UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region 2

IN THE MATTER OF: **US Virgin Islands Water and Power Authority** Respondent Proceeding under Section 3008 of the Solid Waste Disposal Act, as amended, 42 U.S.C. § 6928	**COMPLAINT, COMPLIANCE ORDER, AND NOTICE OF OPPORTUNITY FOR HEARING** Docket No. RCRA-02-2012-7108

COMPLAINT

This is a civil administrative proceeding instituted pursuant to Section 3008 of 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.* ("the Act" or "RCRA"). The United States Environmental Protection Agency ("EPA") has promulgated regulations governing the handling and management of hazardous waste, universal waste and used oil at 40 C.F.R. Parts 260 through 279.

This COMPLAINT, COMPLIANCE ORDER AND NOTICE OF OPPORTUNITY FOR HEARING ("Complaint") serves notice of EPA's preliminary determination that US Virgin Islands Water and Power Authority (hereinafter "Respondent" or "VIWAPA") has violated requirements of RCRA and regulations implementing RCRA, concerning the management of hazardous waste, universal waste and used oil at its plants in St. Thomas and St. Croix, US Virgin Islands.

Pursuant to Section 3006(b) of the Act, 42 U.S.C. § 6926(b), whereby the Administrator of EPA may, if certain criteria are met, authorize a state to operate a "hazardous waste program" (within the meaning of Section 3006 of the Act, 42 U.S.C. § 6926) in lieu of the federal hazardous waste program, the Government of the US Virgin Islands ("USVI") is not authorized by EPA to conduct a hazardous waste management program under Section 3006 of RCRA, 42 U.S.C. § 6926. Therefore, EPA retains primary responsibility for requirements promulgated pursuant to RCRA. As a result, all requirements in 40 C.F.R. Parts 260 through 268 and 270 through 279 relating to hazardous waste are in effect in the USVI and EPA has the authority to implement and enforce these regulations.

Section 3008(a)(1) of RCRA, 42 U.S.C. § 6928(a)(1), provides, in part, that "whenever on the basis of any information the Administrator [of EPA] determines that any person has violated or is in violation of any requirement of this subchapter [Subtitle C of RCRA], the Administrator may issue an order assessing a civil penalty for any past or current violation."

The Complainant in this proceeding, the Director of the Caribbean Environmental Protection Division ("CEPD"), EPA, Region 2, has been duly delegated the authority to institute this action.

NOTICE

1. EPA has given notice of this action to the USVI.

Jurisdiction and Background Legal Allegations

2. This Tribunal has jurisdiction over the subject matter of this action pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), and 40 C.F.R. § 22.1(a)(4).

3. RCRA establishes a comprehensive federal regulatory program for the management of hazardous waste, 42 U.S.C. § 6901 *et seq*. The Administrator of EPA, pursuant to Sections 3002(a) and 3004(a) of RCRA, 42 U.S.C. §§ 6922(a) and 6924(a), promulgated regulations for the management of hazardous waste and setting standards for generators and treatment, storage and disposal facility standards.

4. Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), authorizes the Administrator of EPA to issue an order assessing a civil penalty and/or requiring compliance for any past or current violation(s) of Subtitle C of RCRA.

5. The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, requires EPA to adjust its penalties for inflation on a periodic basis. The maximum civil penalty under Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), for violations after January 12, 2009, is $37,500 per day of violation.

Respondent's Background

6. Respondent is a semi-autonomous governmental instrumentality of the Government of USVI.

7. Respondent is a non-profit public corporation that contributes directly to the USVI Government's budget through an annual payment in lieu of taxes to the Virgin Islands Treasury.

8. Respondent is a "person," as that term is defined in Section 1004(15) of the Act, 42 U.S.C. § 6903(15) and 40 C.F.R. § 260.10.

9. To the best of EPA's knowledge, Respondent operates two (2) plants within the territory of the USVI; Krum Bay Facility located at Charlotte Amalie, St. Thomas, and Richmond Facility located at Christiansted, St. Croix (collectively referred herein as "the Facilities").

10. The Facilities consist of power generation and desalinization plants, which also provide services to maintain the electric power transmission and water distribution lines.

11. The North America Industry Classification System codes applicable for the Facilities are Codes 221112 and 221310.

12. Code 221112 of the North America Industry Classification System, applies to facilities that are primarily engaged in operating fossil fuel powered electric power generation plants. The electric energy produced in these establishments is provided to electric power transmission systems or to electric power distribution systems.

13. Code 221310 of the North America Industry Classification System applies to facilities that operate water treatment plants and/or water supply systems. The water supply system may include pumping stations, aqueducts, and/or distribution mains. The water may be used for drinking, irrigation, or other uses.

14. The Krum Bay Facility has approximately one hundred and twenty (125) employees and operates twenty four hours a day, seven days a week.

15. The Krum Bay Facility's power generation, water desalinization units and fleet management building are located in a peninsula enclosed by the Krum Bay and the Lindberg Bay. The Krum Bay Facility supplies electricity and potable water to St. Thomas and St. John.

16. The Richmond Facility has approximately one hundred (100) employees and operates twenty four hours a day, seven days a week.

17. The Richmond Facility is bordered by Christiansted Bay to the North, an abandoned mid-rise residential complex to the East and a mid-rise residential complex to the West. To the South, a local road separates the plant from a water tank and an electricity substation.

18. Respondent's Facilities constitute a "Facility," within the meaning of 40 C.F.R. § 260.10.

19. In the course of its normal operations at the Facilities, Respondent generates "solid waste," as that term is defined in 40 C.F.R. § 261.2.

20. In the course of its normal operations at the Facilities, Respondent generates "hazardous waste," as that term is defined in 40 C.F.R. § 261.3.

21. In the course of its normal operations at its Facilities, Respondent generates "universal waste," as that term is defined in 40 C.F.R. § 273.9.

22. In the course of its normal operations at its Facilities, Respondent generates "used oil," as that term is defined in 40 C.F.R. § 279.1.

Notification of Hazardous Waste Generation

23. EPA's RCRA database (RCRAInfo) reveals that, pursuant to Section 3010 of RCRA, 42 U.S.C. § 6930, VIWAPA filed Notifications of Regulated Waste Activity ("Notifications") on October 14, 1980 and June 4, 1996, for its Richmond and Krum Bay Facilities, respectively.

24. VIWAPA's Notifications were prepared by an employee and/or agent of VIWAPA in the course his/her duties.

25. The Krum Bay Facility Notification indicates that VIWAPA is not a generator of hazardous waste, but identifies the following waste codes to describe the hazardous waste generated at the Facility: D001 (ignitable), D002 (corrosive), and D003 (reactive).

26. EPA assigned the Krum Bay Facility the Identification Number VID980536056.

27. The Richmond Facility Notification indicates that VIWAPA is not a generator of hazardous waste, but it identifies the following waste codes to describe the hazardous waste generated at the Facility: D001 (ignitable), D002 (corrosive), and D003 (reactive).

28. On or about January 18, 2007, the RCRAInfo database, based on hazardous waste manifests data, identified the Richmond Facility generator status as Small Quantity Generator of hazardous waste and, on or about January 1, 2008, it was changed to Conditionally Exempt Small Quantity Generator.

29. EPA assigned the Richmond Facility the Identification Number VID980301592.

EPA Investigative and Initial Enforcement Activities

The 2003 Inspections

30. On September 25 and 26, 2003, duly designated EPA representatives conducted multimedia inspections at the Facilities. These inspections included RCRA compliance evaluation inspections under 3007 of RCRA, 42 U.S.C. § 6927 ("the 2003 Inspections").

31. On August 4, 2004, a §§ 3007 and 3008 Request for Information and Notice of Violation Letter ("Request for Information and Notice of Violation") was issued to the Respondent. The Request for Information and Notice of Violation addressed issues related to findings of the 2003 Inspections, regarding the management of hazardous waste, universal waste and used oil, and notified Respondent of the following violations: failure to make hazardous waste determinations on paint waste related materials and waste/used oil impacted materials (e.g. rags, absorbent pads), failure to properly manage universal waste (e.g. fluorescent bulbs) and failure to comply with used oil requirements.

32. On September 8, 2004, Respondent submitted a written response ("the Response") addressing, in part, the issues identified on the Request for Information and Notice of Violation.

33. As part of the Response, VIWAPA developed and submitted two (2) Standard Operating Procedures ("SOPs") for the handling and storage of used oil, oily rags, and filters, and for the handling, storage and disposal of paint.

34. Respondent stated in its Response that it generates used oil from equipment/vehicle maintenance activities such as motor oil, lubricating oil, gear-case oil, pump oil, electrical insulating oil, transmission oil, hydraulic oil, and miscellaneous used oils.

35. The SOPs provided procedures to evaluate the applicability of hazardous waste determinations on paint related and oil derived waste streams.

36. After evaluating VI WAPA's Response to the Request for Information and Notice of Violation, the EPA determined that the Response was adequate and no further action was warranted at the time.

The 2010 Inspections

37. On August 5 and 6, 2010, a duly designated EPA representative conducted compliance evaluation inspections under Section 3007 of RCRA, U.S.C. § 6927 at the Facilities. The purpose of the inspections was to verify Respondent's compliance with the applicable requirements of RCRA and its implementing regulations (the "2010 Inspections").

38. As a result of the 2010 Inspections, EPA identified several violations related to the management of hazardous waste and used oil at the Facilities.

Krum Bay 2010 Inspection

39. During the Krum Bay Facility 2010 Inspection, EPA found that Respondent failed to make hazardous waste determinations on (waste/used) oil impregnated materials, such as rags and pads; paint waste related materials, such as brushes, rollers, and gallons; and on eleven (11) unidentified 5-gallon containers found nearby the desalinization area.

40. During the Krum Bay 2010 Inspection, the EPA found two (2) unidentified 55-gallon containers with spent solvents (listed hazardous waste) at the drum crusher area. The containers were uncovered and exposed to the elements.

41. During the Krum Bay Facility 2010 Inspection, Mr. George Maxwell, VIWAPA's Environmental Manager, indicated that used oil and spent solvents from maintenance operations are mixed with Fuel Oil No. 6. This mixture is burned at the Facility's boilers for energy recovery.

42. During the Krum Bay Facility 2010 Inspection, Respondent failed to determine whether the total halogen content of used oil burned at the facility is above or below 1,000 ppm total halogens.

43. As part of the 2010 Inspection at the Krum Bay Facility, the EPA representatives and VIWAPA's Environmental Manager, Mr. George Maxwell, held a closing meeting, to discuss EPA's findings and the Facility's noncompliance with RCRA generator and used oil requirements.

Richmond Facility 2010 Inspection

44. During the Richmond Facility 2010 Inspection, EPA found that Respondent failed to make hazardous waste determination on oil (waste/used) impregnated materials such as rags and pads and paint related waste.

45. During the Richmond Facility 2010 Inspection, EPA found that Respondent failed to demonstrate that used oil burned for energy recovery is not a hazardous waste under the rebuttable presumption of 279.10(b)(1)(ii). Respondent failed to determine that the total halogen content of used oil managed at the Facilities is below 1,000 ppm.

46. During the Richmond Facility 2010 Inspection, the EPA representative and VIWAPA's Environmental Specialist, Nicole C. Turnbull, held a closing meeting to discuss EPA's findings and the Facility's noncompliance with RCRA generator and used oil requirements.

The 2011 Inspections

47. On August 9 and 11, 2011, duly designated EPA representatives conducted compliance evaluation inspections under 3007 of RCRA, U.S.C. § 6927 (the "2011 Inspections"). The purpose of the inspections was to verify Respondent's compliance with the applicable requirements of RCRA and its implementing regulations.

48. As a result of the 2011 Inspections, the EPA representatives identified several violations related to the management of hazardous waste, universal waste and used oil at the Facilities. During the 2011 Inspections, EPA found the following violations at the Facilities:

49. Repeated violations at the Krum Bay Facility:

a. failure to manage a hazardous waste program, failure to comply with hazardous waste manifests and pre-transport requirements (i.e. labeling, weekly inspections, accumulation period).
   i. two (2) unidentified 55-gallon containers with spent solvents (listed hazardous waste) were found at the drum crusher area, uncovered and exposed to the elements.
b. failure to make hazardous waste determination on oil (waste/used) impregnated materials such as rags and pads and paint related waste (e.g. rollers, brushes).
c. failure to determine whether the total halogen content of used oil burned at the Facility is above or below 1,000 ppm.

50. Additional (first time) violations at the Krum Bay Facility:

a. accumulation of broken and intact fluorescent bulbs in oversized wood crates and,
b. failure to keep record of the universal waste lamp accumulation period,

51. Repeated Violations at the Richmond Facility included:

a. failure to make hazardous waste determination on oil (waste/used) impregnated materials such as rags and pads, Failure to demonstrate that used oil to be burned for energy recovery had not been mixed with listed hazardous waste.
b. failure to determine whether the total halogen content of used oil burned at the Facility is above or below 1,000 ppm.

52. Additional (first time) Violations at the Richmond Facility included:

a. failure to make hazardous waste determination on the following waste streams:
   i. two (2) thirty cubic yard (30yd3) roll-up containers with oil impacted soil, and;
   ii. two (2) 55-gallon steel containers with crushed fluorescent bulbs.
b. failure to maintain records of the universal waste accumulation period.

53. During the Richmond Facility 2011 Inspection, EPA requested Mr. Rhymer, VIWAPA's Chief Operating Officer, documentation pertaining to the used oil specifications (total halogens). Respondent did not provide EPA with documentation regarding this request.

COUNT 1
Operating Without a Permit

54. Complainant re-alleges each allegation contained in paragraphs "1" through "53," as if fully set forth herein.

55. Respondent became a generator of hazardous waste as defined in 40 C.F.R. § 260.10, for its activities conducted at the Krum Bay Facility since, at least, August 5, 2010.

56. Pursuant to 40 C.F.R. § 262.34(a) and (d), a generator who generates more than 100 kilograms but less than 1,000 kilograms of hazardous waste[1] in a calendar month may accumulate hazardous waste on-site for 180 days or less **without a permit or without having interim status** provided that:

a. the quantity of waste accumulated on-site never exceeds 6,000 kilograms;
b. the date upon which each period of accumulation begins is clearly marked and visible for inspection on each container;
c. while being accumulated on-site, each container and tank is labeled or marked with the words "Hazardous Waste;"
d. the generator complies with the requirements of Subpart I of 40 C.F.R. Part 265, Management of Containers, except for 40 C.F.R §§ 265.176 and 265.178;
   i. hazardous waste containers must always be closed during storage, except when it is necessary to add or remove waste;
   ii. a container holding hazardous waste must not be opened, handled or stored in a manner in which may rupture the container or cause it to leak;
   iii. at least weekly inspections are conducted;
e. the generator complies with the requirements of 40 C.F.R. § 265.201 in Subpart J of Part 265, Management of Tanks;
f. the generator complies with requirements of Subpart C of Part 265, Preparedness and Prevention, with all applicable requirements under 40 C.F.R. Part 268;

[1] On the 2010 and 2011inspections VIWAPA had accumulated over 500 kg* of hazardous waste at the Krum Bay Facility.

*(2)(55-gallon)=110-gallon of hazardous waste : (110-gallons)(10.52lb/gal)$^{density\ of\ methylene\ chloride:}$
=1157.2lb(1kg/2.20lb)= 526 kg

**Methylene chloride is a halogenated solvent, commonly used in industries as a cleaning agent.*

g. at all times there must be at least one employee either on the premises or on call (i.e., available to respond to an emergency by reaching the Facility within a short period of time) with the responsibility for coordinating all emergency response measures. This employee is the emergency coordinator;
h. the generator must post the following information next to the telephone:
   i. the name and telephone number of the emergency coordinator;
   ii. location of fire extinguishers and spill control material, and, if present, fire alarm; and
   iii. the telephone number of the fire department, unless the Facility has a direct alarm, and;
i. the generator must ensure that all employees are thoroughly familiar with proper waste handling and emergency procedures, relevant to their responsibilities during normal Facility operations and emergencies.

57. Hazardous waste generators may treat waste on site in accumulation tanks or containers without a RCRA permit or interim status provided they are in compliance with the applicable provisions in 40 C.F.R. §262.34 and provided that the treatment is not thermal treatment (56 FR10146, 10168; March 24, 1986).

58. At least since August 5, 2010, Respondent placed and stored spent solvents (listed hazardous waste) in two (2) open (uncovered) 55-gallons containers, mentioned in paragraph "40," without the accumulation start date or the words "Hazardous Waste."

59. At least since August 5, 2010, Respondent stored the containers described in paragraph "40" at the drum crusher area, which is not provided with a telephone or any other communication or alarm system and is remotely located. One of the referenced containers, in addition to be uncovered, was in advanced stage of deterioration (i.e. rusted, dented) and exposed to the elements, which increases the risk of releases of hazardous waste and hazardous waste constituents to the environment.

60. Prior to at least August 5, 2010, Respondent treated[2], through incidental evaporation and dilution (i.e. addition of water via rain), a portion of its spent solvents (i.e. hazardous waste) stored in the open containers described in paragraphs "40" and "58".

61. On or about August 5, 2010, EPA duly designated representatives made VIWAPA's representatives aware of the violations described in paragraphs "40" and "58" through "60." VIWAPA representatives agreed with the EPA findings, and stated their willingness to implement corrective measures.

62. Since at least August 11, 2011, Respondent maintained similar conditions as those mentioned in paragraphs "40" and "58" through "60". However, the containers found were different to those observed during the 2010 Inspection.

[2] According to 40 C.F.R. § 260.10, " treatment" means any method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to neutralize such waste, or so as to recover energy or material resources from the waste, or so as to render such waste non-hazardous, or less hazardous, or less hazardous; safer to transport, store, or dispose; or amendable for recovery, amendable for storage, or reduced in volume.

63. Prior to at least August 11, 2011, Respondent failed to send for off-site treatment and/or disposal its hazardous waste containers with spent solvents, mentioned in paragraph "40". The Facility has exceeded its accumulation threshold of 180 days, illegally disposed of or treated its hazardous waste by evaporation, or by blending and burning it with used oil at the Krum Bay's Facility's boilers. The abovementioned facts demonstrate that hazardous wastes generated at the Krum Bay Facility were improperly and illegally managed.

64. Respondent's failure to treat and store hazardous waste without having a permit or interim status, constitutes a violation of 40 C.F.R. § 262.34(d).

COUNT 2
Failure to Make Hazardous Waste Determinations

65. Complainant re-alleges each allegation contained in paragraphs "1" through "53," inclusive, as if fully set forth herein.

66. Pursuant to 40 C.F.R. § 261.2, subject to certain exclusions, a "solid waste" is any discarded material that includes abandoned, recycled or inherently waste-like materials, as those terms are further defined therein.

67. Pursuant to 40 C.F.R. § 261.2(b), materials are solid wastes if they are "abandoned" by being disposed of, burned or incinerated or accumulated, stored, or treated before or in lieu of being abandoned by being disposed of, burned or incinerated.

68. Pursuant to 40 C.F.R. § 262.11, a person who generates "solid waste," as defined in 40 C.F.R. § 261.2, must determine if the solid waste is a hazardous waste using the procedures specified in that provision.

69. Prior to, at least, August 5, 2010, Respondent generated the following waste streams at the Krum Bay Facility:

a. Eleven (11) unidentified 5-gallon containers found nearby the desalinization area.
b. Paint waste related materials such as paint cans, brushes, and rags found at the drum crusher area, including:
   i. several 5-gallons containers of paint with contents and without lids,
   ii. a cart identified as "EMPTY PAINT CANS" and "OLD BRUSHES ONLY," was observed full of 1-gallon paint containers, which did not meet the "RCRA empty"3 criteria.
c. Oil/Used Oil impacted materials such as rags and absorbent pads:[4]
   i. oil absorbent pads5 accumulated in roll-up containers (20-25 yd3).

[3] Term used to define containers of hazardous waste that are no longer used for such purpose and can be discarded as non hazardous. In order to be rendered as "RCRA empty," the container must comply with the specifications provided in 40 CFR §261.7.

[4] VIWAPA indicated that these oil/used oil related materials are not hazardous waste, but were unable to present evidence of such determination. Pursuant to 40 C.F.R. § 262.40, a generator must keep records of any tests results, waste analyses, or other determinations made in accordance with 262.44 for at least three years from the date the waste was last sent on-site, off-site treatment, storage, or disposal.

70. Prior to, at least, August 11, 2011, Respondent generated the following waste streams at the Krum Bay Facility:

a. Broken fluorescent lamps:[8]
   i. two wood crates were found with broken and unbroken lamps.[6]

71. Prior to, at least, August 6, 2010, Respondent generated the following waste streams at the Richmond Facility:

a. Paint waste related materials found nearby the desalinization unit and at the maintenance area;
   i. one (1) 55-gallons container with paint impregnated materials (e.g. brushes, rollers and crushed 1-5 gallons paint containers.
   ii. several (20 approximately) 1-gallon and three (3) 5-gallon paint containers, which were no longer in use and deteriorated (e.g. rusted)
b. Oil/Used oil impregnated materials such as rags and absorbent pads, which are accumulated at a twenty cubic yard container ($20yd^3$), located at the water/oil separator.

72. Prior to, at least, August 9, 2011, Respondent generated the following waste streams at the Richmond Facility:

a. oil impacted soil
   i. two (2) thirty cubic yard ($30yd^3$) roll-up containers with oil impacted soil were observed at the yard next to the old warehouse.
b. Crushed fluorescent bulbs:[7]
   i. two (2) 55-gallon steel drums with crushed bulbs were observed at the old warehouse.

73. Each of the waste streams identified in paragraph "69" through "72 above are "solid waste," as defined in 40 C.F.R. § 261.2.

74. As of at least August 9, 2011, Respondent was unable to demonstrate whether the materials identified in paragraph "69" through "72" at the Krum Bay Facility constituted or not hazardous wastes.

75. Since, at least, August 6, 2010, Respondent failed to demonstrate whether the materials identified in paragraph "69" through "72 at the Richmond Facility, constituted or not hazardous wastes.

76. Respondent's failure to determine and demonstrate whether each solid waste generated and accumulated at its Facilities constitutes a hazardous waste is a violation of 40 C.F.R. § 262.11.

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[5] VIWAPA also identifies oil/used oil related materials as "oil rags" and "oil pads."
[6] Broken bulbs release mercury and could have impacted the unbroken lamps.
[7] Pursuant to 40 C.F.R. § 273.13, crushed and broken fluorescent bulbs are not longer considered universal waste, and must be managed in accordance with 40 C.F.R. Part 262.

COUNT 3
Failure to Comply with Universal Waste Requirements

77. Complainant re-alleges each allegation contained in paragraphs "1" through "53," inclusive, as if fully set forth herein.

78. Respondent became a small quantity handler of universal waste since, at least, September 25, 2003, and September 26, 2003, for activities related to the generation and accumulation of universal waste lamps at the Facilities.

79. Pursuant to 40 C.F.R. § 273.13 (d), Standards for Small Quantity Handlers of Universal Waste, a small handler of universal waste lamps must manage lamps in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:

a. A small quantity handler of universal waste must contain any lamp in containers or packages that are structurally sound, adequate to prevent breakage, and compatible with the contents of the lamps. Such containers and packages must remain closed and must lack evidence of leakage, spillage or damage that could cause leakage under reasonably foreseeable conditions.
b. A small quantity handler of universal waste must immediately clean up and place in a container any lamp that is broken and must place in a container any lamp that shows evidence of breakage, leakage, or damage that could cause the release of mercury or other hazardous constituents to the environment. Containers must be closed, structurally sound, compatible with the contents of the lamps and must lack evidence of leakage, spillage or damage that could cause leakage or releases of mercury or other hazardous constituents to the environment under reasonably foreseeable conditions.

80. Pursuant to 40 C.F.R. § 273.15(c), a small quantity handler of universal waste who accumulates universal waste must be able to demonstrate the length of time that the universal waste has been accumulated from the date it becomes a waste or is received. The handler may make this demonstration by:

a. Placing the universal waste in a container and marking or labeling the container with the earliest date that any universal waste in the container became a waste or was received;
b. Marking or labeling each individual item of universal waste (e.g., each battery or thermostat) with the date it became a waste or was received;
c. Maintaining an inventory system on-site that identifies the date each universal waste became a waste or was received;
d. Maintaining an inventory system on-site that identifies the earliest date that any universal waste in a group of universal waste items or a group of containers of universal waste became a waste or was received;
e. Placing the universal waste in a specific accumulation area and identifying the earliest date that any universal waste in the area became a waste or was received; or

f. Any other method which clearly demonstrates the length of time that the universal waste has been accumulated from the date it becomes a waste or is received.

81. Prior to at least August 11, 2011, the Respondent failed to accumulate universal waste lamps in structurally sound containers, adequate to prevent breakage. "Used Florescent Lamps"[8] were accumulated in oversized (10ft x 3ft x 3f) wood crates, which did not offer suitable conditions for spent lamps storage, given its storage capacity (i.e. over 300 tubular lamps each crate) and hardness of their material of construction.

82. At least since August 9 and 11, 2011, Respondent failed to demonstrate the length of time that the universal waste has been accumulated from the date it becomes a waste or is received.

83. Respondent's failure to comply with the requirements set forth in 40 C.F.R. § 273.13 (d) and 40 C.F.R. § 273.15(c), constitutes a violation to the Standards for Small Quantity Handlers of Universal Waste.

COUNT 4
Failure to Comply with the Requirements for Used Oil Burners

84. Complainant re-alleges each allegation contained in paragraphs "1" through "53," inclusive, as if fully set forth herein.

85. Since, at least, September 25, 2003, Respondent became a generator and burner of used oil.

86. Pursuant to 40 C.F.R. § 279.63, a used oil burner must determine whether the total halogen content of used oil managed at the Facility is above or below 1,000 ppm. The used oil burner must make this determination by:

a. testing the used oil;
b. applying knowledge of the halogen content of the used oil in light of the materials or processes used; or
c. if the used oil has been received from a processor/re-refiner subject to regulation, using information provided by the processor/re-refiner.

87. If the used oil contains greater than or equal to 1,000 ppm total halogens, it is presumed to be a hazardous waste because it has been mixed with halogenated hazardous waste listed in Subpart D of Part 261. The owner or operator may rebut the presumption by demonstrating that the used oil does not contain hazardous waste (for example, by showing that the used oil does not contain significant concentrations of halogenated hazardous constituents listed in appendix VIII of 40 C.F.R. Part 261).

88. Since at least September 25, 2003, VIWAPA has been burning used oil for energy recovery at the Facilities without determining the halogen concentration or rebutting the hazardous waste presumption.

[8] Name used by VIWAPA to identify their universal waste lamps.

89. Pursuant to 40 C.F.R. § 279.10, mixtures of used oil and a hazardous waste that is listed in Subpart D of Part 261 (e.g. solvents) are subject to regulation as hazardous waste under Parts 260 through 266, 268, 270, and 124 rather than as used oil.

90. Respondent's failure to demonstrate that the used oil to be burned for energy recovery complies with 40 C.F.R. § 279.63(a) and (c), constitutes a violation the Standards for Used Oil Burners.

91. Respondent's failure to burn used oil without verifying that it complies with the halogen concentration limit or rebutting the hazardous waste presumption is a violation of 40 C.F.R. § 279.63(a).

PROPOSED CIVIL PENALTY

The proposed civil penalty has been determined in accordance with Section 3008(a)(3) of the Act, 42 U.S.C. § 6928(a)(3). For purposes of determining the amount of any penalty assessed, Section 3008(a)(3) requires EPA to "take into account the seriousness of the violation and any good faith efforts to comply with applicable requirements." To develop the proposed penalty in this complaint, the Complainant has taken into account the particular facts and circumstances of this case and used EPA's 2003 RCRA Civil Penalty Policy, a copy of which is available upon request or can be found on the Internet at the following address: http://www.epa.gov/compliance/resources/policies/civil/rcra/rcpp2003-fnl.pdf. The penalty amounts in the RCRA Civil Penalty Policy have been amended to reflect inflation adjustments. These adjustments were made pursuant to the following: the September 21, 2004 document entitled "Modifications to EPA Penalty Policies to Implement the Civil Monetary Penalty Inflation Rule; the January 11, 2005 document entitled "Revised Penalty Matrices for the RCRA Civil Penalty Policy," and the December 29, 2008 document entitled "Amendments to EPA's Civil Penalty Policies to Implement the 2008 Civil Penalty Monetary Penalty Inflation Adjustment Rule (effective January 12, 2009)." The RCRA Civil Penalty Policy provides a rational, consistent and equitable calculation methodology for applying the statutory penalty factors to particular cases.

Complainant proposes, subject to receipt and evaluation of further relevant information from the Respondent, that the Respondent be assessed the following civil penalty for the violations alleged in this Complaint.

In view of the above-cited violations, and pursuant to the authority of Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), and the RCRA Civil Penalty Policy, including the seriousness of the violations and any good faith efforts by the Respondent to comply with applicable requirements, the Complainant herewith proposes the assessment of a civil penalty in the total amount of $176,628 as follows:

Count 1	Operating Without a Permit	$45,626.00
Count 2	Failure to Make Hazardous Waste Determination	$48,502.00
Count 3	Failure to Comply With Universal Waste Requirements	$37,500.00
Count 4	Failure to Comply with Used Oil Burners Requirements	$45,000.00
Total Proposed Penalty		$176,628.00

COMPLIANCE ORDER

Based upon the foregoing, and pursuant to the authority of Section 3008 of the Act, Complainant herewith issues the following Compliance Order to the Respondent, which shall take effect (i.e., the effective date) thirty (30) days after service of this Order, unless by that date Respondent has requested a hearing pursuant to 40 C.F.R. § 22.15. See 42 U.S.C. § 6928(b) and 40 C.F.R. §§ 22.37(b) and 22.7(c):

1. Respondent shall either (a. or b.):
    a. Submit, within ninety (90) calendar days of the effective date of this Compliance Order, a Part B permit application to the United States Environmental Protection Agency for hazardous waste permits for its Facilities and shall comply with all applicable rules and regulations and take steps, including, but not limited to those set out in paragraphs 2 through 7 below, until it obtains such permits;

    or,

    b. Comply with all conditions necessary to be exempt from hazardous waste permitting requirements at the Facilities. These conditions (which vary according to the type and quantity of hazardous waste generated and accumulated) include, but are not limited to pre-transport requirements (e.g. hazardous waste labeling, accumulation marking).

2. Within ten (10) calendar days of the effective date of this Compliance Order, Respondent shall:

    a. Make sure that all containers with hazardous waste are properly marked and labeled with the accumulation start date and the words "Hazardous Waste".
    b. Conduct weekly inspections of areas in which hazardous wastes are being stored.

3. Within thirty (30) calendar days of the effective date of this Compliance Order, Respondent shall, to the extent it has not already done so, and to the extent possible, make required determinations whether solid wastes generated by VIWAPA are hazardous

wastes or not. Respondent shall comply with 40 C.F.R. § 262.11 for any newly generated solid waste.

4. Within thirty (30) calendar days of the effective date of this Compliance Order, Respondent shall, to the extent it has not already done so, and to the extent possible, provide evidence of its hazardous waste (i.e. spent solvents) disposals (e.g. manifests) and comply with the applicable recordkeeping requirements. However, if 2011-2012 hazardous waste disposal manifests are not provided, the EPA will assumed that the hazardous wastes generated at the Facilities were illegally treated, disposed of, or mixed with used oil for energy recovery at the Facilities boilers.

5. Within thirty (30) calendar days of the effective date of this Compliance Order Respondent shall identify hazardous waste accumulation area(s) and provide it with an internal communications or alarm system capable of providing immediate emergency instruction (voice or signal) to the Facilities' personnel and test and maintain emergency equipment as necessary to assure its proper operation in time of emergency. The Respondent shall post the following information at the accumulation area; the name and telephone of the emergency coordinator, location of fire extinguishers and spill control material, and, if present, fire alarm. In addition, the Respondent shall ensure that employees handling hazardous waste are thoroughly familiar with the Facility's emergency procedures for hazardous waste.

6. Within thirty (30) calendar days of the effective date of this Compliance Order, Respondent shall, to the extent it has not already done so, and to the extent possible, analyze the used oil that is burned at the Facilities' boilers for energy recovery and shall, in case it exceeds the halogen content of 1000 ppm, be able to demonstrate that it does not contain listed hazardous waste (e.g. spent solvents).

7. All responses, documentation, and evidence submitted in response to this Compliance Order should be sent to:

Zolymar Luna
U.S. Environmental Protection Agency, Region 2
Caribbean Environmental Protection Division
Response & Remediation Branch
City View Plaza II, Suite 7000
Road PR-165, Km 1.2, #48
Guaynabo, PR 00968

Compliance with the provisions of this Compliance Order does not waive, extinguish or otherwise affect Respondent's obligation to comply with all other applicable RCRA statutory or regulatory (federal and/or Commonwealth) provisions, nor does such compliance release Respondent from liability for any violations at the Facilities. In addition, nothing herein waives, prejudices or otherwise affects EPA's right to enforce any applicable provision of law, and to seek and obtain any appropriate penalty or remedy under any such law, regarding Respondent's generation, handling and/or management of hazardous waste at the Facilities.

NOTICE OF LIABILITY FOR ADDITIONAL CIVIL PENALTIES

Pursuant to the terms of Section 3008(c) of RCRA and the Debt Collection Improvement Act of 1996, 31 U.S.C. §§ 3701 *et seq.*, a violator failing to take corrective action within the time specified in a compliance order is liable for a civil penalty of up to $37,500 for each day of continued noncompliance. Such continued noncompliance may also result in suspension or revocation of any permits issued to the violator by EPA.

PROCEDURES GOVERNING THIS ADMINISTRATIVE LITIGATION

The rules of procedure governing this civil administrative litigation have been set forth in the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits," ("CROP"), which are codified at 40 C.F.R. Part 22. A copy of the CROP can be found at:
http://www.epa.gov/compliance/resources/policies/civil/rcra/final-crop-fr.pdf.

Answering the Complaint

Where Respondent intends to contest any material fact upon which the Complaint is based, to contend that the proposed penalty and/or the Compliance Order is inappropriate or to contend that Respondent is entitled to judgment as a matter of law, Respondent must file with the Regional Hearing Clerk of EPA, Region 2, both an original and one (1) copy of a written Answer to the Complaint, and such Answer must be filed within thirty (30) days after service of the Complaint (40 C.F.R. §§ 22.15(a) and 22.7(c)). The address of the Regional Hearing Clerk of EPA, Region 2, is:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th floor - Room 1631,
New York, New York 10007-1866

Respondent shall also then serve one copy of the Answer to the Complaint upon Complainant and the Assistant Regional Counsel identified below and any other party to the action, 40 C.F.R. § 22.15(a).

Respondent's Answer to the Complaint must clearly and directly admit, deny, or explain each of the factual allegations that are contained in the Complaint and with regard to which Respondent has any knowledge (40 C.F.R. § 22.15(b)). Where Respondent lacks knowledge of a particular factual allegation and so states in its Answer, the allegation is deemed denied.40 C.F.R. § 22.15(b).

The Answer shall also set forth: (1) the circumstances or arguments that are alleged to constitute the grounds of defense, (2) the facts that Respondent disputes (and thus intends to place at issue in the proceeding) and (3) whether Respondent requests a hearing.40 C.F.R. § 22.15(b).

Respondent's failure to affirmatively raise in the Answer facts that constitute or that might constitute the grounds of their defense may preclude Respondent, at a subsequent stage in this proceeding, from raising such facts and/or from having such facts admitted into evidence at a hearing.

Opportunity to Request a Hearing

If requested by Respondent, a hearing upon the issues raised by the Complaint and Answer may be held (40 C.F.R. § 22.15(c)). If, however, Respondent does not request a hearing, the Presiding Officer (as defined in 40 C.F.R. § 22.3) may hold a hearing if the Answer raises issues appropriate for adjudication (40 C.F.R. § 22.15(c)). With regard to the Compliance Order in the Complaint, unless Respondent requests a hearing pursuant to 40 C.F.R. § 22.15 within thirty (30) days after the Compliance Order is served, the Compliance Order shall automatically become final, 40 C.F.R. § 22.37.

Any hearing in this proceeding will be held at a location determined in accordance with 40 C.F.R. § 22.21(d). A hearing of this matter will be conducted in accordance with the provisions of the Administrative Procedure Act, 5 U.S.C. §§ 551-59, and the procedures set forth in Subpart D of 40 C.F.R. Part 22.

Failure to Answer

If Respondent fails in its Answer to admit, deny, or explain any material factual allegation contained in the Complaint, such failure constitutes an admission of the allegation (40 C.F.R. § 22.15(d)). If Respondent fails to file a timely [i.e. in accordance with the 30-day period set forth in 40 C.F.R. § 22.15(a)] Answer to the Complaint, Respondent may be found in default upon motion (40 C.F.R. § 22.17(a)). Default by Respondent constitutes, for purposes of the pending proceeding only, an admission of all facts alleged in the Complaint and a waiver of Respondent's right to contest such factual allegations (40 C.F.R. § 22.17(a)). Following a default by Respondent for a failure to timely file an Answer to the Complaint, any order issued therefore shall be issued pursuant to 40 C.F.R. § 22.17(c).

Any penalty assessed in the default order shall become due and payable by Respondent without further proceedings 30 days after the default order becomes final pursuant to 40 C.F.R. § 22.27(c) as set forth in 40 C.F.R. § 22.17(d). If necessary, EPA may then seek to enforce such final order of default against Respondent, and to collect the assessed penalty amount, in federal court. Any default order requiring compliance action shall be effective and enforceable against Respondent without further proceedings on the date the default order becomes final under 40 C.F.R. § 22.27(c) as set forth in 40 C.F.R. § 22.17(d).

Exhaustion of Administrative Remedies

Where Respondent fails to appeal an adverse initial decision to the Agency's Environmental Appeals Board ("EAB"; see 40 C.F.R. § 1.25(e)) pursuant to 40 C.F.R. § 22.30, and that initial decision thereby becomes a final order pursuant to the terms of 40 C.F.R. § 22.27(c), Respondent waives its right to judicial review, 40 C.F.R. § 22.27(d).

To appeal an initial decision to the EAB, Respondent must do so "[w]ithin thirty (30) days after the initial decision is served" (40 C.F.R. § 22.30(a)). Pursuant to 40 C.F.R. § 22.7(c), where service is effected by mail, "five days shall be added to the time allowed by these rules for the filing of a responsive pleading or document." Note that the 45-day period provided for in 40 C.F.R. § 22.27(c) [discussing when an initial decision becomes a final order] does not pertain to or extend the time period prescribed in 40 C.F.R. § 22.30(a) for a party to file an appeal to the EAB of an adverse initial decision.

INFORMAL SETTLEMENT CONFERENCE

Whether or not Respondent requests a formal hearing, EPA encourages settlement of this proceeding consistent with the provisions of the Act and its applicable regulations.40 C.F.R. § 22.18(b). At an informal conference with a representative(s) of Complainant, Respondent may comment on the charges made in the Complaint, and Respondent may also provide whatever additional information that it believes is relevant to the disposition of this matter, including: (1) actions Respondent has taken to correct any or all of the violations herein alleged, (2) any information relevant to Complainant's calculation of the proposed penalty, (3) the effect the proposed penalty would have on Respondent's ability to continue in business and/or (4) any other special facts or circumstances Respondent wishes to raise.

Complainant has the authority to modify the amount of the proposed penalty, where appropriate, to reflect any settlement agreement reached with Respondent, to reflect any relevant information previously not known to Complainant, or to dismiss any or all of the charges, if Respondent can demonstrate that the relevant allegations are without merit and that no cause of action as herein alleged exists. Respondent is referred to 40 C.F.R. § 22.18.

Any request for an informal conference or any questions that Respondent may have regarding this complaint should be directed to:

Carolina Jordán-García, Esq.
Assistant Regional Counsel
U.S. Environmental Protection Agency, Region 2
City View Plaza II, Suite 7000
Road PR-165, Km 1.2, #48
Guaynabo, PR 00968
Telephone: (787) 977-5834
Email: jordan-garcia.carolina@epa.gov

The parties may engage in settlement discussions irrespective of whether Respondent has requested a hearing (40 C.F.R. § 22.18(b)(1)). Respondent's requesting a formal hearing does not prevent it from also requesting an informal settlement conference; the informal conference procedure may be pursued simultaneously with the formal adjudicatory hearing procedure. A request for an informal settlement conference constitutes neither an admission nor a denial of any of the matters alleged in the Complaint. Complainant does not deem a request for an informal settlement conference as a request for a hearing as specified in 40 C.F.R. § 22.15(c).

A request for an informal settlement conference does not affect Respondent's obligation to file a timely Answer to the Complaint pursuant to 40 C.F.R. § 22.15. No penalty reduction, however, will be made simply because an informal settlement conference is held.

Any settlement that may be reached as a result of an informal settlement conference will be embodied in a written consent agreement (40 C.F.R. § 22.18(b)(2)). In accepting the consent agreement, Respondent waives its right to contest the allegations in the Complaint and waive its right to appeal the final order that is to accompany the consent agreement (40 C.F.R. § 22.18(b)(2)). To conclude the proceeding, a final order ratifying the parties' agreement to settle will be executed.40 C.F.R. § 22.18(b)(3).

Respondent's entering into a settlement through the signing of such Consent Agreement and its complying with the terms and conditions set forth in such Consent Agreement terminate this administrative litigation and the civil proceedings arising out of the allegations made in the complaint. Respondent's entering into a settlement does not extinguish, waive, satisfy or otherwise affect its obligation and responsibility to comply with all applicable statutory and regulatory requirements, and to maintain such compliance.

RESOLUTION OF THIS PROCEEDING WITHOUT HEARING OR CONFERENCE

If, instead of filing an Answer, Respondent wishes not to contest the Compliance Order in the Complaint and wants to pay the total amount of the proposed penalty within thirty (30) days after receipt of the Complaint, Respondent should promptly contact the Assistant Regional Counsel identified above

COMPLAINANT:

DATE: September 27, 2012

José C. Font, Acting Director
Caribbean Environmental Protection Division
U.S. Environmental Protection Agency, Region 2

To: Gregory Rhymer, Chief Operating Officer
Virgin Islands Water and Power Authority
P.O. Box 1450
St Thomas, USVI 00804

cc: Ms. Alicia Barnes, Commissioner
Department of Natural and Environmental Resources
Department of Planning and Natural Resources
45 Estate Mars Hill
Frederiksted, VI 00840

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region 2

IN THE MATTER OF: US Virgin Islands Water and Power Authority Respondent: Proceeding under Section 3008 of the Solid Waste Disposal Act, as amended, 42 U.S.C. § 6928	COMPLAINT, COMPLIANCE ORDER, AND NOTICE OF OPPORTUNITY FOR HEARING Docket No. RCRA-02-2012-7108

CERTIFICATE OF SERVICE

This is to certify that I have on this day caused to be mailed a copy of the foregoing Complaint, with attachments, bearing docket number RCRA-02-2012-7108 as follows:

Certified Mail/Return Receipt Requested, to:

Mr. Gregory Rhymer
Chief Operating Officer
Virgin Islands Water and Power Authority
P.O. Box 1450
St Thomas, USVI 00804

Original and a copy of the Complaint for filing by Fed Ex:

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

Dated: October 1, 2012

ORC-CT, San Juan, Puerto Rico