

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2**

IN THE MATTER OF:

**Dana Transport**  
PO Box 10995  
Caparra Heights Station  
San Juan, PR 00922

**RESPONDENT**

Proceeding under Section 3008 of the  
Solid Waste Disposal Act, as amended,  
42 U.S.C. § 6928

**CONSENT AGREEMENT AND FINAL  
ORDER**

Docket No. RCRA-02-2010-7112

U.S. ENVIRONMENTAL  
PROTECTION AGENCY  
REGION 2  
HEARING  
OFFICE  
MAY 20 11:20 AM  
SAN JUAN, PR

**PRELIMINARY STATEMENT**

This civil administrative proceeding was instituted pursuant to Section 3008 of the Solid Waste Disposal Act, as amended by various laws including the Resource Conservation and Recovery Act, and the Hazardous and Solid Waste Amendments of 1984, 42 United States Code (U.S.C.) §§ 6901-6991 (together hereafter the "Act" or "RCRA").

The Complainant in this proceeding, the Director of the Caribbean Environmental Protection Division, EPA, Region 2, has been duly delegated the authority to institute and carry forward this proceeding.

The Respondent is Dana Transport (hereinafter "DANA" or "Respondent"). DANA is a corporation duly authorized to conduct business in the Commonwealth of Puerto Rico.

Pursuant to Section 3006(b) of the Act, 42 U.S.C. § 6926(b), whereby the Administrator of EPA may, if certain criteria are met, authorize a state to operate a "hazardous waste program" (within the meaning of Section 3006 of the Act, 42 U.S.C. § 6926) in lieu of the federal hazardous waste program. The Commonwealth of Puerto Rico is a "State" as that term is defined by Section 1004(31) of the Act, 42 U.S.C. § 6903(31), and therefore within the meaning of this provision. The Commonwealth of Puerto Rico, however, is not authorized by EPA to conduct a hazardous waste management program under Section 3006 of RCRA, 42 U.S.C. § 6926. Therefore, EPA retains primary responsibility for the implementation and enforcement of RCRA's hazardous waste regulations in the Commonwealth of Puerto Rico. These regulations are set forth in 40 (Code of Federal Regulations [C.F.R.]) Parts 260 through 273.

The Complainant issued a Complaint, Compliance Order and Notice of Opportunity for Hearing (the "Complaint") to Respondent on or about September 28, 2010. The Complaint alleged that Respondent failed to comply with RCRA and hazardous waste regulations at its facility located in Bayamón, Puerto Rico (the "Facility"). Complainant and Respondent conducted settlement negotiations which led to this agreement.

Complainant and Respondent agree, by entering into this Consent Agreement and Final Order (the "CA/FO"), that settlement of this matter upon the terms set forth in this CA/FO is an appropriate means of resolving this case without further litigation.

### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

#### **Respondent**

1. DANA is a "person," as that term is defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), and 40 C.F.R. § 260.10.
2. Respondent's facility constitutes a "facility" as that term is defined in 40 C.F.R. § 260.10.
3. DANA is the "owner" of the facility as that term is defined in 40 C.F.R. § 260.10.
4. DANA is the "operator" of the facility as that term is defined in 40 C.F.R. § 260.10.

#### **Respondent's Regulatory Status**

5. In or about March 2006, Respondent notified EPA that it is a large quantity generator since it generates more than 1,000 kilograms of hazardous waste per calendar month at the Facility. This notification was made pursuant to Section 3010 of RCRA. EPA issued Respondent with EPA Identification Number PRR000018259 for its Facility.
6. In or about March 2008, Respondent submitted a notification to EPA updating or amending its hazardous waste notification.
7. Respondent is a "generator" of "hazardous waste," as those terms are defined in 40 C.F.R. § 260.10. Respondent stores hazardous waste at its facility as the term "storage" is defined in 40 C.F.R. § 260.10.
8. The requirements for hazardous waste generators are set forth in 40 C.F.R. Part 262.

### **EPA Investigative and Initial Enforcement Activities**

9. On or about July 10, 2009, duly designated representatives of EPA conducted an inspection of the Facility pursuant to Section 3007 of RCRA, 42 U.S.C. § 6927, to determine DANA's compliance with Subtitle C of RCRA and its implementing regulations (the "Inspection").
10. At the end of the Inspection EPA representatives held a closing conference with Respondent's representatives. During the closing conference, EPA discussed the preliminary findings of the compliance evaluation inspection. EPA informed Respondent that:
  - a. a drum containing D001 and F003 hazardous wastes was found leaking in the HWSA and that such contents needed to be transferred to a container that was in good condition and was compatible with the hazardous wastes to be stored in it;
  - b. spills in the HWSA needed to be cleaned;
  - c. HWSA needed to have a spill control equipment;
  - d. It needed to perform a hazardous waste determination of the activated carbon; and
  - e. It needed to locate and submit to EPA the several manifests' missing signed sheets.
11. On or about July 14, 2009, Respondent submitted to EPA the documents that were missing during the Inspection and that were brought to its attention by EPA during the Inspection's closing conference, among other documents. This submission was prepared by an employee or agent of Respondent in the course of carrying out his/her employment or duties.

### **Failure to Minimize Risks of Fire, Explosion, or Release**

12. Pursuant to 40 C.F.R. § 262.34 (a)(4) a generator may accumulate hazardous waste on-site for 90 days or less without a permit or without having interim status (except as provided in paragraphs (d), (e), and (f) of § 262.34), provided that the generator complies with the requirements for owners or operators in subparts C and D in 40 CFR part 265, with § 265.16, and with all applicable requirements under 40 CFR part 268, among other.
13. Subpart C of 40 C.F.R. Part 265 (40 C.F.R. §§ 265.30 – 265.37) sets forth requirements regarding preparedness and prevention.

14. Pursuant to 40 C.F.R. § 265.31, a facility must be maintained and operated to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil or surface water which could threaten human health or the environment.
15. Pursuant to 40 C.F.R. § 265.32(b), all facilities must be equipped with a spill control equipment.
16. On or prior to July 10, 2009, Respondent did not have a spill control equipment at the HWSA, as required by 40 C.F.R § 265.32(b).
17. Each action or inaction set forth in Paragraph 16 is a failure by Respondent to maintain and operate its Facility in a manner minimizing the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil or surface water which could threaten human health or the environment, and constitutes a violation of 40 C.F.R. §§ 265.31 and 265.32(b).
18. Respondent's failure to comply with 40 C.F.R §§ 265.31 and 265.32(b) subjects it to penalties pursuant to Section 3008 of the Act.

#### **Failure To Comply with Certain Use and Managerial Requirements for Containers**

19. Pursuant to 40 C.F.R. § 262.34 (a)(1)(i) a generator may accumulate hazardous waste on-site for 90 days or less without a permit or without having interim status (except as provided in paragraphs (d), (e), and (f) of § 262.34), provided that the waste is placed in containers and the generator complies with the applicable requirements of subparts I, AA, BB, and CC of 40 C.F.R. part 265, among other.
20. Subpart I of 40 C.F.R. Part 265 (40 C.F.R. §§ 265.170 – 265.178) sets forth requirements regarding the use and management of containers.
21. Pursuant to 40 C.F.R. § 265.171, if a container holding hazardous waste is not in good condition, or if it begins to leak, the owner or operator must transfer the hazardous waste from this container to a container that is in good condition, or manage the waste in some other way that complies with the requirements of this part.
22. Pursuant to 40 C.F.R. § 265.172, the owner or operator must use a container made of or lined with materials which will not react with, and are otherwise compatible with, the hazardous waste to be stored, so that the ability of the container to contain the waste is not impaired.
23. Pursuant to 40 C.F.R. § 265.174, owners or operators must conduct weekly inspections of container storage areas, looking for leaking containers and for

deterioration of containers and the containment system caused by corrosion and other factors.

24. On or before July 10, 2009, Respondent had seven (7) 55-gallon containers stored in the HWSA, five of which contained hazardous substances. Several of these containers were rusted. One of the drums containing hazardous wastes D001 and F003 was found leaking and spilling its content onto the floor of the HWSA. Stains were observed on the cement floor under and in the area adjacent to the leaking container. Releases could impact nearby soil.
25. At the time of the Inspection Respondent had failed to:
  - a. transfer the hazardous waste from the drum that was leaking to a container that was made with materials compatible with such hazardous wastes so that the ability to contain the waste was not impaired or to manage the waste in some other way in compliance with the requirements of this part; and
  - b. properly conduct weekly inspections (failed to identify the corroded drum that was leaking hazardous waste substances and other deteriorated containers caused by corrosion and/or other factors) of the HWSA during periods of waste storage, as required by 40 C.F.R. § 265.174.
26. Respondent's failure to comply with 40 C.F.R §§ 265.171, 265.172 and 265.174 subjects it to penalties pursuant to Section 3008 of the Act.

### **CONSENT AGREEMENT**

Pursuant to Section 3008 of RCRA and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and Revocation or Suspension of Permits, 40 C.F.R. § 22.18, it is hereby agreed by and between the parties and Respondent knowingly and voluntarily agrees as follows:

1. For the purpose of this proceeding, Respondent admits the jurisdictional allegations of the Complaint as applied to its Facility and neither admits nor denies specific factual allegations contained in the Complaint or the Findings of Fact or Conclusions of Law in this CA/FO.
2. Respondent shall pay a civil penalty in the amount of FOURTEEN THOUSAND DOLLARS (\$14,000.00) in accordance with paragraphs 3 and 4 of this Consent Agreement.
3. Respondent shall pay an initial penalty of THREE THOUSAND FIVE HUNDRED DOLLARS (\$3,500) within sixty (60) days from the date the Regional Judicial Officer executes this Consent Agreement as a Final Order, which is located at the end of this CA/FO.

4. Thereafter, Respondent shall make 3 payments of THREE THOUSAND FIVE HUNDRED DOLLARS (\$3,500) each, in accordance with the following schedule:
  - a. the first of the 3 payments no later than the last day in the 5<sup>th</sup> month following the date of signature of the Final Order;
  - b. the second of the 3 payments no later than the last day of the 8<sup>th</sup> month following the date of signature of the Final Order; and
  - c. the third and final payment no later than the last day of the 11<sup>th</sup> month following the date of signature of the Final Order.
5. Such payment shall be made by cashier's or certified checks or by Electronic Fund Transfers ("EFT"). If the payments are made by checks, then the checks shall be made payable to the "Treasurer, United States of America," and shall be mailed to:

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

**OVERNIGHT MAIL:**

U.S. Bank  
1005 Convention Plaza  
Mail Station SL-MO-C2GL  
ATTN Box 979077  
St. Louis, MO 63101  
Contact: Natalie Pearson  
314-418-4087.

Each check shall be identified with a notation thereon: **In the Matter of Dana Transport** and shall bear thereon the Docket Number: **RCRA-02-2010-7112**. If Respondent chooses to make the payments by EFT, then Respondent shall provide the following information to its remitter bank:

- a. Amount of Payment
- b. SWIFT address: FRNYUS33, 33 Liberty Street, New York, NY 10045.
- c. Account Code for Federal Reserve Bank of New York receiving payment: 68010727.
- d. Federal Reserve Bank of New York ABA routing number: 021030004.

- e. Field Tag 4200 of the Fedwire message should read: "D68010727 Environmental Protection Agency."
- f. Name of Respondent: **DANA Transport**
- g. Case Number: **RCRA-02-2010-7112**.

Whether the payments are made by checks or by EFT, the Respondent shall promptly thereafter furnish reasonable proof that such payments have been made to:

Héctor L. Vélez Cruz, Esq.  
Assistant Regional Counsel  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 2  
1492 Ponce de León Ave., Suite 417  
San Juan, PR 00907-4127  
Fax number: (787) 729-7748

and

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

The date by which payments must be received shall hereinafter be referred to as the "Due Date."

- a. Failure to pay the civil penalty in full according to the above provisions may result in referral of this matter to the United States Department of Justice or the United States Department of the Treasury for collection.
- b. Further, if the payments are not received on or before the Due Date, interest will be assessed at the annual rate established by the Secretary of the Treasury pursuant to the Debt Collection Act, 31 U.S.C. § 3717, on the overdue amount from the due date through the date of payment. In addition, a late payment handling charge of fifteen dollars (\$15.00) will be assessed for each thirty (30) day period (or any portion thereof) following the Due Date in which the balance remains unpaid. A six percent (6%) per annum penalty will also be applied on any principal amount not paid within ninety (90) days of the Due Date.
- c. The civil penalty constitutes a penalty within the meaning of 26 U.S.C. § 162(f). This Consent Agreement is being voluntarily and knowingly

entered into by the parties to resolve (conditional upon full payment of the civil penalty herein) the specific civil and administrative claims alleged in the Complaint. Nothing herein shall be read to preclude EPA or the United States, however, from pursuing appropriate injunctive or other equitable relief or criminal sanctions for any violation of law. Respondent has read the Consent Agreement, understands its terms, finds it to be reasonable and consents to its terms. Respondent consents to the issuance of the accompanying Final Order. Respondent agrees that all the terms of the settlement are set forth herein.

6. Respondent waives any right it may have pursuant to 40 C.F.R. § 22.8 to be present during discussions with or to be served with and to reply to any memorandum or communication addressed to the Regional Administrator, the Deputy Regional Administrator or Regional Judicial Officer where the purpose of such discussion, memorandum, or communication is to discuss a proposed settlement of this matter or to recommend that such official accept this Consent Agreement and issue the attached Final Order.
7. This CA/FO does not waive, extinguish, or otherwise affect Respondent's obligation to comply with all applicable provisions of the Act and the regulations implementing it, nor shall it be construed as the issuance of a permit or a ruling on, or determination of, any issues related to any federal, state or local law, regulation or permit.
8. Each party shall bear its own costs and fees in this matter.
9. The representative of Respondent signing this Consent Agreement certifies that he or she is duly and fully authorized to enter into and ratify this Consent Agreement and all the terms and conditions set forth in this Consent Agreement. The provisions of this Consent Agreement shall be binding upon Respondent and its officials including authorized representatives and successors or assigns.
10. Respondent consents to service upon Respondent by a copy of this CA/FO by an EPA employee other than the Regional Hearing Clerk.
11. The effective date of this CA/FO shall be the date of filing with the Regional Hearing Clerk, U.S. EPA, Region 2, New York, New York.



RESPONDENT:

**DANA Transport**

BY:



NAME:

Donald B. Dana

TITLE:

President

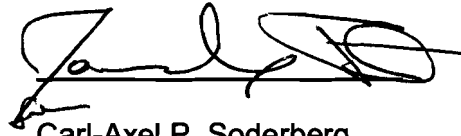
DATE:

28 Apr 2011

COMPLAINANT:

**U. S. Environmental Protection  
Agency – Region 2**

BY:



NAME:

Carl-Axel P. Soderberg

TITLE:

Director, Caribbean  
Environmental Protection Division

DATE:

May 18, 2011

**FINAL ORDER**

The Regional Judicial Officer of the U.S. Environmental Protection Agency Region 2, ratifies the foregoing Consent Agreement. The Consent Agreement entered into by the parties is hereby approved, incorporated herein, and issued as an Order. The effective date of this Order shall be the date of filing with the Regional Hearing Clerk, United States Environmental Protection Agency, Region 2, New York, NY.

May 19, 2011  
Date

Helen Ferrara  
Helen Ferrara  
Regional Judicial Officer  
United States Environmental  
Protection Agency-Region 2  
290 Broadway, 16<sup>th</sup> Floor  
New York, NY 10007-1866

CERTIFICATE OF SERVICE

I certify that I have this day caused to be sent the foregoing Consent Agreement and Final Order, dated *May 19*, 2011, entered in In the Matter of Dana Transport, Docket Number RCRA-02-2010-7112, in the following manner to the respective addressees below:

Original and copy by facsimile, **Overnight Mail** to:

**Karen Maples**  
Regional Hearing Clerk  
Region II  
U.S. Environmental Protection Agency  
290 Broadway, 16<sup>th</sup> Floor  
New York, NY 10007-1866  
Fax (212) 637-3202.

Copy by facsimile, **Overnight Mail** to:

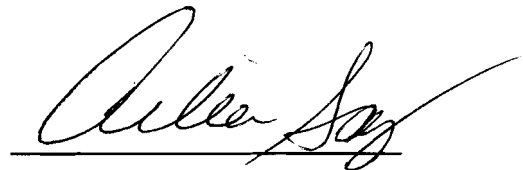
Respondent:  
**Mr. Dan Bonanni**  
Dana Transport, Inc.  
Vice-President  
Office of Risk Management  
210 East Essex Avenue  
Avenel, NJ 07001  
O: 800-733-3262, Ext. 106  
F: 732-596-1452  
[dbonanni@danacompanies.com](mailto:dbonanni@danacompanies.com)

Copy by facsimile, **Overnight Mail** to:

Chief Administrative Law Judge  
**Honorable Susan L. Biro**  
Office of Administrative Law Judges  
U.S. Environmental Protection Agency  
1099 14<sup>th</sup> Street, N.W., Suite 350  
Washington, D.C. 20005  
Fax (202) 565-0044.

5/19/2011

Date



Signature