February 29, 2012. On February 27, 2012, the Parties jointly moved for a two-week extension of the stay, i.e., until March 14, 2012. The stays have provided the Parties with the opportunity to reach a settlement. The Parties hereby report to the Board that they have reached a settlement that resolves the issues raised in Bacardi’s Petition.

III. NATURE OF THE SETTLEMENT

The Parties have agreed as follows:

1. Pursuant to 40 C.F.R. Parts 122 and 124, EPA intends to public notice for public comment draft permit modifications as set forth below:

A. Revise the introductory language in the EPA Addendum to Special Condition 17(b), on page 15 of the Permit, to read as follows:

EPA had revised the limitations for fecal coliform and bacteria for outfall 001 to be consistent with current existing effluent quality during normal operations. During shutdown of distillery operations and the period for three weeks (21 days) following resuming operations after a shutdown, the limitations for bacteria shall be: ...

B. Revise the language in Special Condition 18 of the Permit to read as set forth in “Exhibit A” hereto.

2. EPA intends to public notice the draft permit modifications, referenced in 1.A and 1.B above, within the next 45 days.

3. The Parties anticipate that the public notice and comment period, referenced in 2 above, EPA’s consideration of and responses to any public comments received during such period, and finalization of the permit modifications will take up to approximately six months.

4. In light of this settlement, the Parties do not wish to burden the Board with any further motions, pleadings, hearings, or the like.

5. To that end, Bacardi agrees to seek the withdrawal of its Petition for Review in this matter, without prejudice to renewal of its Petition in the event that the above-referenced modifications are not made to the Permit.

IV. REQUESTED RELIEF

Accordingly, the Parties request that the Board, as it deems appropriate, dispose of Bacardi's Petition by either of the following courses of action:

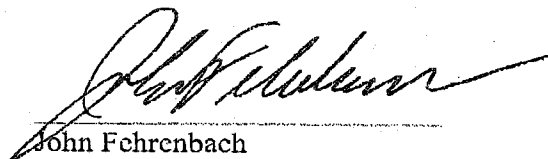
1. Dismiss Bacardi's Petition subject to Bacardi's ability to re-activate its appeal in the event that the above-referenced modifications are not made to the Permit; or
2. Grant a six-month extension of the stay until September 14, 2012, during which time EPA would initiate and complete the public notice and comment process and finalize the Permit modifications.

V. CONCLUSION

For the reasons set forth above, the Parties respectfully request that the Board grant whichever proposed relief the Board deems appropriate based on this Joint Motion for Disposition of Permit Appeal.

This motion has been discussed with, and is being filed with the consent of, EPA counsel of record.

Respectfully submitted,



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Date: March 14, 2012

CERTIFICATE OF SERVICE

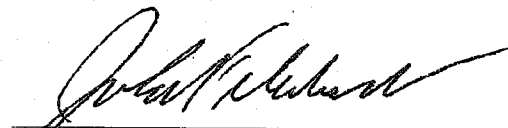
I hereby certify that copies of the foregoing Joint Motion for Disposition of Permit Appeal in *In re Bacardi Corporation*, NPDES Appeal No. 11-07, were sent on the below listed date to the following persons in the manner indicated:

By Facsimile & First Class U.S. Mail:

Eduardo Negrón Navas
Fiddler Gonzalez & Rodriguez, P.S.C.
P.O. Box 363507
San Juan, PR 000936-3507
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Diane Gomes
Eduardo Gonzalez
Office of Regional Counsel
Environmental Protection Agency - Region 2
290 Broadway -- 16th Floor
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Date: March 14, 2012



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EXHIBIT A**18. Whole Effluent Toxicity Requirements**

- a. The permittee shall conduct quarterly chronic toxicity tests on flow-weighted 24-hour composite effluent samples of the combined Bacardi, PRASA Puerto Nuevo, and PRASA Bayamón discharges (referred herein as "combined discharge") for fertilization of *Arbacia punctulata*. Once each calendar year, the permittee shall split a 24-hour composite effluent sample and concurrently conduct acute and chronic toxicity tests using *Mysidopsis bahia* and *Cyprinodon variegatus* in addition to *Arbacia punctulata* fertilization test. The testing on this split sample, in addition to the *Arbacia punctulata* test for that quarter, would satisfy the annual toxicity monitoring requirement of Special Condition 17.

The permittee shall also conduct quarterly chronic toxicity tests on 24-hour composite effluent samples of solely the Bacardi effluent, taken at Bacardi Discharge Point 001, for fertilization of *Arbacia punctulata*.

b. Effluent Limitation:

Interim Effluent Limitation:

The following effluent limit shall be effective from the effective date of this permit condition (EDPC) through EDPC + 3 years:

No single IC25 test result for any species or effect in the combined discharge shall be less than 1.29%.

Final Effluent Limitation:

The following final effluent limitation shall be effective EDPC + 3 years through November 30, 2016:

No test result for any species or effect in the combined discharge shall be greater than 83.32 TUC.

c. TRE Workplan

No later than EDPC + 90 days, the permittee shall prepare and submit a Toxicity Reduction Evaluation (TRE) Workplan to EPA Region 2 for approval. The TRE Workplan must include, at a minimum:

- 1) A description of the investigation and evaluation techniques that would be used to identify potential causes and sources of toxicity, effluent variability, and treatment system efficiency.
- 2) A description of methods for maximizing in-house treatment system efficiency, good housekeeping practices, and a list of all chemicals used in operations at the facility.

- 3) Potential actions to be undertaken by the permittee to investigate, identify, and correct the causes, and prevent the recurrence of toxicity.
- 4) Identification of responsible persons/parties for conducting the TRE.
- 5) Potential source reduction measures and pollution prevention opportunities to reduce toxicity.

EPA shall provide comments on such TRE Workplan no later than 30 days after the permittee's submission of the Workplan. If EPA provides such comments within that timeframe, the permittee shall respond to such comments not later than 30 days after permittee's receipt. If EPA does not provide comments within 30 days, the Workplan will be deemed approved as proposed.

d. Implementation of Toxicity Reduction Evaluation

Once the TRE Workplan is approved, if a test result for any species or effect in the combined discharge exceeds 83.32 TUC on or after EDPC, the permittee shall initiate, within 30 days of receipt of this test result, the TRE Workplan approved pursuant to paragraph c of this special condition. The TRE shall use the same species and test method as that of the observed exceedance. The TRE may be performed in conjunction with the PRASA Puerto Nuevo and Bayamón facilities. The permittee shall use the following guidance manuals:

- 1) *Toxicity Reduction Evaluation Guidance for Municipal Wastewater Treatment Plants* (EPA 833-B-99-002, 1999)
- 2) *Generalized Methodology for Conducting Industrial Toxicity Reduction Evaluations* (EPA/600/2-88/070, 1989).

The permittee may also use the following manuals for Toxicity Identification Evaluation to identify the causes of toxicity:

- 3) *Toxicity Identification Evaluation: Characterization of Chronically Toxic Effluents, Phase I* (EPA/600/6-91/005F, 1992);
- 4) *Methods for Aquatic Toxicity Identification Evaluations, Phase II Toxicity Identification Procedures for Samples Exhibiting Acute and Chronic Toxicity* (EPA/600/R-92/080, 1993);
- 5) *Methods for Aquatic Toxicity Identification Evaluations, Phase III Toxicity Confirmation Procedures for Samples Exhibiting Acute and Chronic Toxicity* (EPA/600/R-92/081, 1993); and
- 6) *Marine Toxicity Identification Evaluation (TIE): Phase I Guidance Document* (EPA/600/R-96-054, 1996).

e. Progress Reports

The permittee shall submit three annual progress reports on the TRE process. These reports shall include an inventory of actions taken, testing procedures, and results. Potential causes of synergistic toxicity shall be identified, as well as source reduction activities to address such causes. The first progress report shall be due EDPC + 1 year.

f. Test Methods

1) Acute Toxicity Testing

- A) The acute toxicity tests shall be conducted in accordance with the EPA publication, EPA-821-R-02-012 Methods for Measuring the Acute Toxicity of Effluents and Receiving Waters to Freshwater and Marine Organisms (Fifth Edition), October 2002, or the most recent edition of this publication, if such edition is available.
- B) The tests shall provide a measure of the acute toxicity as determined by the wastewater concentration, which cause 50 percent mortality of the organisms over a 48 hour period. Test results shall be expressed in terms of Lethal Concentration (LC) and reported as 48 hour LC50.
- C) The test species shall be the *Mysidopsis bahia* (mysid shrimp) and *Cyprinodon variegatus* (sheepshead minnow). The tests shall be static renewal type.

2) Chronic Toxicity Testing

- A) The chronic toxicity tests shall be conducted in accordance with EPA publication, EPA-821-R-02-013 Short Term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Marine and Estuarine Organisms, Fourth Edition, October 2002.
- B) The tests shall report the No Observable Effects Concentration (NOEC), the Low Observable Effects Concentration (LOEC), the calculated inhibition concentration of 25% (IC25), and the effects reported at each concentration tested in the dilution series. The dilution series concentrations shall be chosen to bracket the approximate expected IC25 results, in order to accurately depict the toxic effects of the sample.
- C) The chronic toxicity tests shall be fertilization of *Arbacia punctulata* (sea urchin). The tests shall be static renewal type.
- D) If either the reference toxicant or effluent toxicity tests do not meet all test acceptability criteria in the test methods manual, then the permittee must resample and retest within 14 days.

g. Reporting of Chronic Toxicity Monitoring Results

- 1) A procedure report shall be submitted to EPA and EQB by EDPC + 90 days. The following information shall be included in the procedure report:
 - A) An identification of the organizations responsible for conducting the test and the species to be tested.
 - B) A detailed description of the methodology to be utilized in the conduct of the tests, including equipment, sample collection, dilution water, and source of test organisms.
 - C) A schematic diagram which depicts the effluent sampling location. The diagram shall indicate the location of effluent sampling in relation to wastewaters treatment facility and discharge monitoring point.
- 2) For any toxicity testing event, a full laboratory report shall be submitted and shall include: the toxicity test results in NOEC, LOEC, IC25, and the results reported at each effluent dilution. The results shall be reported according to the test methods manual chapter on report preparation and test review; the dates of sample collection and initiation of each toxicity test; all results for effluent parameters monitored concurrently with the toxicity test(s); and progress reports on TRE/TIE investigations.
- 3) Full laboratory reports of analytical results shall be submitted to EPA Region II and EQB within thirty (30) days of completion of each test. Based on a review of the test results, EPA or the EQB may require additional toxicity tests, including chronic toxicity analyses. In addition to submitting the procedures report and test results to the addresses listed in Part I.B. of this permit, results shall be submitted to:

CHIEF, CLEAN WATER REGULATORY BRANCH
U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION II
290 BROADWAY - 24th FLOOR
NEW YORK, NEW YORK 10007-1866
- 4) The permittee shall notify the permitting authority in writing within 14 days of any violation of the chronic toxicity limitation. This notification shall describe actions the permittee has taken or will take to investigate, identify, and correct the causes of toxicity; the status of actions required by this permit; and schedule for actions not yet completed; or reason(s) that no action has been taken.

h. Reopener Clause for Toxicity Requirements

In accordance with 40 C.F.R. Parts 122 and 124, this permit may be reopened by EPA to include toxicity/treatability studies, additional effluent limitations, or other special conditions to address toxicity in the effluent or receiving water body. EPA may, upon

review of technical data that supports an alternate toxicity test data evaluation method for this discharge, reopen the permit.