

**UNITED STATES OF AMERICA
ENVIRONMENTAL PROTECTION AGENCY
REGION 2**

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II

REGIONAL HEARING CLERK
290 Broadway, 16th Floor-Room 1631
New York, New York 10007-1866

2008 FEB 20 PM 3:34

REGIONAL HEARING
CLERK

IN THE MATTER OF:

Municipality of San Juan,
Dr. Javier J. Anton Hospital, San
Juan Center for Diagnostic and
Treatment

Respondent.

Docket No. **RCRA-02-2007-7112**

FORMAL HEARING REQUESTED


**ANSWER TO COMPLAINT, COMPLIANCE ORDER, AND NOTICE OF OPORTUNITY
FOR HEARING**

TO THE HONORABLE ENVIRONMENTAL PROTECTION AGENCY:

NOW COMES Respondent, the Municipality of San Juan, represented by its attorneys
and respectfully alleges and pray as follows:

- B
- A. On October 8th, 2007 Respondent was served with a document entitled
"Complaint, Compliance Order, And Notice Of Opportunity For Hearing"
(hereinafter, the "Complaint").
 - B. Respondent requested an extension of time to respond to the Complaint, and
the Regional Judicial Officer of EPA Region 2 granted Respondent until
February 15, 2008, to submit such answer.
 - C. For purposes of clarity, Respondent's answer will follow, for the most part,
the same order of the Complaint. On those portions of the answer that do
not follow such order, Respondent will clarify its response.

I. Statutory Authority

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- i. The first paragraph of the Complaint contains the statutory background concerning the EPA's authority under 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 U.S.C. § 6901 et seq. (referred to collectively as the "Act" or "RCRA") which do not require an answer, and in the alternative, it is denied.
 - ii. The Municipality of San Juan denies the second paragraph that states that the Respondent has violated requirements of RCRA and regulations implementing RCRA, concerning the management of hazardous waste at its regional medical facility, the Dr. Javier J. Antón Hospital San Juan Center For Diagnostic And Treatment, in Rio Piedras, Puerto Rico (hereinafter the "CDT").
 - iii. The Third paragraph of the Complaint that contains conclusions of law which do not require an answer, and in the alternative, it is denied.
 - iv. The Fourth paragraph of the Complaint that contains conclusions of law which do not require an answer, and in the alternative, it is denied.
 - v. The Fifth paragraph of the Complaint that contains conclusions of law which do not require an answer, and in the alternative, it is denied.
 - vi. The Sixth paragraph of the Complaint that contains conclusions of law which do not require an answer, and in the alternative, it is denied.

II. General Allegations

Jurisdiction

1. This paragraph of the Complaint contains conclusions of law which do not require an answer, and in the alternative, it is denied.

Respondents Background

2. Admitted.
3. Paragraph Three is denied as pleaded. It is alleged that the Municipality does operate a small regional medical facility by the name of Dr. Javier J. Anton at the stated address.
4. The first sentence from Paragraph Four is admitted. The rest is denied.
5. Paragraph Five is denied.
6. Paragraph Six is denied.
7. Paragraph Seven is denied.
8. Denied.
9. Denied.

Respondent's Generation of Waste

10. The answer to the NOV filed on December 15, 2006 is hereby adopted.
11. The answer to the NOV filed on December 15, 2006 is hereby adopted.
12. Denied.

13. Paragraph Thirteen is denied. It is alleged that if so, it has been as a conditionally exempt small quantity generator.

14. Denied.

15. Denied.

Notification of Hazardous Waste Generation

16. Paragraph Eighteen is denied for lack of information to provide a responsive pleading.

17. Paragraph Eighteen is denied for lack of information to provide a responsive pleading.

18. Paragraph Eighteen is denied for lack of information to provide a responsive pleading.

19. Paragraph Nineteen is denied for lack of information to provide a responsive pleading.

20. Paragraph Twenty is admitted.

EPA Investigative Activities

21. From Paragraph Twenty One it is admitted that an inspection was conducted on said date. The rest is denied.

22. Respondent can not admit or deny EPA's intent on its inspections, and in the alternative, it is denied.

23. Respondent can not admit or deny EPA's intent on its inspections, and in the alternative, it is denied.

24. From Paragraph Twenty Four is admitted that a conference took place on said date. The rest is denied.

25. Respondent admits that EPA held a closing conference, with its representatives in which they discussed the preliminary findings of the 1st Inspection with Respondent's representatives. However respondent's representatives present at said meeting are not able to recall the details discussed thus the Municipality of San Juan cannot admit or deny the rest of the paragraph, and in the alternative, it is denied.

26. From Paragraph Twenty Six it is admitted that a fire took place on or around said date. The rest is denied. It is alleged that fire was set by a third party involving criminal activity.

27. The answer to the NOV filed on December 15, 2006 is hereby adopted.

28. From Paragraph Twenty Eight it is admitted that on or around said date a mercury spill occurred resulting out of a third party's action. The rest is denied.

29. From Paragraph Twenty Nine it is admitted that a spill occurred on or around said date resulting out of a third party's action. The rest is denied.

30. Paragraph Thirty is denied as drafted. It is alleged that no violations were found..

31. Admitted.

32. Respondent can not admit or deny EPA's intent on its inspections, and in the alternative, it is denied.

33. Respondent can not admit or deny EPA's actions on its inspections, and in

the alternative, it is denied.

34. Admitted.

35. Respondent admits that EPA held a closing conference, with its representatives in which they discussed the preliminary findings of the 2nd Inspection with Respondent's representatives. However respondent's representatives present at said meeting are not able to recall the details discussed, thus the Municipality of San Juan cannot admit or deny the rest of the paragraph, and in the alternative, it is denied.

36. Respondent denies that such admission was ever made; therefore, it denies the first sentence. Though it is admitted that a program to dispose of fluorescent lamp bulbs was in place as provided in the response to the notice of violation.

37. From Paragraph Thirty Seven it is admitted that a request for information was sent on or about said date. The rest is denied.

38. From Paragraph Thirty Eight it is admitted that information was requested. The rest is denied as drafted.

39. Admitted.

40. Admitted.

41. The answer to the NOV is hereby adopted.

42. The answer to the NOV is hereby adopted

43. The answer to the NOV is hereby adopted

44. Respondent can not admit nor deny EPA's evaluation of respondent's

response, and in the alternative, it is denied.

Count 1 – Failure to Make Hazardous Waste Determinations

Respondent hereby adopts by reference all previous responsive pleadings and the foregoing affirmative defenses.

45. This paragraph of the Complaint contains conclusions of law which do not require an answer, and in the alternative, it is denied.

46. This paragraph of the Complaint contains conclusions of law which do not require an answer, and in the alternative, it is denied.

47. This paragraph of the Complaint contains conclusions of law which do not require an answer, and in the alternative, it is denied.

48. This paragraph of the Complaint contains conclusions of law which do not require an answer, and in the alternative, it is denied.

49. Respondent denies this paragraph.

a. Respondent's answer to the NOV is adopted by reference.

b. Respondent's answer to the NOV is adopted by reference.

c. Respondent's answer to the NOV is adopted by reference.

d. Respondent's answer to the NOV is adopted by reference.

50. Denied.

51. This paragraph of the Complaint contains conclusions of law which do not require an answer, and in the alternative, it is denied.

52. Denied.

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Count 2 – Failure to Minimize Risks

53. This paragraph of the Complaint contains conclusions of law which do not require an answer, and in the alternative, it is denied.

54. This paragraph of the Complaint contains conclusions of law which do not require an answer, and in the alternative, it is denied.

55. Denied.

56. This paragraph of the Complaint contains conclusions of law which do not require an answer, and in the alternative, it is denied.

57. Respondent denies this paragraph.

a. Respondent's December 15, 2006 answer to the NOV is adopted by reference.

b. Respondent's December 15, 2006 answer to the NOV is adopted by reference.

c. Respondent's December 15, 2006 answer to the NOV is adopted by reference.

d. Respondent's December 15, 2006 answer to the NOV is adopted by reference.

58. Denied.

59. Denied.

III. Proposed Civil Penalty

This entire section III is denied. Furthermore, Respondent hereby incorporates by reference all applicable averments submitted in response on prior sections. The proposed civil penalty is contrary to law and unwarranted. In the alternative, it is excessive and in violation of the criteria established in 3008(a)(3) of the Act 42 U.S.C. § 6928(a)(3) and in violation of Respondent's due process rights under Amendment V of the Constitution of the United States, and of section 558(b) of the Administrative Procedure Act, 5 U.S.C. §558(b). The factual analysis used to establish the proposed civil penalty for the alleged violations is magnified, distorted and fails to take into consideration the nature, circumstances, degree of seriousness of the alleged violations, degree of actual threat to human health or the environment, Respondent's good faith efforts to cooperate with EPA.

IV. Compliance Order

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This paragraph of the Complaint contains conclusions of law which do not require an answer, and in the alternative, it is denied.

1. Respondent has made such determination as submitted in its December 15 2006 answer to EPA's notice of violation.
2. Respondent has taken sufficient measures as to insure that the Facility is 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, as submitted in its December 15 2006 answer to EPA's notice of violation.
3. Respondent provided verbal confirmation during its Meeting of January 17,

2008 with Region 2 Caribbean Field Office personnel that all alleged deviations had being addressed in compliance with applicable statutory requirements. Written information required will be provided under a separate cover as part of this administrative procedure.

4. This paragraph of the Complaint contains conclusions of law which do not require an answer, and in the alternative, it is denied.

V. Notice of Liability for Additional Civil Penalties

This paragraph of the Complaint contains conclusions of law which do not require an answer, and in the alternative, it is denied.

VI. Procedures Governing This Administrative Litigation

This section contains instructions provided by EPA and conclusions of law, which are self-explanatory and do not require an answer, or are addressed by Respondent further below.

A. Answering the Complaint.

This section contains instructions provided by EPA and conclusions of law, which are self-explanatory and do not require an answer, or are addressed by Respondent further below.

B. Opportunity To Request A Hearing

1. Respondent hereby requests a formal hearing before an Administrative Law Judge pursuant to 40 C.F.R. Part 22.

2. The purpose of the hearing is to contest the Complaint, the proposed exorbitant penalty, and the matters of law and material facts that were not admitted above, and which were set forth in the Complaint.

3. Respondent's legal grounds for contesting the Complaint and the proposed penalty are set forth in this Answer and in the Affirmative Defenses listed below.

4. Respondent reserves the right to present additional factual circumstances, arguments, and Affirmative Defenses that constitute the grounds for defense of the claims made in the Complaint, if and when such circumstances or arguments become known to Respondent through discovery or other means. In addition, it reserves the right to modify its responses if additional information is obtained that clarifies any particular allegation of Respondent.

C. Failure to Answer

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This section contains instructions provided by EPA and conclusions of law, which are self-explanatory and do not require an answer, or are addressed by Respondent further below.

D. Exhaustion of Administrative Remedies

This section contains instructions provided by EPA and conclusions of law, which are self-explanatory and do not require an answer, or are addressed by Respondent further below.

VII. Informal Settlement Conference

Respondent hereby requests an informal settlement conference. Furthermore Respondent requests the opportunity for Alternative Dispute Resolution track, to settle this complaint.

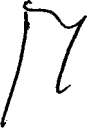
VIII. Resolution of This Proceeding Without Hearing Or Conference

This section contains instructions provided by EPA and conclusions of law, which are self-explanatory and do not require an answer, or are addressed by Respondent further below.

IX. Filing of Documents


This section contains instructions provided by EPA and conclusions of law, which are self-explanatory and do not require an answer, or are addressed by Respondent further below.

X Affirmative Defenses

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1. Respondent hereby incorporates by reference all responses and defenses included in Section II of this Answer.
 2. All conclusions of law alleged in the Complaint are disputed insofar applicable to the factual allegation herein.
 3. All factual allegations contained in the Complaint, except those specifically admitted and only qualified herein, are hereby denied.
 4. This Honorable Agency lacks subject matter jurisdiction.
 5. The Complaint does not state a claim upon which relief can be granted.
 6. Respondent at all times, acted according to law and in good faith in the performance of its duties.
 7. At all times material hereto, Respondent acted in a manner which was proper, reasonable, lawful and in the exercise of good faith.
 8. Respondent hereby adopts by reference all its response to the NOV.
 9. Respondent requests a formal hearing.

10. Respondent request Alternate Dispute Resolution to solve the present case.
11. The proposed penalty of \$85,150 is grossly exaggerated, speculative, excessive, unreasonable, arbitrary and capricious, an abuse of discretion, unwarranted and contrary to law because the factual analysis used by Complainant to established the proposed civil penalty for the alleged violations is distorted and fails to take into consideration the nature, circumstances, degree of seriousness of the alleged violations, degree of actual threat to human health or the environment nor to the alleged adverse effect caused by the alleged violation..
12. We respectfully understand that the Complaint and proposed penalty is contrary to law, arbitrary and capricious, an abuse of discretion and unwarranted because some of the allegations pertaining to non-compliance are time barred by the five (5) year statute of limitation for RCRA's civil or criminal actions¹.
13. Respondent took adequate measures to minimize risks, such as round the clock security, and the hiring external contractor to help the Municipality respond to the spills.
14. The amounts of waste released into the environment were in minimal quantities which do no affected human health or the environment.
15. Respondent is a conditionally exempt small quantity generator under 40 CFR §261.5(a).

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16. Respondent made the required waste determination pursuant to 40 CFR §262.11.
 17. Respondent has complied with the labeling requirement for the waste to be disposed of.
 18. Respondent properly stored the waste it generated.
 19. Respondent properly disposed of the waste it generated.
 20. There was an intervening third party that contributed to the releases, if any.
 21. Respondent is not responsible for any actions or omissions of third parties not under its supervision and over which did not exercise control.
 22. The Municipality has not received any economic benefit resulting from the alleged failure of providing the information requested.
 23. Respondent does not have the economic means to satisfy any civil assessment resulting from these administrative proceedings. The imposition of any monetary penalty will force the Municipal Administration Health Department to relocate funds from other health related services required by the low income residents of the municipality.
 24. Respondent reserves the right to make amendments to its affirmative defenses upon conclusion of the investigation of this case and after being afforded reasonable opportunity to conclude discovery.

THEREFORE Plaintiffs request to the Honorable Court to the present complaint.

Respectfully submitted.

In San Juan, Puerto Rico, this 14th of February 2008.

I HEREBY CERTIFY: that on this date served copy of the foregoing pleading by United States mail, properly addressed, and first-class postage to Regional Hearing Clerk, U.S. Environmental Protection Agency, 290 Broadway, 16th Floor-Room 1631, New York, New York 10007-1866; Mrs. Lourdes del Carmen Rodriguez, Esq. Assistant Regional Counsel, U.S.E.P.A.-Region 2, Centro Europa Building, Suite 417, 1492 Ponce de Leon Avenue, San Juan, P.R. 00907,

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