

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2**

-----X
In the Matter of :
 :
Compañia Cervecera de Puerto Rico, Inc. :
 :
 :
Respondent. :
 :
Proceeding under Section 325(c) of Title III :
of the Superfund Amendments and Reauthorization Act :
-----X

**CONSENT AGREEMENT
AND
FINAL ORDER**

**DOCKET NUMBER
EPCRA-02-2015-4302**

REGIONAL HEARING
CLERK
AUG 21 AM 6:50
U.S. Environmental
Protection Agency-Reg 2

PRELIMINARY STATEMENT

This administrative proceeding for the assessment of a civil penalty was instituted pursuant to Section 325(c) of Title III of the Superfund Amendments and Reauthorization Act, 42 U.S.C. § 11001 et seq. [also known as the Emergency Planning and Community Right-to-Know Act of 1986 (hereinafter, "EPCRA")].

Pursuant to 40 C.F.R. § 22.13(b) of the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits" (40 C.F.R. Part 22 (July 1, 2000)) where the parties agree to settlement of one or more causes of action before the filing of an Administrative Complaint, a proceeding may be simultaneously commenced and concluded by the issuance of a Consent Agreement and Final Order pursuant to 40 C.F.R. §§ 22.18(b)(2) and (3).

The Director of the Division of Enforcement and Compliance Assistance of the United States Environmental Protection Agency, Region 2, ("EPA" or "Complainant") alleges that Compañia Cervecera de Puerto Rico, Inc. ("Respondent") located at Blvd Alfonso Valdez #100, Mayaguez, Puerto Rico 00680 (hereinafter, "Respondent's facility"), violated the requirements of Section 313 of EPCRA (42 U.S.C. § 11023) and the regulations promulgated pursuant to that Section, codified at 40 C.F.R. Part 372.

Under Section 313 of EPCRA and 40 C.F.R. § 372.22, owners or operators of a facility subject to the requirements of Section 313(b) are required to submit annually, no later than July 1 of each year, a complete and correct Toxic Chemical Release Inventory Reporting Form R report, EPA Form 9350-1 (hereinafter, "TRI Form R report") for each toxic chemical listed under 40 C.F.R. § 372.65 and/or 40 C.F.R. § 372.28 that was manufactured, processed, or otherwise used during the preceding calendar year in quantities exceeding the established toxic chemical thresholds. Each required TRI Form R report must be submitted to the Regional Administrator of the Environmental Protection Agency and to the State / Commonwealth in which the subject facility is located.

As an alternative to the requirements set forth above, pursuant to Section 313(f)(2) of EPCRA (42 U.S.C. § 11023(f)(2)) and 40 C.F.R. § 372.27, owners or operators of a facility subject to the requirements of Section 313(b) with respect to the "manufacture, process or otherwise use" of a toxic chemical may apply an alternate threshold of one million (1,000,000) pounds per year to that chemical if the conditions set forth in 40 C.F.R. § 372.27(a) are met. If the aforementioned alternate threshold for a specific toxic chemical is applicable, such owners or operators, in lieu of filing a TRI Form R report, therefore, may submit an "Alternate Threshold Certification Statement" ("TRI Form A report") pursuant to 40 C.F.R. § 372.27(b). Pursuant to 40 C.F.R. § 372.27(e), EPA has excluded the Persistent Bioaccumulative Toxic Chemicals listed in 40 C.F.R. § 372.28 from eligibility for the Alternate Thresholds described in 40 C.F.R. § 372.27(a). [59 FR 61502, Nov. 30, 1994, as amended at 64 FR 58750, Oct. 29, 1999; as amended at 71 FR 76944, Dec. 22, 2006; as amended at 74 FR 19005, Apr. 27, 2009]

EPA and Compañía Cervecera de Puerto Rico, Inc. agree that settling this matter by entering into this Consent Agreement and Final Order ("CAFO"), pursuant to 40 C.F.R. § 22.13(b) and 40 C.F.R. § 22.18(b)(2) and (3), is an appropriate means of resolving this case without further litigation. This CAFO is being issued pursuant to said provisions of 40 C.F.R. Part 22. No formal or adjudicated Findings of Fact or Conclusions of Law have been made. The following constitutes EPA's Findings of Fact and Conclusions of Law based upon information EPA obtained during and subsequent to an EPCRA Section 313 letter of inquiry emailed to the Respondent December 22, 2014.

**FINDINGS OF FACT
AND CONCLUSIONS OF LAW**

1. Respondent is Compañía Cervecera de Puerto Rico, Inc. (TRI Facility No.: 0079CRVCRALLE)
2. At all times relevant hereto, Respondent has maintained a facility located at Blvd Alfonso Valdez #100, Mayaguez, (County: Mayaguez) Puerto Rico 00680 which is the subject of this Consent Agreement and Final Order.
3. Respondent is a "person" within the meaning of Section 329(7) of EPCRA (42 U.S.C. § 11049(7)).
4. Respondent is an owner of a "facility" as that term is defined by Section 329(4) of EPCRA (42 U.S.C. § 11049(4)) and by 40 C.F.R. § 372.3.
5. Respondent is an operator of a "facility" as that term is defined by Section 329(4) of EPCRA (42 U.S.C. § 11049(4)) and by 40 C.F.R. § 372.3.
6. Respondent's facility has ten (10) or more "full time employees" as that term is defined by 40 C.F.R. § 372.3.
7. Respondent's facility is in North American Industry Classification System "NAICS" code 312120 (Breweries).
8. Respondent is subject to the requirements of Section 313(b) of EPCRA (42 U.S.C. § 11023(b)) and 40 C.F.R. § 372.22.
9. Nitric acid (CAS No.: 7697-37-2) is a listed chemical under 40 C.F.R. § 372.65.
10. Respondent was required to submit a timely, complete and correct TRI Form R report for nitric acid for calendar year 2013 on or before July 1, 2014 to the Administrator of the EPA and to the Commonwealth of Puerto Rico. Respondent submitted the Form R report for nitric acid on January 30, 2015. The Form R report was 214 days late.
11. Respondent's failure to submit a correct TRI Form R report for nitric acid to the EPA constitutes a failure to comply with Section 313 of EPCRA 42 U.S.C. § 11023, and with 40 C.F.R. Part 372.
12. Nitrate compounds is a listed chemical category under 40 C.F.R. § 372.65.
13. Respondent was required to submit a timely, complete and correct TRI Form R report for nitrate compounds for calendar year 2013 on or before July 1, 2014 to the Administrator of the EPA and to the Commonwealth of Puerto Rico. Respondent submitted the Form R report for nitrate compounds on January 30, 2015. The Form R report was 214 days late.

14. Respondent's failure to submit a correct TRI Form R report for nitrate compounds to the EPA constitutes a failure to comply with Section 313 of EPCRA 42 U.S.C. § 11023, and with 40 C.F.R. Part 372.

TERMS OF CONSENT AGREEMENT

Based on the foregoing, and pursuant to Section 325(c) of EPCRA, and in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Etc., 40 C.F.R. § 22.18 (hereinafter, "Consolidated Rules"), it is hereby agreed by and between the parties, and Respondent voluntarily and knowingly agrees, as follows:

1. Respondent certifies herein that each of the EPA Toxic Chemical Release Inventory Form R reports submitted for the above-described violations comply with the requirements of Section 313 of EPCRA and the regulations set forth at 40 C.F.R. Part 372.
2. For the purpose of this proceeding, Respondent: (a) admits the jurisdictional allegations of this Consent Agreement as applied to each facility as set forth in paragraphs 1 through 14, inclusive, and (b) neither admits nor denies the Findings of Fact and Conclusions of Law section, above.
3. Respondent shall pay a civil penalty totaling **TWENTY-NINE THOUSAND TWO HUNDRED NINETY DOLLARS (\$29,290)**, in two installments. Each check must be identified with a notation thereon listing the following: In The Matter of Compañia Cervecera de Puerto Rico, Inc. and the Docket Number EPCRA-02-2015-4302. The first payment of **\$14,960** must be received at the address below on or before 45 calendar days after the date of signature of the Final Order at the end of this document (the date by which payment must be received shall hereafter be referred to as the "due date"). The second payment of **\$14,960** must be received on or before November 30, 2016. Payment should be made by cashier's or certified check or by electronic fund transfer (EFT). If the payment is made by check, then the check should be made payable to the "Treasurer, United States of America," and mailed to:

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

If Respondent chooses to make the payment by EFT, then Respondent shall provide the following information to its remitter bank.

- 1) Amount of Payment.

- 2) SWIFT address: FRNYUS33, 33 Liberty Street, New York, NY 10045.
- 3) Account Code for Federal Reserve Bank of New York receiving payment: 68010727.
- 4) Federal Reserve Bank of New York ABA routing number: 021030004.
- 5) Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency."
- 6) Name of Respondent: Compañía Cervecera de Puerto Rico, Inc.
- 7) Case Number: EPCRA-02-2015-4302.

Such EFT must be received on or before each due date of this CAFO. Whether the payment is made by check or by EFT, the Respondent shall promptly thereafter furnish reasonable proof that such payment has been made to both:

Karen Maples, Regional Hearing Clerk
Office of the Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th Floor (1631)
New York, NY 10007-1866

and

John Gorman, Chief
Pesticides and Toxic Substances Branch
U.S. Environmental Protection Agency, Region 2
2890 Woodbridge Avenue (MS-105)
Edison, NJ 08837

a. Failure to pay the penalty in full according to the above provisions will result in the referral of this matter to the U.S. Department of Justice for collection.

b. Further, if payment is 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 31 U.S.C. § 3717, on the overdue amount from the due date through the date of payment. In addition, a late payment handling fee of \$15 will be assessed for each 30-day period (or any portion thereof) following the due date in which the balance remains unpaid.

c. A 6% per annum penalty also will be applied on any principal amount not paid within 90 days of the due date.

4. This Consent Agreement is being voluntarily and knowingly entered into by the parties in full and final settlement of all civil liabilities under the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. § 11001 et seq.) and the regulations promulgated thereunder, 40 C.F.R. Part 372, that attach or might have attached as a result of the Findings of Fact and Conclusions of Law set out above.

In the Matter of:

Compañía Cervecera de Puerto Rico, Inc.

Docket Number EPCRA-02-2015-4302

FINAL ORDER

The Regional Judicial Officer of the United States Environmental Protection Agency, Region 2, concurs in the foregoing Consent Agreement in the case of In the Matter of Compañía Cervecera de Puerto Rico, Inc. bearing Docket No. EPCRA-02-2015-4302. Said Consent Agreement, having been duly accepted and entered into by the parties, is hereby ratified, incorporated into and issued, as this Final Order, which shall become effective when filed with the Regional Hearing Clerk of the United States Environmental Protection Agency, Region 2. 40 C.F.R. § 22.31(b). This Final Order is being entered pursuant to the authority of 40 C.F.R. §§ 22.13(b) and 22.18(b)(3) and shall constitute an order issued under authority of Section 325(c) of EPCRA 42 U.S.C. § 11045(c).



Helen S. Ferrara, Regional Judicial Officer
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 2
290 Broadway
New York, New York 10007

DATE: Aug 13, 2015

In the Matter of Compañia Cervecera de Puerto Rico, Inc.

Docket No. EPCRA-02-2015-4302

CERTIFICATE OF SERVICE

I certify that I have this day caused to be sent the foregoing fully executed CONSENT AGREEMENT and FINAL ORDER, bearing the above-referenced Docket Number, in the following manner to the respective addressees below:

Original and One Copy
by Interoffice Mail:

Ms. Karen Maples, Regional Hearing Clerk
Office of the Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th Floor (1631)
New York, New York 10007-1866

Copy by Certified Mail,
Return Receipt Requested:

Mr. Craig Hylwa, Operations Manager
Compañia Cervecera de Puerto Rico, Inc.
P.O. Box 1690
Mayaguez, Puerto Rico 00681-1690

Copy by Mail:

Ms. Laura Velez, Chairman
Puerto Rico Environmental Quality Board
1375 Ponce De Leon Avenue
San Juan, Puerto Rico 00926

Dated: AUG 19 2015



Pesticides and Toxic Substances Branch
U.S. Environmental Protection Agency, Region 2
2890 Woodbridge Avenue (MS-105)
Edison, New Jersey 08837-3679