UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

IN THE MATTER OF:

Bacardí Corporation
P. O. Box 363549
San Juan, PR 00936-3549,

Respondent

In a proceeding under
Section 113(d) of the Clean Air Act
42 U.S.C. § 7413(d)

COMPLAINT
and
NOTICE OF OPPORTUNITY
TO REQUEST A HEARING

Index No. CAA-02-2009-1220

Statutory Authority

The United States Environmental Protection Agency (EPA) issues this Complaint and Notice of Opportunity for a Hearing (Complaint) to Bacardí Corporation (Respondent) for violations of the Clean Air Act, 42 U.S.C. § 7401 *et seq.* (CAA or the Act). The Complaint is being issued pursuant to, Section 113(d) of the Act, 42 U.S.C. § 7413(d), and proposes the assessment of penalties in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22 (Consolidated Rules of Practice). The Complainant in the matter, the Director of the Caribbean Environmental Protection Division (Director), is duly delegated the authority to issue administrative complaints for violations that occur in the Commonwealth of Puerto Rico.

In this Complaint, EPA alleges that Respondent's facility (Facility), a rum distillery plant located at PR Road No. 165, Km 2.6, Zona Industrial, Cataño,

Puerto Rico, violated requirements of the "Standards of Performance for Industrial-Commercial-Institutional Steam Generation Units," 40 C.F.R. Part 60, Subpart Db, 40 C.F.R. §§ 60.40b-60.49b (NSPS Subpart Db).

On September 8, 2009, the Department of Justice (DOJ) granted EPA's request for a waiver of the twelve (12) month period limitation provided in Section 113(d) of the Act.

Statutory, Regulatory and Permitting Background

1. Section 111(b)(1)(B) of the Act requires the Administrator to promulgate regulations establishing federal standards of performance for "new sources," referred to as New Source Performance Standards (NSPS), within each category or subcategory listed pursuant to Section 111(b)(1)(A).

2. Section 111(a) of the Act defines a "stationary source" as any building, structure, facility or installation which emits or may emit any air pollutant.

3. Section 111(a)(2) of the Act defines a "new source" as any stationary source, the construction or modification of which is commenced after the publication of regulations promulgating an NSPS (or the proposal of such regulations) which will be applicable to the source.

4. Section 111(d) of the Act requires the Administrator to promulgate regulations establishing NSPS for any existing source that has not been included on a list pursuant to Section 111 but to which a standard of performance would apply if such source were a new source.

5. Section 113(a)(3) of the Act authorizes the Administrator of EPA to issue an administrative penalty order, in accordance with Section 113(d) of the Act, against any person that has violated or is in violation of the Act.

6. Section 114(a)(1) of the Act authorizes the Administrator to require owners or operators of emission sources to submit specific information regarding facilities, establish and maintain records, make reports, sample emission points, and to install, use and maintain such monitoring equipment or methods in order to determine whether any person is in violation of the Act.

7. Section 302(e) of the Act defines the term "person" as an individual, corporation, partnership, association, state, municipality, political subdivision of a State, and any agency, department, or instrumentality of the United States and any officer, agent, or employee thereof.

8. Pursuant to Section 111 and 114 of the Act, on November 17, 1975, EPA promulgated the Standards of Performance for New Stationary Sources, 40 C.F.R. Part 60, Subpart A, Sections 60.1-60.19 (General NSPS), which was later amended.

9. Pursuant to 40 C.F.R. § 60.1(a), except as provided in Subparts B and C, the provisions of Part 60 apply to the owner or operator of any stationary source that contains an affected facility, the construction or modification of which is commenced after the date of publication in Part 60 of any standard (or, if earlier, the date of publication of any proposed standard) applicable to that facility.

10. Pursuant to 40 C.F.R. § 60.2, the following terms used in this enforcement action are defined as follows:

a) opacity: the degree to which emissions reduce the transmission of light and obscure the view of an object in the background;

b) owner or operator: person who owns, leases, operates, controls, or supervises an affected facility or a stationary source of which an affected facility is a part;

c) affected facility: with reference to a stationary source, any apparatus to which a standard is applicable;

d) construction: fabrication, erection, or installation of an affected facility; and

e) startup: the setting in operation of an affected facility for any purpose.

11. Pursuant to 40 C.F.R. § 60.7(a)(1), an owner or operator of an affected facility must provide EPA with a notification of the date of construction of an affected facility, no later than thirty (30) days after the date of construction.

12. Pursuant to 40 C.F.R. § 60.7(a)(3), an owner or operator of an affected facility must provide notice to EPA of the actual date of initial startup of an affected facility within fifteen (15) days after the actual date of initial startup.

13. Pursuant to 40 C.F.R. § 60.8(a), within 60 days after achieving the maximum production rate at which the affected facility will be operated, but not later than 180 days after initial startup of such facility and at such other times as may be required by the Administrator under section 114 of the Act, the owner or operator of such facility shall conduct performance test(s) and furnish the Administrator a written report of the results of such performance test(s).

14. Pursuant to 40 C.F.R. § 60.8(a)(1), "[i]f a force majeure is about to occur, occurs, or has occurred for which the affected owner or operator intends

to assert a claim of force majeure, the owner or operator shall notify the Administrator, in writing as soon as practicable following the date the owner or operator first knew, or through due diligence should have known that the event may cause or caused a delay in testing beyond the regulatory deadline, but the notification must occur before the performance test deadline unless the initial force majeure or a subsequent force majeure event delays the notice, and in such cases, the notification shall occur as soon as practicable."

15. Pursuant to Section 111 and 114 of the Act EPA promulgated the NSPS Subpart Db.

16. Pursuant to 40 C.F.R. § 60.40b(a), NSPS Subpart Db is applicable to each steam generating unit that commences construction, modification, or reconstruction after June 19, 1984, and that has a heat input capacity from fuels combusted in the steam generating unit of greater than 29 megawatts (MW) (100 million British thermal units per hour (MMBtu/hr)).

17. Pursuant to 40 C.F.R. § 60.40b(j), any affected facility meeting the applicability requirements under paragraph (a) of 40 C.F.R. § 60.40b and commencing construction, modification, or reconstruction after June 19, 1986, is not subject to the NSPS Subpart D.

18. Pursuant to 40 C.F.R. § 60.41b, "steam generating unit" is defined as "a device that combusts any fuel or byproduct/waste and produces steam or heats water or any other heat transfer medium. . . . This term...does not include process heaters as they are defined in this subpart."

19. Pursuant to 40 C.F.R. § 60.43b(f), on and after the date on which the initial performance test is completed or is required to be completed under

§ 60.8, whichever date comes first, no owner or operator of an affected facility that combusts coal, oil, wood, or mixtures of these fuels with any other fuels shall cause to be discharged into the atmosphere any gases that exhibit greater than 20 percent opacity (6-minute average), except for one 6-minute period per hour of not more than 27 percent opacity.

20. Pursuant to 40 C.F.R. § 60.44b(a), except as provided under paragraphs (k) and (l) of 40 C.F.R. § 60.44b,on and after the date on which the initial performance test is completed or is required to be completed under § 60.8, whichever date comes first, no owner or operator of an affected facility that is subject to the provisions of 40 C.F.R. § 60.44b and that combusts only coal, oil, or natural gas shall cause to be discharged into the atmosphere from that affected facility any gases that contain NO_X in excess of certain specified limits.

21. Pursuant to 40 C.F.R. § 60.46b (a), the particulate matter (PM) emission standards and opacity limits under § 60.43b apply at all times except during periods of startup, shutdown, or malfunction. Section 60.46b(a) also states that the NO_X emission standards under § 60.44b apply at all times.

22. Pursuant to 40 C.F.R. § 60.49b (a), the owner or operator of each affected facility shall submit notification of the date of initial startup, as provided by § 60.7. The section also indicates that this notification must include:

> (1) "The design heat input capacity of the affected facility and identification of the fuels to be combusted in the affected facility;
>
> (2) If applicable, a copy of any federally enforceable requirement that limits the annual capacity factor for any fuel or mixture of fuels under §§ 60.42b(d)(1), 60.43b(a)(2), (a)(3)(iii), (c)(2)(ii), (d)(2)(iii), 60.44b(c), (d), (e), (i), (j), (k), 60.45b(d), (g), 60.46b(h), or 60.48b(i);

(3) The annual capacity factor at which the owner or operator anticipates operating the facility based on all fuels fired and based on each individual fuel fired; and

(4) Notification that an emerging technology will be used for controlling emissions of SO^2. The Administrator will examine the description of the emerging technology and will determine whether the technology qualifies as an emerging technology. In making this determination, the Administrator may require the owner or operator of the affected facility to submit additional information concerning the control device. The affected facility is subject to the provisions of § 60.42b (a) unless and until this determination is made by the Administrator."

23. Pursuant to 40 C.F.R. § 60.49b (b), the owner or operator of each affected facility subject to the SO^2, PM, and/or NO_X emission limits under §§ 60.42b, 60.43b, and 60.44b must submit to the Administrator the performance test data from the initial performance test and the performance evaluation of the continuous emission monitoring system using the applicable performance specifications in appendix B to NSPS Part 60. Section 60.49b (b) further provides that the owner or operator of each affected facility described in § 60.44b (j) or § 60.44b (k) must submit to the Administrator the maximum heat input capacity data from the demonstration of the maximum heat input capacity of the affected facility.

Findings of Facts

24. Paragraphs 1-23 are realleged and incorporated herein by reference.

25. Respondent is a corporation duly organized under the laws of the Commonwealth of Puerto Rico.

26. Respondent is the owner and/or operator of the Bacardí Corporation Facility located in Cataño, Puerto Rico.

27. On November 16, 2005, the Puerto Rico Environmental Quality Board (PREQB) issued Construction Permit Number PFE-17-0505-0692-II-C (the "Construction Permit") to Respondent for installment of a new steam generating boiler (Boiler 3) as part of the Facility's new cogeneration system. The new cogeneration system consumes a mixture of biogas generated from Respondent's wastewater treatment plant and fuel oil number 6, to generate high pressure steam that in turn is used in a turbine to produce electricity.

28. The new cogeneration system consists of two 3000 hp steam generating boilers ("Boiler 1" and "Boiler 3"). The boilers have a potential to burn fuel oil number 6 at a rate of 883 gallons per hour with sulfur content of 0.5% by weight or biogas at a rate of 205,479 cubic feet per hour with a H_2S content of 0.5% per volume.

29. The Construction Permit provides that both boilers are allowed to annually burn up to 6,000,000 gallons of fuel oil number 6 and 1,500,000,000 ft^3 of biogas.

30. Boiler 1 is an existing boiler, with capacity to burn fuel gas and fuel oil as indicated above, that would not be modified as part of the new cogeneration system project. The Construction Permit prohibited the operation of the existing Boiler 2.

31. Boiler 3 is a steam generating unit that commenced construction after June 19, 1984, which has a heat input capacity from fuels combusted in the steam generating unit of 3,000 hp (100,500,000 MMBtu/hr).

32. In a letter dated February 1, 2006, PREQB made some clarifications as to the language of the Construction Permit.

33. In a letter dated April 4, 2006, PREQB issued a revision to the Construction Permit (Revised Construction Permit), which incorporated changes to the description of the boilers and established new operational limits for Boiler 1.

34. In the cover letter to the Revised Construction Permit, PREQB indicated that the purpose of the revised permit was, in part, to clarify that Boiler 1 was not subject to NSPS Subpart Db. The Revised Construction Permit stated that Boiler 3 would continue to be subject to the subpart. The permit authorized both boilers to burn fuel oil number 2 (diesel) in lieu of fuel oil number 6 at a rate of 1,011 gallons per hour with a sulfur content of 0.5% by weight.

35. On August 24, 2007, Respondent submitted the Continuous Emission Monitor (CEM) and the Continuous Opacity Monitor (COM) Certification Test Protocol (Certification Test Protocol) to the PREQB for review and approval. PREQB approved the Certification Test Protocol on February 14, 2008.

36. On September 19, 2007, Respondent submitted the Boiler System Performance Test Protocol (Performance Test Protocol) to the PREQB for review and approval. PREQB approved the Performance Test Protocol on February 14, 2008.

37. On May 7, 2008, Respondent, EPA and PREQB representatives met at the PREQB's Headquarter Offices in San Juan to follow-up on the progress of the construction of Boiler 3.

38. During the May 7, 2008 meeting Respondent informed EPA and PREQB that the initial startup date of Boiler 3 was December 1, 2007, and that in

accordance with 40 C.F.R. § 60.8, Respondent had to complete the performance test within 180 days of this event or no later than May 29, 2008.

39. During the May 7, 2008 meeting, Respondent also informed EPA and PREQB that ever since the startup date, Boiler 3 had not been able to reach more than approximately 50% of the required normal operational capacity. Respondent contended it had not been able to perform the performance test since the NSPS regulation requires such tests be performed at the maximum production rate at which the facility will be operated.

40. Respondent sent EPA a letter, dated May 7, 2008, explaining in detail its reasons as to why it had not been able to complete the performance test for Boiler 3. Respondent also indicated that it considered the difficulties encountered in performing such test as "force majeure" as covered by the NSPS regulations and requested an additional 180 days to complete the performance test for Boiler 3.

41. In a letter dated May 30, 2008, EPA indicated it had determined that the reasons provided by Respondent did not constitute a "force majeure" as defined in the NSPS regulations and denied Respondent's request for an extension of time.

42. On September 13, 2008, under the authority of Section 113(a) of the Act, EPA issued a Compliance Order (EPA's CO) to Respondent directing it to conduct the initial performance tests for Boiler 3 and to submit the results and a written report of the results of the tests to EPA and PREQB, as specified in the Revised Construction Permit and the NSPS regulations, by September 30, 2008.

43. On September 30, 2008, Respondent submitted the results of the

initial performance test and a written report of the results to EPA and PREQB.

44. In a letter dated October 9, 2008, Respondent informed EPA that it had conducted an initial performance test for Boiler 3 for NO_x and PM on July 31, 2008, and that the test was conducted at an 80% capacity since Boiler 3 was not able to reach the maximum production rate at which it could operate due to mechanical and design problems of the unit. Respondent also informed EPA that it was making arrangements with the manufacturer of Boiler 3 to have the unit modified in order to operate it at its maximum capacity rate (100%).

45. On May 1, 2009, Respondent submitted to EPA and PREQB a written report that included the final results for Boiler 3's March 2009 performance test conducted at the boiler's maximum production rate (100%). The results demonstrated that Boiler 3 was in compliance with the standards established in the NSPS Subpart Db and the Revised Construction Permit for NO_x and PM.

Count 1

46. Paragraphs 1-45 are repeated and re-alleged as if set forth fully herein.

47. Respondent is a "person" within the meaning of Section 302(e) of the Act.

48. Respondent's Facility is subject to the Standards of Performance for Industrial-Commercial-Institutional Steam Generation Units set forth in NSPS Subpart Db, promulgated pursuant to Sections 111 and 114 of the Act.

49. Respondent is an owner and/or operator of Boiler 3, a steam

generating unit, which is an affected facility within the meaning of 40 C.F.R. § 60.2.

50. Respondent's failure to conduct initial performance tests for Boiler 3 no later than 180 days after its initial startup is a violation of 40 C.F.R. § 60.8.

51. Respondent's violation of 40 C.F.R. § 60.8 is a violation of NSPS Subpart Db and Sections 111 and 114 of the Act, for which Respondent is subject to administrative penalties under Section 113(d) of the Act.

Proposed Civil Penalty

Section 113(d) of the Act provides that the Administrator may assess a civil administrative penalty of up to $25,000 per day for each violation of the Act. The Debt Collection Improvement Act of 1996 (DCIA) requires EPA to periodically adjust its civil monetary penalties for inflation. Pursuant to the DCIA, on December 31, 1996, February 13, 2004, and December 11, 2008, EPA adopted regulations entitled Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19 (Part 19). Part 19 provides that the maximum civil penalty per day, pursuant to Section 113(d) of the CAA, should be adjusted up to $27,500 for violations that occurred from January 30, 1997 through March 15, 2004, up to $32,500 for violations that occurred after March 15, 2004 through January 12, 2009, and up to $37,500 for violations that occurred after January 12, 2009. Consistent with Part 19, EPA has amended its civil penalty policies, for example, its CAA Stationary Source Civil Penalty Policy, to increase the initial gravity component of the penalty calculation by 10% for violations which occurred on or after January 30, 1997, increase the gravity component by an

additional 17.23% for violations which occurred March 15, 2004 through January 12, 2009, for a total increase of 28.95%, and further increase it by an additional 9.83% for violations that occurred after January 12, 2009.

In determining the amount of penalty to be assessed, Section 113(e) of the Act requires that the Administrator consider the size of the business, the economic impact of the penalty on the business, the violator's full compliance history and good faith efforts to comply, the duration of the violation as established by any credible evidence, the payment by the violator of penalties previously assessed for the same violation, the economic benefit of noncompliance, the seriousness of the violation and other factors as justice may require.

Respondent's violation alleged in Count 1 results in Respondent being subject to the assessment of administrative penalties pursuant to Section 113(d) of the Act. The proposed penalty has been prepared in accordance with the criteria in Section 113(e) of the Act, and in accordance with the guidelines set forth in EPA's "Clean Air Act Stationary Source Civil Penalty Policy" (CAA Penalty Policy), which reflects EPA's application of the factors set forth in Section 113(e) of the Act.

EPA proposes a total penalty of $33,527 for the count alleged in this Complaint. Below is a brief narrative explaining the reasoning behind the penalty proposed, along with the reasoning behind various general penalty factors and adjustments that were used in the calculation of the total penalty amount.

Preliminary Deterrence Component of Proposed Penalty

The CAA Penalty Policy indicates that the preliminary deterrence amount is determined by combining the gravity component and the economic benefit component of the penalty calculated. The gravity component includes, as applicable, penalties for actual harm, importance to the regulatory scheme, size of violator and adjustments to the gravity component for degree of willfulness or negligence, degree of cooperation, prompt reporting, correction, history of non-compliance and environmental damage. Actual harm is calculated, where applicable, in accordance with the level of the violation, the toxicity of pollutant, the sensitivity of the environment, and the length of time of violation.

Gravity Component

Count 1: Violation of 40 C.F.R. § 60.8

Respondent failed to timely conduct the required initial performance test, which is a testing violation. The CAA Penalty Policy directs that the proposed initial gravity component of the penalty be $5,000 for late performance tests. Therefore, for this Count, EPA proposes a gravity component of $5,000 for Respondent's penalty associated with the importance to the regulatory scheme.

The CAA Penalty Policy also directs that a penalty be assessed, where appropriate, for the length of time of a violation. The affected unit (Boiler 3) started operations in December 1, 2007 and was required to conduct the initial tests no later than May 29, 2008. The tests were conducted and completed on July 31, 2008, 2 months and 3 days after the latest allowable compliance date. The CAA Penalty Policy directs that an $8,000 penalty be proposed for the length

of violation where the length of violation is between two and three months. Therefore, for this Count, EPA proposes a penalty of $8,000 for the length of violation component of the penalty.

Inflation Adjustment

Pursuant to the Debt Collection Improvement Act (DCIA), 31 U.S.C. §§ 3701 *et seq.*, and 40 C.F.R. Part 19, the regulation promulgated pursuant to the DCIA, and the associated amendments to EPA's CAA Penalty Policy, the CAA Penalty Policy "preliminary deterrence" amount should be adjusted 10% for inflation for all violations occurring January 30, 1997 through March 15, 2004, further adjusted an additional 17.23% for all violations occurring on March 15, 2004 until January 12, 2009, and further adjusted an additional 9.83% for all violations occurring after January 12, 2009. The gravity component, which includes the penalties proposed for Count 1 unadjusted for inflation, is $13,000. Inflation adjustments for violations were done in accordance with the DCIA requirements. The violation alleged in this Complaint occurred prior to January 13, 2009, therefore the total inflation adjustment applied for the violation was 28.95%, which resulted in a total inflation adjustment of $3,763.50, resulting in a total proposed penalty of $16,763.50 for the gravity component of the penalty.

Size of Violator

The CAA Penalty Policy directs that a penalty be proposed that takes into account the size of violator, determined by the violator's net worth. Based on the

2006 Puerto Rico State Department Annual Report, Respondent's net worth is estimated at $217,948,000. The CAA Penalty Policy directs EPA to propose a penalty of $70,000, plus $25,000 for every additional $30,000,000 or fraction thereof for violators with this net worth. However, the CAA Penalty Policy states that where the size of the violator figure represents more than 50% of the total preliminary deterrence amount, the litigation team may reduce the size of the violator figure to 50% of the preliminary deterrence amount. The preliminary deterrence amount includes the penalties for the importance to the regulatory scheme, the length of time a violation continues and the size of violator. In accordance with the CAA Penalty Policy, EPA may reduce the penalty associated with the size of violator to 50% of the preliminary deterrence amount. In this case EPA is using the discretion provided it in the policy and is proposing a $16,763.50 penalty for the size of violator component of the penalty.

Economic Benefit Component

In addition to a penalty for the gravity component, the CAA Penalty Policy directs that EPA determine and propose a penalty for the economic benefit derived from non-compliance. The policy explains that the economic benefit component of the penalty should be derived by calculating the amount the violator benefited from delayed and/or avoided costs. EPA determined that Respondent was required to conduct initial performance tests for NO_x and PM on the affected units. EPA estimates that such tests should cost approximately $50,000, and that delaying the tests from May 29 to July 31, 2008, represented an economic benefit to Respondent of $333. The CAA Penalty Policy indicates

that EPA has the discretion not to seek the economic benefit component where it is less than $5,000. EPA is using the discretion provided it in the policy and is not seeking a penalty for Economic Benefit.

Total Proposed Penalty for Violations Alleged in this Complaint

EPA proposes a total penalty of $33,527.00 for the violations alleged in this Complaint.

Notice of Opportunity to Request a Hearing

The hearing in this matter is subject to the Administrative Procedure Act, 5 U.S.C. § 552 *et seq*. The procedures for this matter are found in EPA's Consolidated Rules of Practice, a copy of which is enclosed with the transmittal of this Complaint. References to specific procedures in this Complaint are intended to inform you of your right to contest the allegations of the Complaint and the proposed penalty and do not supersede any requirement of the Consolidated Rules of Practice.

You have a right to request a hearing: (1) to contest any material facts set forth in the Complaint; (2) to contend that the amount of the penalty proposed in the Complaint is inappropriate; or (3) to seek a judgment with respect to the law applicable to this matter. In order to request a hearing you must file a written Answer to this Complaint along with the request for a hearing with the EPA Regional Hearing Clerk within thirty (30) days of your receipt of this Complaint. The original and a copy of the Answer and request for a hearing must be filed at the following address:

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

A copy of the Answer and the request for a hearing, as well as copies of all other papers filed in this matter, are to be served on EPA to the attention of EPA counsel at the following address:

Héctor L. Vélez Cruz
Assistant Regional Counsel
Office of Regional Counsel, Caribbean Team
U.S. Environmental Protection Agency - Region 2
Centro Europa Building, Suite 417
1492 Ponce de León Avenue
San Juan, Puerto Rico 00907.

Your Answer should, clearly and directly, admit, deny, or explain each factual allegation contained in this Complaint with regards to which you have any knowledge. If you have no knowledge of a particular factual allegation of the Complaint, you must so state and the allegation will be deemed to be denied. The Answer shall also state: (1) the circumstances or arguments which you allege constitute the grounds of a defense; (2) whether a hearing is requested; and (3) a concise statement of the facts which you intend to place at issue in the hearing.

If you fail to serve and file an Answer to this Complaint within thirty (30) days of its receipt, Complainant may file a motion for default. A finding of default constitutes an admission of the facts alleged in the Complaint and a waiver of your right to a hearing. The total proposed penalty becomes due and payable

without further proceedings thirty (30) days after the issue date of a Default Order.

Settlement Conference

EPA encourages all parties against whom the assessment of civil penalties is proposed to pursue the possibilities of settlement by informal conferences. However, conferring informally with EPA in pursuit of settlement does not extend the time allowed to answer the Complaint and to request a hearing. Whether or not you intend to request a hearing, you may confer informally with the EPA concerning the alleged violations or the amount of the proposed penalty. If settlement is reached, it will be in the form of a written Consent Agreement which will be forwarded to the Regional Administrator with a proposed Final Order. You may contact EPA counsel, Héctor L. Vélez Cruz at (787) 977-5850 or at the address listed above, to discuss settlement. If Respondent is represented by legal counsel in this matter, Respondent's counsel(s) should contact EPA.

Payment of Penalty in lieu of Answer, Hearing and/or Settlement

Instead of filing an Answer, requesting a hearing, and/or requesting an informal settlement conference, you may choose to pay the full amount of the penalty proposed in the Complaint. Such payment should be made by a cashier's or certified check payable to the Treasurer, United States of America, marked with the docket number and the name of the Respondents which appear

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

A copy of your letter transmitting the check and a copy of the check must be sent simultaneously to EPA counsel assigned to this case at the address provided under the section of this Complaint entitled Notice of Opportunity to Request a Hearing. Payment of the proposed penalty in this fashion does not relieve one of responsibility to comply with any and all requirements of the Clean Air Act.

Dated: 09-18-09

Carl Axel-P. Soderberg, Director
Caribbean Environmental Protection Division

To: Mr. Joaquín Bacardí III
President
Bacardí Corporation
P.O. Box 363549
San Juan, Puerto Rico 00936-3549

cc: Mr. Luis Sierra, Chief
Enforcement Section Air Quality Area
Puerto Rico Environmental Quality Board
P.O. Box 11488
Santurce, Puerto Rico 00910

IN THE MATTER OF: **Bacardi Corporation** P.O. Box 363549 San Juan, PR 00936-3549 **RESPONDENT** In a proceeding under Section 113(d) of the Clean Air Act 42 U.S.C. §7413(d)	**COMPLAINT** **and** **NOTICE OF OPPORTUNITY TO REQUEST A HEARING** Index No. CAA-02-2009-1220

CERTIFICATE OF SERVICE

I certify that the foregoing Complaint was sent to the following persons, in the manner specified, on the date below:

Original & Copy Federal Express

Karen Maples
Regional Hearing Clerk
U.S. Environmental Protection Agency
290 Broadway-16th Floor
New York, NY 10007-1866

Copy by Certified Mail
Return Receipt

Mr. Joaquín Bacardi III
President
Bacardi Corporation
P.O. Box 363549
San Juan, PR 00936-3549

Regular Mail

Mr. Luis Sierra, Chief
Enforcement Section Air Quality Area
Puerto Rico Environmental Quality Board
P.O. Box 11488
Santurce, Puerto Rico 00910

Dated: September 21, 2009