UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

IN THE MATTER OF: **Mayagüez Medical Center - Dr. Ramón Emeterio Betances, Inc.** **RESPONDENT**	**Docket No. RCRA-02-2016-7106** **Proceeding under Section 3008 of the Solid Waste Disposal Act, as amended, 42 U.S.C. §6928**

ANSWER TO THE COMPLAINT AND REQUEST FOR HEARING

To the Honorable Presiding Officer:

COMES NOW, Mayagüez Medical Center - Dr. Ramón Emeterio Betances, Inc. (the "Respondent"), through the undersigned attorneys, and respectfully alleges, states and prays as follows:

I. COMPLAINT

The allegations contained in the first four (4) introductory paragraphs of Section I of the Complaint contain conclusions of law and not statements of fact and as such do not require an answer. Insofar as an answer is required, they are hereby denied.

JURISDICTION AND GENERAL PROVISIONS

1. The allegations contained in paragraph 1 are conclusions of law and as such do not require an answer. In the alternative, they are hereby denied.

2. The allegations contained in paragraph 2 are conclusions of law and as such do not require an answer. In the alternative, they are hereby denied.

3. The allegations contained in paragraph 3 are conclusions of law and as such do not require an answer. In the alternative, they are hereby denied.

Notice

4. With respect to paragraph 4, Respondent does not have sufficient information in order to be able to admit or deny this paragraph.

Respondent's Background

5. Respondent admits that it is a respondent in this proceeding. It does not admit, however, that it should be the only respondent.

6. The allegation contained in Paragraph 6 is admitted.

7. The allegation contained in Paragraph 7 is admitted.

8. The allegations contained in Paragraph 8 are partially admitted. Respondent admits that it conducts business at this physical location, but it is not the only party that conducts business within the premises. To the extent that the "Facility" comprises all of the premises, the allegations are denied.

9. With respect to paragraph 9, Respondent admits that it is the current operator and administrator of a hospital facility and certain other areas within the premises pursuant to a contract with the Municipality of Mayagüez (the "Municipality"). Respondent clarifies that the Municipality has been and remains the legal owner of the Facility located at the above physical location.

10. The allegations contained in Paragraph 10 are a conclusion of law and as such do not require an answer. The foregoing notwithstanding, it is admitted.

11. The allegations contained in Paragraph 11 are a conclusion of law and as such do not require an answer. In the alternative, they are hereby denied.

12. The allegations contained in Paragraph 12 are a conclusion of law and as such do not require an answer. In the alternative, they are hereby denied.

13. Respondent admits that it provided the EPA with a Notification of Hazardous Waste Activity identifying itself as a large quantity generator, but denies that it was necessary given the circumstances. Based on information and belief, the waste that was generated was a universal waste.

14. The allegations contained in Paragraph 14 are a conclusion of law and as such do not require an answer. In the alternative, they are hereby denied.

15. The allegations contained in Paragraph 15 contain conclusions of law which do not require a response.

EPA INVESTIGATIVE ACTIVITIES

16. The allegations contained in Paragraph 16 are admitted with the clarification regarding the scope of the term "Facility" above.

Pharmacy Area

17. The allegations contained in Paragraph 17 are admitted.

18. With respect to Paragraph 18, it is only admitted that there were numerous communications between the EPA representative and Ms. Guzmán during the inspection of the area. The rest of the paragraph is denied as alleged because it constitutes an interpretation of the communications. It also contains conclusions of law.

19. With respect to Paragraph 19, it is only admitted that there were numerous communications between the EPA representative and Ms. Guzmán during the inspection of the area. The rest of the paragraph is denied as alleged because it constitutes an interpretation of the communications. It also contains conclusions of law.

20. The allegations contained in Paragraph 20 are denied.

Biomedical Waste Container Area

21. The allegations contained in Paragraph 21 are admitted to the extent that certain containers were observed. The rest of the allegations in Paragraph 21 are denied for lack of sufficient knowledge as to what the inspector observed and also contains conclusions of law.

22. It is admitted that Mr. Luis Quintana is the Pharmacy Warehouse Supervisor. The rest of the paragraph is denied as alleged and also contains conclusions of law.

23. The allegations contained in Paragraph 23 are denied for lack of sufficient knowledge and also contain conclusions of law and interpretations of the communications with Respondent.

Biosafety Warehouse Area

24. The allegations contained in Paragraph 24 are admitted to the extent that certain boxes were observed. The rest of the allegations in Paragraph 24 are denied for lack of sufficient knowledge as to what the inspector observed.

25. It is admitted that certain boxes had been at the hospital premises at least since 2010 when there was a change in the operator of the hospital. The rest is denied.

26. The allegations contained in Paragraph 26 are denied.

Boiler Room Area

27. The allegations contained in Paragraph 27 are admitted to the extent that certain containers were observed. The rest of the allegations contained in Paragraph 27 are denied for lack of sufficient knowledge as to what the inspector observed.

28. The allegations contained in Paragraph 28 are admitted to the extent that certain containers were observed. The rest of the allegations contained in Paragraph 28 are

denied for lack of sufficient knowledge as to what the inspector observed.

29. It is admitted that certain containers in the area had been at the hospital at least since 2010 when there was a change in the operator of the hospital. The rest is denied.

30. Paragraph 30 is denied.

EPA Request for Information

31. Paragraph 31 is admitted only with respect to the fact that a closing meeting was held and with respect to the general nature of the alleged requirements that Respondent needed to comply with. The rest of the paragraph is denied to the extent that it contains conclusions of law.

32. It is admitted that EPA sent Respondent an email on or about May 11, 2015.

33. It is admitted that Respondent sent an email response to EPA on or about June 5, 2015.

34. The allegations contained in Paragraph 34 are denied as alleged.

35. The allegations contained in Paragraph 35 are denied as alleged.

Any facts alleged in the Complaint not specifically admitted are hereby denied.

COUNT

Respondent's Failure to Make Hazardous Waste Determination

36. Paragraph 36 is a statement that does not require a response. In the alternative, it is denied.

37. Paragraph 37 contains conclusions of law which do not require a response. In the alternative, it is denied.

38. Paragraph 38 is denied.

39. Paragraph 39 contains conclusions of law which do not require a response. In the alternative, it is denied.

40. Paragraph 40 is denied.

II. PROPOSED CIVIL PENALTY

Respondent hereby objects to the proposed penalty set forth in the Complaint as unwarranted, excessive, unreasonable, arbitrary and capricious and disproportionate.

III. COMPLIANCE ORDER

The items in this Section have been or will be complied with in timely manner and included in the compliance certification required under Section III(4) of the Complaint.

IV. NOTICE OF LIABILITY FOR ADDITIONAL CIVIL PENALTIES

This Section contains statements or conclusions of law which do not require a response.

V. PROCEDURES GOVERNING THIS ADMINISTRATIVE LITIGATION

This Section contains statements or conclusions of law which do not require a response.

A. Answering the Complaint

Please see above for the answers to the Complaint.

Respondent hereby raises the following defenses:

1. Affirmative Defenses

a. The Complaint fails to state a claim upon which relief can be granted.

b. The allegations in the Complaint involve third party actions or omissions, and thus there are other indispensable parties.

c. The materials at issue constitute commercial chemical products or pharmaceutical products, not hazardous wastes.

d. Respondent was and is in compliance with the Act.

e. Respondent does not have a prior history of noncompliance with the Act.

f. There is no evidence that any alleged noncompliance caused any actual harm to the human health or the environment.

g. The volume of waste, if any, involved in any alleged violation, if any, is small.

h. The alleged findings in the inspection report mentioned in the Complaint are not accurate or representative of the conditions of Respondent's operation.

i. Respondent is a good corporate citizen and not an unwilling party who needs enforcement to compel compliance.

j. Respondent has acted in good faith.

k. Respondent did not derive any economic benefit from the alleged violations.

l. The proposed penalty is unwarranted, excessive, unreasonable, arbitrary and capricious and is not sustained by the totality of the administrative record.

m. The proceeding constitutes selective enforcement.

n. The proposed penalty is disproportionate compared to penalties imposed by EPA to other members of the regulated community subject to similar enforcement actions in similar circumstances.

o. The Respondent's ability to pay is limited due to Respondent's poor financial condition, including the pending significant debt owed by the Puerto Rico government's public health insurance program. The proposed penalty will subject the Respondent to additional financial hardship.

p. Respondent does not waive and thus reserves the right to raise any other affirmative defenses of law or fact as the same may be discovered in the course of the investigation of the allegations and in the course of any discovery.

B. Opportunity to Request a Hearing

Respondent hereby requests a hearing.

C. Failure to Answer

This Section does not require a response.

D. Filing of Documents Filed After the Answer

This Section does not require a response.

E. Exhaustion of Administrative Remedies

This Section does not require a response.

VI. INFORMAL SETTTLEMENT CONFERENCE

An informal settlement conference was held on November 2, 2016. The parties continue to hold good faith settlement discussions.

VII. RESOLUTION OF THIS PROCEEDING WITHOUT HEARING OR CONFERNCE

This Section does not require a response.

WHEREFORE, in view of the foregoing, Respondent respectfully requests that after the appropriate procedures, including the hearing requested herein, the Hearing Examiner dismiss the Complaint in its entirety.

Respectfully submitted, in San Juan, Puerto Rico, this 28th day of November, 2016.

Pietrantoni Méndez & Alvarez
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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2

IN THE MATTER OF: Mayagüez Medical Center Dr. Ramón Emeterio Betances, Inc. RESPONDENT	MOTION DOCKET NUMBER RCRA-02-2016-7106

CERTIFICATE OF SERVICE

I certify that I have this day caused to be sent the foregoing **Answer to the Complaint and Request for Hearing**, dated November 28, 2016, and bearing the above-referenced docket number, in the following manner to the respective addressees below:

ORIGINAL AND COPY BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, AND COPY BY ELECTRONIC TO:

Ms. Karen Maples
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Region 2
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COPY TO COMPLAINANT BY ELECTRONIC MAIL AND CERTIFIED MAIL, RETURN RECEIPT REQUESTED TO:

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11/28/2016
Date

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