

**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

COMPLAINT, COMPLIANCE ORDER,  
AND NOTICE OF OPPORTUNITY FOR  
HEARING

Docket No. RCRA-02-2010-7112

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REG. II  
2010 SEP 30 P 12: 21  
REGIONAL HEARING  
CLERK

**I. COMPLAINT**

This is a civil administrative proceeding 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 (HSWA), 42 United States Code (U.S.C.) §§ 6901, et seq. (together hereafter the "Act" or "RCRA"), for injunctive relief and the assessment of civil penalties.

This COMPLAINT, COMPLIANCE ORDER AND NOTICE OF OPPORTUNITY FOR HEARING (Complaint) serves notice of the United States Environmental Protection Agency's (EPA) preliminary determination that Dana Transport has violated provisions of RCRA and federal regulations concerning the management of hazardous waste at its facility in Bayamón, Puerto Rico (the "Facility").

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 in this proceeding, the Director of the Caribbean Environmental Protection Division, EPA, Region 2, who has been duly delegated the authority to

institute this action, hereby alleges:

### **JURISDICTION**

1. This administrative Tribunal has jurisdiction over the subject matter of this action pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), and 40 C.F.R. § 22.1(a)(4).

### **NOTICE**

2. EPA has given notice of this action to the Commonwealth of Puerto Rico.

### **RESPONDENT**

3. Respondent is Dana Transport (hereinafter "DANA" or "Respondent"). DANA is a corporation duly authorized to conduct business in the Commonwealth of Puerto Rico.
4. Dana is a transportation company that transports hazardous waste, among other. As part of its activities at the Facility, Dana cleans tanker trucks used for transportation at the Facility's Wash Station Area. As part of the tank's cleaning process, DANA uses a caustic solution in combination with water, among other materials depending upon the material that was stored in the tank. This solution resulting from the cleaning of the interior of the tanks are collected in drums then transported to the Facility's hazardous waste storage area (HWSA). Afterwards, the interior of the tank is again washed along with the exterior of the entire tanker truck. The resulting wash water is then collected through floor drains and directed to the Facility's wastewater treatment system. After treated on site, the wash water is discharged into the Puerto Rico Aqueduct and Sewer Authority's (PRASA) sewer system. DANA is dully authorized to conduct such discharges through a PRASA pretreatment permit.
5. The Facility is located at Juan Sánchez Ward, Downe Drive #9, Marginal Expreso Río Hondo Extremo Sur, Bayamón, Puerto Rico.

### **GENERAL ALLEGATIONS**

6. RCRA establishes a comprehensive federal regulatory program for the management of hazardous waste. 42 U.S.C. § 6901 et seq. The Administrator of EPA, pursuant to Sections 3002(a) and 3004(a) of RCRA, 42 U.S.C. §§ 6922(a) and 6924(a), promulgated regulations for the management of hazardous waste and setting standards for generators and treatment, storage

and disposal facilities. These regulations are set forth in 40 C.F.R. Parts 260 through 266 and Parts 268, 270 and 273.

7. Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), authorizes the Administrator of EPA to issue an order assessing a civil penalty and/or requiring compliance for any past or current violation(s) of Subtitle C (Hazardous Waste Management) of RCRA.
8. The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, required EPA to adjust its penalties for inflation on a periodic basis. The penalty amounts were amended for violations occurring on or after January 31, 1997. The maximum civil penalty under Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), for violations occurring between March 15, 2004 and January 12, 2009 is \$ 32,500 per day of violation. 40 C.F.R. Part 19. The maximum civil penalty under Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), for violations after January 12, 2009 is \$37,500 per day of violation. 40 C.F.R. Part 19.
9. Respondent is a "person" (as that term is defined in Section 1004(15) of the Act, 42 U.S.C. § 6903(15) and 40 C.F.R. § 260.10.
10. Respondent's Facility constitutes a "facility," within the meaning of 40 C.F.R. § 260.10.
11. Respondent has been and remains to be the "operator" of the Facility as that term is defined in 40 C.F.R. § 260.10.
12. 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.
13. In or about March 2008, Respondent submitted a notification to EPA updating or amending its hazardous waste notification.
14. 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.
15. The requirements for hazardous waste generators are set forth in 40 C.F.R. Part 262.

**EPA Investigative and Initial Enforcement Activities**

16. On or about July 10, 2009, duly designated representatives of EPA conducted an inspections 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").
17. At the end of the Inspection EPA representatives held closing conference with Respondent's representatives. During the closing conference, EPA discussed the preliminary findings of the compliance evaluation inspections. 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.
18. 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.

**COUNTS****COUNT 1 - FAILURE TO MINIMIZE RISKS OF FIRE, EXPLOSION, OR RELEASE**

19. Complainant re-alleges each applicable allegation contained in paragraphs "1" through "18", as if fully set forth herein.
20. 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.

21. Subpart C of 40 C.F.R. Part 265 (40 C.F.R. §§ 265.30 – 265.37) sets forth requirements regarding preparedness and prevention.
22. 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.
23. Pursuant to 40 C.F.R. § 265.32(b), all facilities must be equipped with a spill control equipment.
24. 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).
25. Each action or inaction set forth in Paragraph 24 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).
26. 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.

**COUNT 2 - FAILURE TO COMPLY WITH CERTAIN USE AND MANAGERIAL REQUIREMENTS  
FOR CONTAINERS**

27. Complainant re-alleges each applicable allegation contained in paragraphs "1" through "18", as if fully set forth herein.
28. 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 CFR part 265, among other.
29. 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.
30. 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.

31. 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.
32. 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.
33. 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.
34. 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.
35. 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.

## II. PROPOSED CIVIL PENALTY

The Complainant proposes, subject to the receipt and evaluation of further relevant information, that Respondent be assessed the following civil penalty for the violations alleged in this Complaint:

**Count 1: \$15,580.00**

**Count 2: \$38,595.00**

**Total Proposed Penalty for Counts 1 and 2 is \$54,175.00.**

The proposed civil penalty has been determined in accordance with Section 3008(a)(3) of the Act, 42 U.S.C. § 6928(a)(3). For purposes of determining the amount of any penalty assessed, Section 3008(a)(3) requires EPA to "take into account the seriousness of the violation and any good faith efforts to comply with applicable requirements." To develop the proposed penalty in this complaint, the Complainant has taken into account the particular facts and circumstances of this case and used EPA's 2003 RCRA Civil Penalty Policy, a copy of which is available upon request or can be found on the Internet at the following address:

**<http://www.epa.gov/compliance/resources/policies/civil/rcra/rcpp2003-fnl.pdf>**

This policy provides a rational, consistent and equitable calculation methodology for applying the statutory penalty factors to particular cases.

The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, required EPA to adjust its penalties for inflation on a periodic basis. Consistent with this, the penalty amounts in the 2003 RCRA Civil Penalty Policy have been amended to reflect inflation adjustments. These adjustments were made pursuant to the December 29, 2008 document entitled Amendments to EPA's Civil Penalty Policies to Implement the 2008 Civil Penalty Monetary Penalty Inflation Adjustment Rule (effective January 12, 2009); and the November 16, 2009 document entitled Adjusted Penalty Policy Matrices based on the 2008 Civil Monetary Inflation Rule.

The maximum civil penalty under Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), for violations after January 12, 2009 is \$37,500 per day of violation. See Paragraph 8 *supra*, and 40 C.F.R. Part 19.

The Complainant proposes, subject to receipt and evaluation of further relevant information from the Respondent, that the Respondent be assessed the following civil penalty for the violations alleged in this Complaint. A penalty calculation worksheet and narrative explanation to support the penalty figure for each violation cited in this Complaint is included in Attachment I, below. Matrices employed in the determination of individual and multi-day penalties are included as Attachments II, and III, below.

### **III.COMPLIANCE ORDER**

Based upon the foregoing, and pursuant to the authority of Section 3008 of the Act, Complainant herewith issues the following Compliance Order to the Respondent,

which shall take effect (i.e., the effective date) thirty (30) days after service of this Order, unless by that date Respondent has requested a hearing pursuant to 40 C.F.R. § 22.15. See 42 U.S.C. § 6928(b) and 40 C.F.R. §§ 22.37(b) and 22.7(c):

1. Within ten (10) calendar days of the effective date of this Compliance Order, Respondent shall, to the extent it has not already done so:
  - a. transfer hazardous wastes from leaking drums to containers that are in good conditions;
  - b. use containers that are compatible with the hazardous waste to be stored in them; and
  - c. clean up and properly manage any spill of hazardous waste at the HWSA or any other area at the Facility.
2. No later than ten (10) calendar days of the effective date of this Compliance Order, if it has not already been doing so, Respondent shall properly conduct weekly inspections at the Facility, of areas in which hazardous wastes are being stored.
3. Within thirty (30) calendar days of the effective date of this Compliance Order, to the extent it has not already done so, Respondent shall:
  - a. make hazardous waste determinations for each solid waste generated at the Facility pursuant to 40 C.F.R. § 262.11 and for any newly generated solid waste at each of its facilities in the Commonwealth of Puerto Rico; and
  - b. maintain and operate the facility in a manner that minimizes 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 pursuant to 40 C.F.R. § 265.31.
4. Within thirty (30) calendar days of the effective date of this Compliance Order, Respondent shall comply with all other applicable federal and state regulatory requirements for hazardous waste generators for its Facility.
5. Respondent shall submit to EPA within forty (40) calendar days of the effective date of this Compliance Order written notice of its compliance (accompanied by a copy of all appropriate supporting documentation) or noncompliance for each of the requirements cited in Paragraphs "1" through "4" of this Compliance Order, above. If Respondent is in noncompliance with a particular requirement, the notice shall state the reasons for noncompliance and shall provide a schedule for achieving prompt compliance with the requirement.



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

**Jesse Avilés**

U.S. Environmental Protection Agency, Region 2  
Caribbean Environmental Protection Division  
Response & Remediation Branch  
Centro Europa Building, Suite 417  
1492 Ponce de León Avenue  
San Juan, Puerto Rico 00907.

7. This Compliance Order shall take effect thirty (30) days after service of this Order, unless by that date Respondent has requested a hearing pursuant to 40 C.F.R. § 22.15. See 42 U.S.C. §6928(b) and 40 C.F.R. §§ 22.37(b) and 22.7(c).
8. Compliance with the provisions of this Compliance Order does not waive, extinguish or otherwise affect Respondent's obligation to comply with all other applicable RCRA statutory or regulatory (federal and/or local) provisions, nor does such compliance release Respondent from liability for any violations at the Facility. In addition, nothing herein waives, prejudices or otherwise affects EPA's right to enforce any applicable provision of law, and to seek and obtain any appropriate penalty or remedy under any such law, regarding Respondent's generation, handling and/or management of hazardous waste at the Facility.

#### **IV. NOTICE OF LIABILITY FOR ADDITIONAL CIVIL PENALTIES**

Pursuant to the terms of Section 3008(c) of RCRA and the Debt Collection Improvement Act of 1996, a violator failing to take corrective action within the time specified in a compliance order is liable for a civil penalty of up to \$37,500.00 for each day of continued noncompliance. Such continued noncompliance may also result in suspension or revocation of any permits issued to the violator whether issued by EPA.

#### **V. PROCEDURES GOVERNING THIS ADMINISTRATIVE LITIGATION**

The rules of procedure governing this civil administrative litigation have been set forth in the "CONSOLIDATED RULES OF PRACTICE GOVERNING THE ADMINISTRATIVE ASSESSMENTS OF CIVIL PENALTIES, ISSUANCE OF COMPLIANCE OR CORRECTIVE ACTION ORDERS, AND THE REVOCATION, TERMINATION OR SUSPENSION OF PERMITS," (CROP) and which are codified at 40 C.F.R. Part 22. A copy of these rules accompanies this "Complaint, Compliance Order and Notice of Opportunity for Hearing."

**A. Answering the Complaint**

Where Respondent intends to contest any material fact upon which the Complaint is based, to contend that the proposed penalty and/or the Compliance Order is inappropriate or to contend that Respondent is entitled to judgment as a matter of law, Respondent must file with the Regional Hearing Clerk of EPA, Region 2, both an original and one copy of a written answer to the Complaint, and such Answer must be filed within 30 days after service of the Complaint (40 C.F.R. §§ 22.15(a) and 22.7(c)). The address of the Regional Hearing Clerk of EPA, Region 2, is:

Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 2  
290 Broadway, 16th floor - Room 1631,  
New York, New York 10007-1866.

Respondent shall also then serve one copy of the Answer to the Complaint upon Complainant and the Assistant Regional Counsel mentioned in Section VI below and any other party to the action. 40 C.F.R. § 22.15(a).

Respondent's Answer to the Complaint must clearly and directly admit, deny, or explain each of the factual allegations that are contained in the Complaint and with regard to which Respondent has any knowledge. 40 C.F.R. § 22.15(b). Where Respondent lacks knowledge of a particular factual allegation and so states in its Answer, the allegation is deemed denied. 40 C.F.R. § 22.15(b).

The Answer shall also set forth: (1) the circumstances or arguments that are alleged to constitute the grounds of defense, (2) the facts that Respondent disputes (and thus intends to place at issue in the proceeding) and (3) whether Respondent requests a hearing. 40 C.F.R. § 22.15(b).

Respondent's failure to affirmatively raise in the Answer(s) facts that constitute or that might constitute the grounds of their defense may preclude Respondent, at a subsequent stage in this proceeding, from raising such facts and/or from having such facts admitted into evidence at a hearing.

**B. Opportunity To Request A Hearing**

If requested by Respondent, a hearing upon the issues raised by the Complaint and Answer may be held. 40 C.F.R. § 22.15(c). If, however, Respondent does not request a hearing, the Presiding Officer (as defined in 40 C.F.R. § 22.3) may hold a hearing if the Answer raises issues appropriate for adjudication. 40 C.F.R. § 22.15(c). With regard to the Compliance Order in the Complaint, unless Respondent requests a hearing pursuant to 40 C.F.R. § 22.15 within thirty (30) days after the Compliance Order is served, the Compliance Order shall automatically become final. 40 C.F.R. § 22.37.

Any hearing in this proceeding will be held at a location determined in accordance with 40 C.F.R. § 22.21(d). A hearing of this matter will be conducted in accordance with the provisions of the Administrative Procedure Act, 5 U.S.C. §§ 551-59, and the procedures set forth in Subpart D of 40 C.F.R. Part 22.

### **C. Failure To Answer**

If Respondent fails in its Answer to admit, deny, or explain any material factual allegation contained in the Complaint, such failure constitutes an admission of the allegation (40 C.F.R. § 22.15(d)). 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 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 a 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 30 days after the default order becomes final pursuant to 40 C.F.R. § 22.27(c) as set forth in 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) as set forth in 40 C.F.R. § 22.17(d).

### **D. Exhaustion Of Administrative Remedies**

Where Respondent fails to appeal an adverse initial decision to the Agency's Environmental Appeals Board ("EAB"; see 40 C.F.R. § 1.25(e)) pursuant to 40 C.F.R. § 22.30, and that initial decision thereby becomes a final order pursuant to the terms of 40 C.F.R. § 22.27(c), Respondent waives its right to judicial review. 40 C.F.R. § 22.27(d).

To appeal an initial decision to the EAB, Respondent must do so "[w]ithin thirty (30) days after the initial decision is served upon the parties." 40 C.F.R. § 22.30(a). Pursuant to 40 C.F.R. § 22.7(c), where service is effected by mail, "five days shall be added to the time allowed by these rules for the filing of a responsive pleading or document." Note that the 45-day period provided for in 40 C.F.R. § 22.27(c) [discussing when an initial decision becomes a final order] does not pertain to or extend the time period prescribed in 40 C.F.R. § 22.30(a) for a party to file an appeal to the EAB of an adverse initial decision.

## VI. INFORMAL SETTLEMENT CONFERENCE

Whether or not Respondent requests a formal hearing, EPA encourages settlement of this proceeding consistent with the provisions of the Act and its applicable regulations. 40 C.F.R. § 22.18(b). At an informal conference with a representative(s) of Complainant, Respondent may comment on the charges made in the Complaint, and Respondent may also provide whatever additional information that it believes is relevant to the disposition of this matter, including: (1) actions Respondent has taken to correct any or all of the violations herein alleged, (2) any information relevant to Complainant's calculation of the proposed penalty, (3) the effect the proposed penalty would have on Respondent's ability to continue in business and/or (4) any other special facts or circumstances Respondent wishes to raise.

Complainant has the authority to modify the amount of the proposed penalty, where appropriate, to reflect any settlement agreement reached with Respondent, to reflect any relevant information previously not known to Complainant, or to dismiss any or all of the charges, if Respondent can demonstrate that the relevant allegations are without merit and that no cause of action as herein alleged exists. Respondent is referred to 40 C.F.R. § 22.18.

Any request for an informal conference or any questions that Respondent may have regarding this complaint should be directed to:

**Héctor Vélez, Esq.**  
Assistant Regional Counsel  
U.S. Environmental Protection Agency, Region 2  
Centro Europa Building, Suite 417  
1492 Ponce de León Avenue  
San Juan, PR 00907  
Telephone: (787) 977-5850.

The parties may engage in settlement discussions irrespective of whether Respondent has requested a hearing. 40 C.F.R. § 22.18(b)(1). Respondent's requesting a formal hearing does not prevent it from also requesting an informal settlement conference; the informal conference procedure may be pursued simultaneously with the formal adjudicatory hearing procedure. A request for an informal settlement conference constitutes neither an admission nor a denial of any of the matters alleged in the Complaint. Complainant does not deem a request for an informal settlement conference as a request for a hearing as specified in 40 C.F.R. § 22.15(c).

A request for an informal settlement conference does not affect Respondent's obligation to file a timely Answer to the Complaint pursuant to 40 C.F.R. § 22.15. No penalty reduction, however, will be made simply because an informal settlement conference is held.

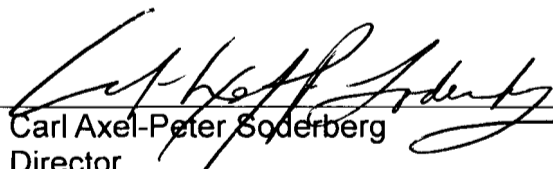
Any settlement that may be reached as a result of an informal settlement conference will be embodied in a written consent agreement. 40 C.F.R. § 22.18(b)(2). In accepting the consent agreement, Respondent waives its right to contest the allegations in the Complaint and waive its right to appeal the final order that is to accompany the consent agreement. 40 C.F.R. § 22.18(b)(2). To conclude the proceeding, a final order ratifying the parties' agreement to settle will be executed. 40 C.F.R. § 22.18(b)(3).

Respondent's entering into a settlement through the signing of such Consent Agreement and its complying with the terms and conditions set forth in such Consent Agreement terminate this administrative litigation and the civil proceedings arising out of the allegations made in the Complaint. Respondent's entering into a settlement does not extinguish, waive, satisfy or otherwise affect its obligation and responsibility to comply with all applicable statutory and regulatory requirements, and to maintain such compliance.

**VII. RESOLUTION OF THIS PROCEEDING WITHOUT HEARING OR CONFERENCE**

If, instead of filing an Answer, Respondent wishes not to contest the Compliance Order in the Complaint and wants to pay the total amount of the proposed penalty within thirty (30) days after receipt of the Complaint, Respondent should promptly contact the Assistant Regional Counsel identified in Section VI.

COMPLAINANT:

  
\_\_\_\_\_  
Carl Axel-Peter Soderberg  
Director  
Caribbean Environmental Protection Division  
U.S. Environmental Protection Agency, Region 2

09-28-10  
\_\_\_\_\_  
DATED  
San Juan, PR

To: Héctor García Nieves  
General Manager  
PO Box 10995  
Caparra Heights Station  
San Juan, PR 00922

cc: Pedro Nieves, Esq.  
President  
PR Environmental Quality Board  
PO Box 11488  
San Juan, PR 00910

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
Region 2

IN THE MATTER OF:

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

COMPLAINT, COMPLIANCE ORDER,  
AND NOTICE OF OPPORTUNITY FOR  
HEARING

RESPONDENT

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

Docket No. RCRA-02-2010-7112

CERTIFICATE OF SERVICE

This is to certify that I have on this day caused to be mailed a copy of the foregoing Complaint, with attachments, bearing docket number RCRA-02-2010-7112 and a copy of the Consolidated Rules of Practice which are codified at 40 C.F.R. Part 22, as follows:

Certified Mail/Return Receipt Requested, to:

Héctor García Nieves  
General Manager  
Dana Transport  
PO Box 10995  
Caparra Heights Station  
San Juan, PR 00922

Original and a copy of the Complaint for filing by certified mail/return receipt:

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

Dated: September 28, 2010

  
ORC-CT, San Juan, Puerto Rico

**ATTACHMENT I**

**NARRATIVE EXPLANATION TO SUPPORT COMPLAINT AMOUNT  
Penalty Computation Worksheet  
COUNT 1 - FAILURE TO MINIMIZE RISKS OF FIRE, EXPLOSION, OR RELEASE**

Respondent:  
Dana Transport

Facility Address:  
PO Box 10995  
Caparra Heights Station  
San Juan, PR 00922

Requirement Violated:  
§ 265.31 Maintenance and operation of facility - Respondent failed to operate the facility to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to the air, soil or surface water which could threaten human health or the environment.

**PENALTY AMOUNT FOR COMPLAINT**

1	Gravity based penalty from matrix		\$ 15,580.00
	a) Potential for harm		MODERATE
	b) Extent of deviation		MODERATE
2	Select an amount from the appropriate multi-day matrix		
3	Multiply line 2 by number of multipliers minus 1	_____	\$ -
4	Add line 1 and line 3		\$ 15,580.00
5	Percent increase/decrease for good faith	_____	\$ -
6	Percent increase/decrease for willfulness/negligence	_____	\$ -
7	Percent increase for history of non-compliance	_____	\$ -
8	Calculate economic benefit		\$ -
9	Add lines 4, 5, 6, 7 and 8 for penalty amount to be inserted in the complaint		\$ 15,580.00

**NARRATIVE EXPLANATION TO SUPPORT COMPLAINT AMOUNT**  
**Penalty Computation Worksheet**  
**COUNT 1 - FAILURE TO MINIMIZE RISKS OF FIRE, EXPLOSION, OR RELEASE**

**1. Gravity Based Penalty**

- a. Potential for Harm – The potential for harm for a failure to conduct a hazardous waste determination is deemed 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 facility failed to have spill equipment at the hazardous waste storage area and a spill was ongoing at the time of the inspection. By not having the spill kit available, the spill was not managed in a timely manner exposing workers and neighboring facilities to unsafe conditions.
- b. Extent of Deviation – The extent of deviation present in this violation was determined to be MODERATE. Noncompliance with the RCRA regulatory program directly increases the threat of harm to human health and the environment. Therefore, all regulatory requirements are fundamental to the continued integrity of the RCRA program. The facility at least had a fire extinguisher on the area, the emergency communication equipment and the shack had a small dike to minimize the risk that releases escaped to nearby soil.

The applicable cell ranges from \$11,330 to \$15,580. The amount of \$15,580 (the highpoint) for the cell matrix was selected.

- c. Multiple/Multi-day – No multipliers will be added.

**2. Adjustment Factors**

Based upon facility specific factors and information available to date, i.e. that Respondent did not identify the violation and take corrective action prior to the EPA Inspection, no adjustment has been made at this time.

**3. Economic Benefit**

After running the BEM model, it was determined that the economic benefit for this count is *de minimis*.



**NARRATIVE EXPLANATION TO SUPPORT COMPLAINT AMOUNT**  
**Penalty Computation Worksheet**  
**COUNT 2 - FAILURE TO COMPLY WITH CERTAIN USE AND MANAGERIAL REQUIREMENTS FOR**  
**CONTAINERS**

Respondent:  
 Dana Transport

Facility Address:  
 PO Box 10995  
 Caparra Heights Station  
 San Juan, PR 00922

Requirement Violated:

§ 265.171 Condition of containers - Respondent failed to transfer the hazardous waste from a leaking container to a container that was in good condition, or manage the waste in some other way that complies with the requirements of this part.

§ 265.172 Compatibility of waste with container - Respondent failed to 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.

§ 265.174 Inspections - Respondent failed to 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.

**PENALTY AMOUNT FOR COMPLAINT**

1	Gravity based penalty from matrix	\$ 32,915.00
	a) Potential for harm	MAJOR
	b) Extent of deviation	MAJOR
2	Select an amount from the appropriate multi-day matrix	\$ 1,420.00
3	Multiply line 2 by number of multipliers minus 1	<u>4</u> \$ 5,680.00
4	Add line 1 and line 3	\$ 38,595.00
5	Percent increase/decrease for good faith	<u>          </u> \$ -
6	Percent increase/decrease for willfulness/negligence	<u>          </u> \$ -
7	Percent increase for history of non-compliance	<u>          </u> \$ -
8	Calculate economic benefit	\$ -
9	Add lines 4, 5, 6, 7 and 8 for penalty amount to be inserted in the complaint	\$ 38,595.00

**NARRATIVE EXPLANATION TO SUPPORT COMPLAINT AMOUNT**  
**Penalty Computation Worksheet**  
**COUNT 2 - FAILURE TO COMPLY WITH CERTAIN USE AND MANAGERIAL REQUIREMENTS FOR**  
**CONTAINERS**

**1. Gravity Based Penalty**

- a. Potential for Harm – The potential for harm for a failure to conduct a hazardous waste determination is deemed MAJOR. 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 leak of the container, the incompatibility of the container with the waste, failure of the facility to attend the spill, and inspections that were not performed or were performed improperly presented a severe potential for harm to human health and the environment. The leaked waste was corrosive and flammable which could cause other containers to leak and increase the risk of a fire. It was evident that the leak was ongoing and the facility had not taken timely actions to stop the leak even though it said that it was inspecting the hazardous waste storage area on a daily basis.
- b. Extent of Deviation – The extent of deviation present in this violation was determined to be MAJOR. Noncompliance with the RCRA regulatory program directly increases the threat of harm to human health and the environment. Therefore, all regulatory requirements are fundamental to the continued integrity of the RCRA program.

The applicable cell ranges from \$37,500 to \$28,330. The amount of \$32,915 (the midpoint) for the cell matrix was selected.

- c. Multiple/Multi-day – There were five (5) hazardous waste containers that were rusted. One container had rusted to the point that it leaked its contents. Facility is required to change containers in bad condition to prevent leakage. One multiplier per container is deemed appropriate.

The applicable cell ranges from \$7,090 to \$1,420. The amount of \$1,420 for the cell matrix was selected.

**2. Adjustment Factors**

Based upon facility specific factors and information available to date, i.e. that Respondent did not identify the violation and take corrective action prior to the EPA Inspection, no adjustment has been made at this time.

**3. Economic Benefit**

After running the BEM model, it was determined that the economic benefit for this count is *de minimis*.

**ATTACHMENT II**

**PENALTY ASSESSMENT GRAVITY MATRIX**

		Extent of Deviation from Requirement		
		Major	Moderate	Minor
<b>Potential for Harm</b>	Major	\$37,500 to \$28,330	\$28,330 to \$21,250	\$21,250 to \$15,580
	Moderate	\$15,580 to \$11,330	\$11,330 to \$7,090	\$6,447 to 3,869
	Minor	\$4,250 to \$2,130	\$2,130 to \$710	\$710 to \$150

**MULTI-DAY MATRIX**

		Extent of Deviation from Requirement		
		Major	Moderate	Minor
<b>Potential for Harm</b>	Major	\$7,090 to \$1,420	\$5,670 to \$1,070	\$4,250 to \$780
	Moderate	\$3,120 to \$570	\$2,230 to \$360	\$1,420 to \$220
	Minor	\$850 to \$150	\$430 to \$150	\$150