

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

IN THE MATTER OF:

USVI Department of Health - Division of
Environmental Health -St. Thomas & St.
Croix

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-02-2010-711

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II
2012 MAR 22 A 10:34
REGIONAL HEARING
CLERK

Informative Motion

COMES NOW Complainant, the U.S. Environmental Protection Agency ("EPA" or
"Complainant") through the undersigned attorney, and respectfully alleges, prays and
requests as follows:

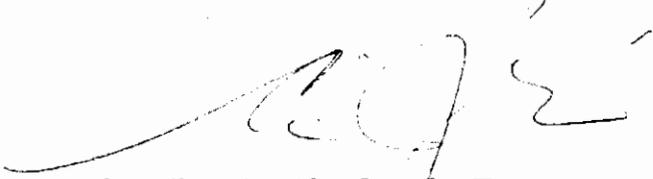
1. Complainant informs this Honorable Court that the process of concurrence,
which involves the signature of several persons both in Puerto Rico and New
York, has been finalized.
2. Complaint herein submits the fully executed Consent Agreement and Final
Order (CA/FO).

Certificate of Service

I hereby certify that a true copy of this Motion was served to: **Pamela R. Tepper, Esq.**
VI Department of Justice, 34-38 Kronprindsens Gade, GERS Building, 2nd Floor, St.

Thomas, VI, 00802.

Respectfully submitted, in San Juan, Puerto Rico, this 12th day of March, 2012.



Carolina Jordán-García, Esq.
Office of Regional Counsel - Caribbean Team
U.S. Environmental Protection Agency - Region 2
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San Juan, PR 00907-4127
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**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
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**USVI Department of Health - Division of
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Croix**

Respondent

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42 U.S.C. § 6928

**CONSENT AGREEMENT AND FINAL
ORDER**

Docket No. RCRA-02-2010-7111

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 the US Virgin Islands Department of Health-Division of Environmental Health (hereinafter "VIDOH" or "Respondent"). VIDOH is an executive department of the Government of the Virgin Islands, created and organized by the Virgin Islands Code, Titles 3 and 19.

Pursuant to Section 3006(b) of the Act, 42 U.S.C. § 6926(b), the Administrator of EPA may, if certain criteria are met, shall 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 US Virgin Islands 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 requirements promulgated pursuant to RCRA. As a result, all requirements in 40 C.F.R. Parts 260 through 268 and 270 through 279 relating to hazardous waste are in effect in the US Virgin Islands and EPA has the authority to implement and enforce these regulations.

The Complainant issued a Complaint, Compliance Order and Notice of Opportunity for Hearing (the "Complaint") to Respondent on September 28, 2010. The

Complaint alleged that Respondent failed to comply with RCRA and hazardous waste regulations at its facilities located in Saint Thomas and Saint Croix, U.S. Virgin Islands (the "Facilities"). The Respondent answered the Complaint denying the allegations. 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. VIDOH 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. Each one of VIDOH's Facilities constitute a "facility" as that term is defined in 40 C.F.R. § 260.10.
3. VIDOH is the "owner" of the facility as that term is defined in 40 C.F.R. § 260.10.
4. VIDOH is the "operator" of the facility as that term is defined in 40 C.F.R. § 260.10.

Respondent's Regulatory Status

5. Respondent has been a "generator" of "hazardous waste," as those terms are defined in 40 C.F.R. § 260.10.
6. EPA issued Identification Numbers for the Facilities: "*VI Department of Health, Division of Environmental Health - St. Thomas Facility*," EPA Identification Number VIN008020133; and "*VI Department of Health, Division of Environmental Health - St. Croix Facility*," EPA Identification Number VIN008020042.
7. Each one of the VIDOH's Facilities constitutes an "existing hazardous waste management facility" (or "existing facility") within the meaning of 40 C.F.R. § 260.10.
8. Each one of the Facilities is and/or has been a "storage" facility for hazardous waste, as that term is defined in 40 C.F.R. § 260.10.
9. The requirements for hazardous waste generators are set forth in 40 C.F.R. Part 262.

EPA Investigative and Enforcement Activities

St. Thomas Facility

1. On August 19, 2008, EPA conducted a Compliance Evaluation Inspection (CEI) pursuant to Section 3007 of RCRA, 42 U.S.C. § 6927, at the VIDOH facility in St. Thomas (the "St. Thomas Inspection"). The purpose of the St. Thomas Inspection was: (1) to perform a hazardous waste management investigation, since EPA had previously conducted a removal action under Section 104, 42 U.S.C. § 9604, of the Comprehensive Environmental Recovery and Liability Act (CERCLA) and; (2) to assess Respondent's current compliance with the applicable requirements of RCRA and its implementing regulations.
2. On August 19, 2008, EPA representatives held a closing conference with Respondent, to inform of EPA's findings during the St. Thomas Inspection. Among the findings, EPA expressed concern regarding the Respondent's compliance with 40 C.F.R. § 262.11.
3. On September 4, 2008, EPA's inspectors inspected the area again and observed, among others, the presence of incompatible hazardous waste.
4. On September 8, 2008, EPA commenced the removal action, under CERCLA, in order to address the release and/or threatened release of the abandoned chemical product material at the St. Thomas facility. The material was discarded as hazardous waste.
5. From approximately September 8, 2008, to April 22, 2009, EPA conducted removal actions at the St. Thomas facility in order to address the abandoned products. The waste streams were accepted by the disposal facility on May 1, 2009, which completed the removal action.

St. Croix Facility

6. During the St. Croix Inspection, EPA inspectors observed spills and releases that required immediate attention inside the chemical storage area.
7. On August 21, 2008, EPA representatives held a closing conference with Respondent to inform of EPA's findings during the St. Croix Inspection. EPA expressed its concern regarding Respondent's failure to make hazardous waste determinations on hazardous chemical products abandoned for over a year at the St. Croix facility. EPA indicated that the Respondent should procure the services of a certified cleanup contractor and proceed with a materials removal action. That same day, EPA requested that hazardous waste be disposed of as required by RCRA.

8. On May, 2011, Respondent submitted its Pesticide Chemical Storage and Handling Plan to EPA.
9. On August 8 and 11, 2011, EPA representatives conducted follow up inspections at the Facilities. The follow up inspections revealed that Respondent had addressed the violations alleged in the Complaint and that it was working to achieve full compliance.

Failure to Make Hazardous Waste Determinations

10. Pursuant to 40 C.F.R. § 261.2, subject to certain exclusions, a "solid waste" is any "discarded material" that includes "abandoned," "recycled" or "inherently waste-like materials," as those terms are further defined therein.
11. 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."
12. Pursuant to 40 C.F.R. § 262.11, a person who generates "solid waste," as defined in 40 C.F.R. § 261.2, must determine if the solid waste is a hazardous waste by using the procedures specified in that provision.
13. Prior to at least August 21, 2008, Respondent abandoned, accumulated or stored "abandoned material" and "solid waste," as defined in 40 C.F.R. § 261.2, without making a hazardous waste determination at its Facilities, instead of disposing of it.
14. At the time of the 2008 Inspection, Respondent had failed to determine whether each solid waste generated and/or abandoned at the Facilities constituted a violation of 40 C.F.R. § 262.11.

Failure to Minimize Risks of Fire, Explosion, or Release

15. Respondent's failure to determine if the materials stored or abandoned at the Facilities constituted a hazardous waste, subjected the Respondent to full regulation under 40 C.F.R. Parts 262 through 266, 268, and 270, and the notification requirements of Section 3010 of RCRA, 42 U.S.C. § 6930.
16. At the time alleged in the Complaint, Respondent was a generator of hazardous waste in its Facilities, as defined in 40 C.F.R. § 260.10
17. Pursuant to 40 C.F.R. § 262.34(d)(4), a generator must comply with the requirements for owners or operators in Subparts C, 40 C.F.R Part 265.

18. 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.
19. Respondent failed to maintain or operate its Facilities in a way that would 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. This failure constitutes a violation of 40 C.F.R. § 265.31, as referenced by Section 262.34(d)(4).

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 Facilities 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 SIXTY EIGHT THOUSAND DOLLARS (\$68,000) in accordance with paragraphs 3 and 4 of this Consent Agreement.
3. Respondent shall pay an initial penalty of EIGHT THOUSAND FIVE HUNDRED DOLLARS (\$8,500) within thirty (30) days from the date Regional Administrator signs the Final Order, which is located at the end of this CA/FO.
4. Thereafter, Respondent shall make seven (7) payments of EIGHT THOUSAND FIVE HUNDRED DOLLARS (\$8,500) each. These seven (7) payments are due quarterly at three (3) months, six (6) months, nine (9) months, twelve (12) months, fifteen (15) months, eighteen (18) months and twenty one (21) months, following the date of the signature of the Final Order.
5. Such payments 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 US Virgin Islands (Department of Health)** and shall bear the Docket Number: **RCRA-02-2010-7111**. 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: **US Virgin Islands Department of Health**
- g. Case Number: **RCRA-02-2010-7111**.

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:

Carolina Jordán-García, 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, 16th 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 additional 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. 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.
7. Each party shall bear its own costs and fees in this matter.
8. 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.
9. Respondent consents to service upon Respondent by a copy of this CA/FO by an EPA employee other than the Regional Hearing Clerk.
10. 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.

RESPONDENT:

U.S. Virgin Islands

BY:



NAME:

Mercedes K.C. Dullum

TITLE:

Acting Commissioner

Department of Health

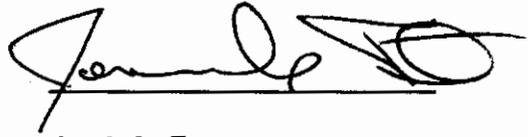
DATE:

1/11/12

COMPLAINANT:

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

BY:



NAME:

José C. Font

TITLE:

Acting Director, Caribbean
Environmental Protection Division

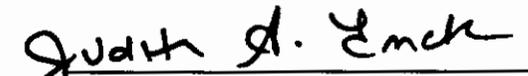
DATE:

2-23-12

FINAL ORDER

The Regional Administrator 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 Consent Agreement, entered into by the parties, is hereby approved and issued, as a Final Order, effective immediately.



Judith A. Enck

Regional Administrator
U.S. Environmental Protection Agency - Region 2

Date: 3/12/12

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IN THE MATTER OF:

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**COMPLAINT, COMPLIANCE ORDER,
AND NOTICE OF OPPORTUNITY FOR
HEARING**

Docket No. RCRA-02-2010-7111

CERTIFICATE OF SERVICE

I certify that, on the date noted below, I caused to be mailed the foregoing Motion to the following persons, at the addresses listed below and in the following manner:

Original and Copy by overnight mail to:

Karen Maples
Regional Hearing Clerk
Region 2
290 Broadway, 16th Floor
New York, NY 1007-1866
Fax (212) 637-3202

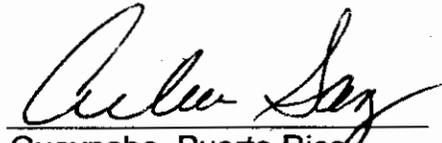
Copy by Facsimile and overnight mail to:

Administrative Law Judge:
Honorable Barbara A. Gunning
Office of Administrative Law Judges
U.S. Environmental Protection Agency
1099 14th Street, N.W., Suite 350
Washington, D.C. 20005
Fax (202) 565-0044

Copy by email and Regular Mail:

Pamela R. Tepper, Esq.
VI Department of Justice
34-38 Kronprindsens Gade
GERS Building, 2nd Floor
St. Thomas, VI, 00802
Fax (340) 774-9710

Date: 3/21/2012



Guaynabo, Puerto Rico
Office of Regional Counsel - CT

