

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2**

In the Matter of:

DESTILERÍA SERRALLÉS, INC.
PO Box 198
Mercedita, Puerto Rico 00715

RESPONDENT

Proceeding pursuant to Section 113(d) of
the Clean Air Act, 42 USC § 7413(d)

COMPLAINT
AND NOTICE OF OPPORTUNITY TO
REQUEST A HEARING

DOCKET NUMBER CAA-02-2010-1233

U.S. ENVIRONMENTAL
PROTECTION AGENCY REGION II
2010 NOV -5 A 11:09
REGIONAL HEARING
CLERK

**ANSWER TO THE COMPLAINT AND REQUEST FOR
HEARING**

TO THE HONORABLE ADMINISTRATIVE LAW JUDGE:

NOW COMES Respondent, Destilería Serrallés, Inc. ("DSI"), through its undersigned attorneys, and for its Answer to the Administrative Complaint, Findings of Violation, Notice of Proposed Assessment of a Civil Penalty, and Notice of Opportunity to Request a Hearing issued by the U. S. Environmental Protection Agency, Region II ("EPA") by letter dated September 29, 2010 (hereinafter, the "Complaint"), admits, denies and alleges as follows:

1. The averments contained in paragraphs 1 through 40 require no responsive pleadings insofar as they recite provisions of law or regulation. To the extent that they might be deemed allegations of fact, such allegations are denied.
2. The averments contained in paragraphs 41 through 51 are admitted.

3. The averments contained in paragraphs 52 through 54 are denied insofar as they relate to alleged conversations that have not been verified by DSI between EPA's Enforcement Officer and Mr. Henry Huertas, who no longer works with DSI.
4. The averments contained in paragraphs 55 are partially denied insofar as they relate to alleged document exchanges that have not been verified by DSI between EPA's Enforcement Officer and Mr. Henry Huertas, who no longer works with DSI. However, DSI admits that the service records referenced in paragraph 55 indicate the information contained in paragraph 55.
5. The averments contained in paragraph 56 are denied as drafted for lack of knowledge of what the EPA Inspector found or not during the inspection. However, it is clarified however that after EPA inspection referenced in paragraph 49, DSI performed a thorough evaluation of the refrigeration practices conducted by its licensed refrigeration technicians and found significant departures from the regulatory requirements set forth in 40 CFR Part 82, including the requirement to conduct follow up verifications tests within 30 days of completing repairs.
6. The averments contained in paragraph 20 are denied as these relate to calculations made by EPA relying on faulty or incomplete inspection reports. .

7. The averments contained in paragraph 58 are admitted, subject to the defenses and mitigating factors later described in this responsible pleading.
8. The averments contained in paragraph 59 do not require a repeated response insofar as these have been already responded by DSI.
9. The averments contained in paragraph 60 through 67 are admitted.
10. The averments contained in paragraph 68 are denied as drafted. DSI admits that it maintains a December 28, 2006 leak and repair record for the Vitter Compressor 450 XL equipment reflecting the addition of 250 pounds of R-22 refrigerant.
11. The averments contained in paragraphs 69 and 70 are denied as drafted as these contain conclusions of law for which no responsive pleadings are required.
12. The averments contained in paragraph 71 do not require a repeated response insofar as these have been already responded by DSI.
13. The averments contained in paragraph 72 are denied as drafted are denied as these contain conclusions of law for which no responsive pleadings are required. DSI admits that it maintains a September 11, 2006 leak and repair record for the Vitter Compressor 450 XL equipment reflecting the addition of R-22 refrigerant to replace the lost amount.

14. The averments contained in paragraphs 73, 74 and 75 are denied as drafted as these contain conclusions of law for which no responsive pleadings are required.
15. The averments contained in paragraph 76 do not require a repeated response insofar as these have been already responded by DSI.
16. The averments contained in paragraph 77 are denied as drafted as these contain conclusions of law for which no responsive pleadings are required. DSI admits that it maintains a December 28, 2006 leak and repair record for the Vitter Compressor 450 XL equipment reflecting the addition of R-22 refrigerant to replace the lost amount.
17. The averments contained in paragraphs 78, 79 and 80 are denied as drafted as these contain conclusions of law for which no responsive pleadings are required.
18. The averments contained in paragraph 81 do not require a repeated response insofar as these have been already responded by DSI.
19. The averments contained in paragraph 82 are denied as drafted are denied as these contain conclusions of law for which no responsive pleadings are required. DSI admits that it maintains a February 27, 2007 leak and repair record for the Vitter Compressor 450 XL equipment reflecting the addition of R-22 refrigerant to replace the lost amount.

20. The averments contained in paragraphs 83, 84 and 85 are denied as drafted as these contain conclusions of law for which no responsive pleadings are required.
21. The averments contained in paragraph 86 do not require a repeated response insofar as these have been already responded by DSI.
22. The averments contained in paragraph 87 are denied as drafted are denied as these contain conclusions of law for which no responsive pleadings are required. DSI admits that it maintains an April 7, 2007 leak and repair record for the Vitter Compressor 450 XL equipment reflecting the addition of R-22 refrigerant to replace the lost amount.
23. The averments contained in paragraphs 88, 89 and 90 are denied as drafted as these contain conclusions of law for which no responsive pleadings are required.
24. The averments contained in paragraph 91 do not require a repeated response insofar as these have been already responded by DSI.
25. The averments contained in paragraph 92 are denied as drafted are denied as these contain conclusions of law for which no responsive pleadings are required. DSI admits that it maintains a May 24, 2007 leak and repair record for the Vitter Compressor 450 XL equipment reflecting the addition of R-22 refrigerant to replace the lost amount.

26. The averments contained in paragraphs 93, 94 and 95 are denied as drafted as these contain conclusions of law for which no responsive pleadings are required.
27. The averments contained in paragraph 96 do not require a repeated response insofar as these have been already responded by DSI.
28. The averments contained in paragraph 97 are denied as drafted are denied as these contain conclusions of law for which no responsive pleadings are required. DSI admits that it maintains a June 5, 2007 leak and repair record for the Vitter Compressor 450 XL equipment reflecting the addition of R-22 refrigerant to replace the lost amount.
29. The averments contained in paragraphs 98, 99 and 100 are denied as drafted as these contain conclusions of law for which no responsive pleadings are required.
30. The averments contained in paragraph 101 do not require a repeated response insofar as these have been already responded by DSI.
31. The averments contained in paragraph 102 and 103 do not require a responsive pleading, since they only contain conclusions of law for which no factual responsive pleadings are required.
32. Respondent denies any and all allegations not specifically admitted herein.

Affirmative Defenses

1. The Complaint fails to state a claim upon which relief can be granted.
2. The proposed civil penalty is excessive, unreasonable and is not supported by the individual facts and circumstances present in this matter, including but not limited to the existence of mitigating factors which must be taken into consideration.
3. Complainant's allegations constitute agency action that is arbitrary and capricious, and an abuse of discretion under the Administrative Procedure Act, 5 U.S.C. §§553 and 706.
4. For meeting the applicable requirements under 40 CFR Part 82 and the related Title V permit provision, DSI relied on the work of licensed refrigeration technicians employed by DSI and who supposedly were adequately trained and certified by EPA on the applicable ODS regulatory requirements under 40 CFR Part 82. DSI paid for the trainings of its licensed refrigeration technicians in the pertinent ODS regulations, verified their attendance to such training sessions, and kept records thereof.
5. DSI obtained absolutely no economic benefit from any of the alleged non compliance with the applicable regulatory requirements. To the contrary, the alleged non conformance with the standard refrigeration practices by its licensed technicians resulted in additional and unnecessary expenses for DSI.

6. As a result of the EPA Administrative Compliance Order no CAA-02-2009-1002 issued on March 30, 2009, DSI took immediate, assertive and proactive measures to ascertain that its operations complied fully with the applicable ODS requirements. After said issuance, DSI has systematically reported to EPA the results of its successful refrigeration practices. Before receiving such Order, the management of DSI was totally unaware of any potential compliance problem associated with its regulated refrigeration equipment.
7. Under Puerto Rican law, a “refrigeration and air conditioning technician” is someone engaged in the installation, repair, or maintenance of refrigeration and air conditioning equipment or related equipment in homes, commercial establishments, industries, and similar places. Under the law, a refrigeration and air conditioning technician in Puerto Rico means any person authorized to practice the profession of refrigeration and air conditioning technician in the Commonwealth of Puerto Rico, pursuant to Act No. 35 of May 20, 1970, as amended.
8. Puerto Rico requires applicants for a license as a refrigeration and air conditioning technician to be: (1) at least 18 years old, (2) a U. S. citizen and have lived in Puerto Rico for at least one year, (3) successfully completed four years of high school, (4) passed the licensing exam, and (5) met the following educational requirements.

Applicants must have completed (1) an approved one-year or 800-hour course in refrigeration and air conditioning techniques at a public vocational school or technological institute or at another accredited institution; (2) a training course prescribed by the Apprenticeship Council of Puerto Rico; or (3) 200 hours of vocational training offered by the Apprenticeship Division of the Right to Work Administration through accredited educational institutions, at least one year as an apprentice, and one or more certificates of training or seminars offered by the College of Refrigeration and Air Conditioning Technicians (T. 20 Puerto Rico Code § 2059).

9. It further provides that the sale of refrigerants, as well as the installation and discharge thereof into refrigeration and air conditioning equipment shall be restricted to members of the College of Refrigeration Technicians who are duly licensed and certified by the federal Environmental Protection Agency.
10. As a result of EPA's enforcement action, DSI discovered that the inspection and repair form provided by the College of Refrigeration Technicians to its members did not allow for proper verification of the regulatory requirements under 40 CFR Part 82. In effect, DSI further discovered that its members were not adequately trained in the applicable requirements under 40 CFR Part 82, but that not even the President of the College of Refrigeration Technicians, who was called

to provide an immediate training to its members employed by DSI, had complete knowledge of all the applicable regulatory requirements. As a result of DSI's proactive and assertive response to this matter, the College of Refrigeration Technicians of Puerto Rico was made aware of its training flaws and of all the pertinent regulatory requirements. Such information by DSI has most likely resulted in significant environmental improvements in ODS management and compliance by other industries and commerce in Puerto Rico, which depended on licensed technicians to ascertain compliance with the Part 82 rules, and overall environmental protection.

11. DSI operates its refrigeration equipment in full compliance with the 40 CFR Part 82 requirements.
12. DSI has shown EPA its good faith and commitment to maintain its operations in compliance with the applicable regulations.
13. Respondent expressly reserves the right to raise additional affirmative defenses which may arise during discovery or under other procedures associated with the present Complaint.

Informal Settlement Conference

Respondent respectfully informs that the parties have scheduled an informal settlement conference for November 8, 2010, at 2:00 pm.

Request for Hearing

Respondent hereby requests a hearing upon the issues raised by the Complaint and its Answer as included herein, pursuant to 5 U.S.C. §§ 552 *et seq.* and the Consolidated Rules of Practice, 40 CFR §22.15.

WHEREFORE, Respondent respectfully requests that Respondent be granted a hearing on this matter; that Respondent be granted any other remedy deemed fit and proper; that after an objective assessment of the pertinent facts involved, that the present Complaint be dismissed and/or that the proposed civil penalty amount assessed be significantly reduced and adjusted to reflect all the mitigating factors involved.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 3rd day of November, 2010.

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