

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)

CONSENT AGREEMENT
and Attached Final Order
CAA-02-2009-1220

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. 2
2010 FEB 25 AM 11:38
REGIONAL HEARING
CLERK

Preliminary Statement

The United States Environmental Protection Agency (EPA) issues this Consent Agreement and attached Final Order under the authority of the Clean Air Act ("CAA" or "Act"), 42 U.S.C. § 7401 et seq., at 42 U.S.C. § 7413(d), Section 113(d), and 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 (Consolidated Rules of Practice). The Complainant in this matter is the Director of the Caribbean Environmental Protection Division (Director), EPA, Region 2. The Complainant is delegated the authority to issue CAA Section 113(d) Complaints and Consent Agreements on behalf of EPA Region 2, which includes the State of New York, the State of New Jersey, the Commonwealth of Puerto Rico, and the Territory of the U.S. Virgin Islands. The Regional Judicial Officer of EPA Region 2 is duly delegated the authority to execute CAA Section 113(d) Final Orders.

On September 8, 2009, the United States Department of Justice granted EPA's request for a waiver of the CAA Section 113(d) 12-month limitation on EPA's authority to initiate an administrative action against Barcardi Corporation (Respondent).

Pursuant to 40 C.F.R. § 22.13(a), any proceeding subject to the Consolidated Rules of Practice is commenced by filing with the Regional Hearing Clerk a complaint conforming to § 22.14. On September 18, 2009, EPA issued a Complaint and Notice of Opportunity to Request a Hearing CAA-02-2009-1220 (Complaint) to Respondent for civil monetary penalties. In the Complaint, EPA alleged that Respondent violated 40 C.F.R. Part 60 Subpart A, 40 C.F.R. §§ 60.1 - 60.19 the "New Source Performance Standards General Provisions," and 40 C.F.R. Part 60, Subpart Db, 40 C.F.R. §§ 60.40b - 60.49b, the "Standards of Performance for Industrial-Commercial-Institutional Steam Generating Units" (NSPS Subpart Db) promulgated pursuant to Sections 111 and 114 of the Act.

In accordance with 40 C.F.R. § 22.18(b), Complainant and Respondent have agreed to resolve the Complaint by entering into this Consent Agreement and by the issuance of a Final Order.

For purposes of this proceeding Respondent: (1) admits that EPA has jurisdiction over the subject matter as alleged herein; (2) neither admits nor denies specific factual allegations contained in the Complaint; (3) consents to the terms of agreement set forth in this Consent Agreement; and (4) consents to the issuance of the attached Final Order.

Consent Agreement

Based on the foregoing, and in accordance with federal laws and regulations, it is agreed that:

1. Pursuant to Section 113(d) of the Act, Respondent shall pay a civil penalty in the amount of TWENTY THOUSAND DOLLARS (\$20,000.00) in accordance with paragraphs 2 and 3 of this Consent Agreement.
2. Respondent agrees to pay the above stated amount in four (4) payments:
 - a. an initial payment in the amount of FIVE THOUSAND DOLLARS (\$5,000.00) shall be made within forty-five (45) calendar days from the date the Regional Judicial Officer executes this Consent Agreement as a Final Order (Effective Date);
 - b. a second payment in the amount of FIVE THOUSAND DOLLARS (\$5,000.00) shall be made within one hundred thirty-five (135) calendar days from the Effective Date;
 - c. a third payment in the amount of FIVE THOUSAND DOLLARS (\$5,000.00) shall be made within two hundred twenty-five (225) calendar days from the Effective Date; and
 - d. a fourth and final payment in the amount of FIVE THOUSAND DOLLARS (\$5,000.00) shall be made within three hundred fifteen (315) calendar days from the Effective Date.
3. Respondent shall pay the penalty of TWENTY THOUSAND DOLLARS (\$20,000.00) by cashiers' or certified checks, payable to the "Treasurer of the United States of America" or by wire transfers.
4. Respondent shall clearly identify, with either form of payment, the name and docket number of this case, set forth in the caption on the first page of this document

- a. Respondent shall mail the checks to:

US Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO 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.

- b. Alternatively, Respondent shall make wire transfers to:

WIRE TRANSFERS:
Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York NY 10045.

Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency."

5. Within five (5) days of making each payment, Respondent shall send a copy of each check or a record of each wire transfer, identifying whether the payment is the first, second, third, or fourth payment to each of the following individuals:

Francisco Claudio
Environmental Engineer
Multimedia, Permits and Compliance Branch
Caribbean Environmental Protection Agency
U.S. Environmental Protection Agency Region 2
1492 Ponce de León Ave., Suite 417
San Juan, PR 00907-4127
Fax number: (787) 289-7104,

Héctor L. Vélez Cruz, 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

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

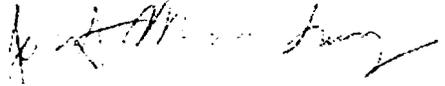
6. If Respondent fails to make full and complete payment of the \$20,000.00 penalty that is required by this Consent Agreement and Final Order, this case may be referred by EPA to the United States Department of Justice and/or the United States Department of the Treasury for collection. In such an action, pursuant to Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5), and 31 U.S.C. § 3717, Respondent shall pay the following amounts:
- a. Interest. If Respondent fails to make payment, or makes partial payment, any unpaid portion of the assessed penalty shall bear interest at the rate established pursuant to 31 U.S.C. § 3717 and 26 U.S.C. § 6621 from the payment Due Date.

- b. Handling Charges. Pursuant to 31 U.S.C. § 3717(e)(1), a monthly handling charge of fifteen dollars (\$15.00) shall be paid if any portion of the assessed penalty is more than thirty (30) days past the payment Due Date.
- c. Attorney Fees, Collection Costs, Nonpayment of Penalty. If Respondent fails to pay the amount of an assessed penalty on time, pursuant to 42 U.S.C. § 7413(d)(5), in addition to such assessed penalty and interest and handling assessments, Respondent shall also pay the United States' enforcement expenses, including but not limited to attorney fees and costs incurred by the United States for collection proceedings, and a quarterly nonpayment penalty for each quarter during which such a failure to pay persists. Such nonpayment penalty shall be ten percent of the aggregate amount of Respondent's outstanding penalties and nonpayment penalties accrued from the beginning of such quarter.

7. This Consent Agreement and attached Final Order constitute a settlement by EPA of all claims for civil penalties pursuant to the Clean Air Act for violations alleged in the Complaint. Nothing in this Consent Agreement and attached Final Order is intended to nor shall be construed to operate in any way to resolve any criminal liability of the Respondents, or to affect the right of the United States to pursue appropriate injunctive or other equitable relief for any violations of law. Compliance with this Consent Agreement and attached Final Order shall not be a defense to any actions subsequently commenced pursuant to Federal laws and regulations administered by EPA, and it is the responsibility of the Respondents to comply with such laws and regulations.
8. This Consent Agreement is being entered into voluntarily and knowingly by the parties in full settlement of Respondent's alleged violations of the Act set forth in the Complaint.

9. Respondent has read the Consent Agreement, finds it reasonable and consents to the terms and issuance as a Final Order.
10. Respondent explicitly waives its right to request a hearing and/or contest allegations in this Consent Agreement and explicitly waives its right to appeal the attached Final Order.
11. Respondent waives any right it may have pursuant to 40 C.F.R. § 22.08 to be present during discussions with, or to be served with and to reply to any memorandum or communication addressed to, the Presiding Officer where the purpose of such discussion, memorandum, or communication is to recommend that such official accept this Consent Agreement and issue the attached Final Order.
12. Each party to this Consent Agreement shall bear its own costs and attorneys fees in the action resolved by this Consent Agreement and attached Final Order.
13. This Consent Agreement shall be binding on Respondent and its successors and assignees.
14. Each of the undersigned representative(s) to this Consent Agreement certifies that he or she is duly authorized by the party whom he or she represents to enter into the terms and conditions of this Consent Agreement and bind that party to it.

FOR RESPONDENT:



Jorge Marcano for Joaquín Bacardí III

BY:

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

DATE:

February 24, 2010

FOR COMPLAINANT:



Carl-Axel P. Soderberg, Director
Caribbean Environmental Protection Division
U.S. Environmental Protection Agency - Region 2
Centra Europa Building, Suite 417
1492 Ponce de León Avenue
San Juan, Puerto Rico 0090

DATE:

02-24-10

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2**

IN THE MATTER OF:

Bacardí Corporation
P. O. Box 383549
San Juan, PR 00936-3549,

Respondent

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

FINAL ORDER

Index No. CAA-02-2009-1220

FINAL ORDER

The Regional Judicial Officer of EPA, Region 2, concurs in the foregoing Consent Agreement, in the matter of Bacardí Corporation CAA-02-2009-1220. The Consent Agreement, entered into by the parties, is hereby approved and issued, as a Final Order, effective immediately.



Date: February 24, 2010

Helen S. Ferrara
Regional Judicial Officer
U.S. Environmental Protection Agency – Region 2

bcc: F. Claudio, 2CEPD/MPCB
T. Rodríguez, 2CEPD/MPCB
S. Carreño, 2ORC/CT
H. Vélez, 2ORC/CT
F. Mills, 2ORC/AB
ACB Source File
ORC Air Chron File

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)

CONSENT AGREEMENT
and Attached Final Order
CAA-02-2009-1220

CERTIFICATE OF SERVICE

I certify that I have this day caused to be sent the foregoing *Consent Agreement and Final Order*, dated February , 2010, and bearing the above-referenced docket number, in the following manner to the respective addressees below:

Original and copy by facsimile, **Overnight Mail to:**

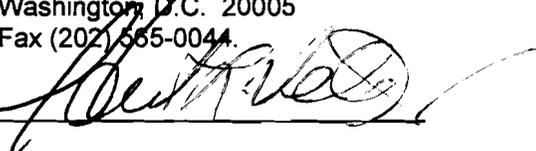
Karen Maples
Regional Hearing Clerk
Region II
U.S. Environmental Protection Agency
290 Broadway, 16th Floor
New York, NY 10007-1866
Fax (212) 637-3202.

Copy by facsimile, **Certified Mail, Return Receipt Requested to:**

Attorney for Respondent:
Eduardo M. Negrón Navas, Esq.
María Luisa González, Esq.
BACARDI CORPORATION
FIDDLER GONZÁLEZ & RODRÍGUEZ PSC.
P.O. Box 363507
San Juan, Puerto Rico 00936-3507
Tel. (787) 759-3106
Fax (787) 759-3108.

Copy by facsimile, **Overnight Mail to:**

Chief Administrative Law Judge:
The Honorable Susan L. Biro
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.

Name: 

Date: 2/24/2010