

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region 2

In the Matter of:

Mayagüez Medical Center
Dr. Ramón Emeterio Betances, Inc.
P.O. Box 600
Mayagüez, Puerto Rico 00681

Respondent

Proceeding under Section 3008 of the Solid Waste
Disposal Act, as amended, 42 U.S.C. § 6928

CONSENT AGREEMENT AND FINAL
ORDER

Docket No. RCRA-02-2016-7106

CONSENT AGREEMENT AND FINAL ORDER

Complainant, the United States Environmental Protection Agency ("EPA"), having issued the Complaint referenced herein on September 26, 2016, against Mayagüez Medical Center Dr. Ramón Emeterio Betances, Inc. ("Respondent"); and

Complainant and Respondent having agreed that settlement of this matter is in the public interest, and that entry of this Consent Agreement and Final Order ("CA/FO") without further litigation is the most appropriate means of resolving this matter;

NOW, THEREFORE, before the taking of any testimony, upon the pleadings, without adjudication of any issue of fact or law, and upon consent and agreement of the Parties, it is hereby agreed, and ordered as follows:

PRELIMINARY STATEMENT

1. This civil administrative proceeding was 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, 42 United States Code (U.S.C.) §§ 6901-6991 (the "Act" or "RCRA").
2. The Complainant in this proceeding, the Director of the Caribbean Environmental Protection Division, EPA, Region 2, has been duly delegated the authority to institute and carry forward this proceeding.
3. The Respondent is Mayagüez Medical Center Dr. Ramón Emeterio Betances, Inc.
4. Section 3006(b) of the Act, 42 U.S.C. § 6926(b), provides that EPA's Administrator 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 Commonwealth of Puerto Rico is a “State” as that term is defined by Section 1004(31) of the Act, 42 U.S.C. § 6903(31). The Commonwealth of Puerto Rico, however, is not authorized by EPA to administer a hazardous waste program under Section 3006 of RCRA, 42 U.S.C. § 6926. Therefore, EPA retains primary responsibility for the implementation and enforcement of RCRA’s hazardous waste regulations in the Commonwealth of Puerto Rico.

5. 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 facilities. These regulations are set forth in 40 C.F.R. Parts 260 through 266 and Parts 268, 270, 273 and 279.
6. The Complainant issued a Complaint, Compliance Order and Notice of Opportunity for Hearing (the “Complaint”) to Respondent on September 26, 2016. The Complaint alleged that Respondent failed to comply with the requirement of making a hazardous waste determination as established in 40 C.F.R § 262.11.
7. On November 28, 2016, Respondent filed its Answer to the Complaint and Request for Hearing. Among other defenses, Respondent asserted that the allegations in the Complaint involve third party actions or omissions, and thus there are other indispensable parties that may be liable.
8. Complainant and Respondent conducted settlement negotiations which led to this agreement.
9. Complainant and Respondent agree, by entering into this CA/FO, that settlement of this matter upon the terms set forth in this CA/FO is an appropriate means of resolving this case without further litigation.
10. This CA/FO shall apply to and be binding upon Respondent, its officers, directors, employees, successors and assigns, including, but not limited to, subsequent purchasers.
11. Respondent stipulates that EPA has jurisdiction over the subject matter alleged in the Complaint and that the Complaint states claims upon which relief can be granted against Respondent. Respondent waives any defenses they might have as to jurisdiction and venue, and, without admitting or denying the factual or legal allegations contained in the Complaint, consents to the terms of this CA/FO.
12. Respondent hereby waives its right to a judicial or administrative hearing or appeal on any issue of law or fact set forth in the Complaint.

EPA’S FINDINGS OF FACT AND CONCLUSIONS OF LAW

RESPONDENT

13. Respondent operates and administers a hospital engaged in the business of health care and emergency services, pharmacy, x-rays and other diagnostic tests and surgery procedures located

at Hostos Avenue #410, State Road PR-2, Sabalos Ward, Mayagüez, Puerto Rico (the "Facility").

14. 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.
15. Respondent is and has been the "operator" of the Facility, as that term is defined in 40 C.F.R. § 260.10, since January 29, 2010 pursuant to a lease with the Municipality of Mayagüez.
16. Respondent's Facility constitutes a "Facility," within the meaning of 40 C.F.R. § 260.10.
17. On or about March 23, 2011, Respondent provided the EPA with a Notification of Hazardous Waste Activity, identifying itself as large quantity generator of hazardous waste. In response, EPA assigned Respondent with EPA Identification Number PRR000023630.
18. In the course of its normal operations at the Facility, Respondent generates "solid waste," as that term is defined in 40 C.F.R. § 261.2.
19. In the course of its normal operations at the Facility, Respondent generates "hazardous waste," as that term is defined in 40 C.F.R. § 261.3.
20. Respondent is and has been a "generator" of "hazardous waste" at its Facility, as those terms are defined in 40 C.F.R. § 260.10. The requirements of hazardous waste generators are set forth in 40 C.F.R. Part 262.
21. On May 7, 2015, EPA inspected Respondent's Facility to determine its compliance with RCRA and its implementing regulations (hereafter "the Inspection").

Count 1 - Failure to Make Hazardous Waste Determination

22. Respondent is a generator of hazardous waste as defined in 40 C.F.R. § 260.10.
23. 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 method set forth therein.
24. During the Inspection, EPA found that Respondent did not make a hazardous waste determination for: (a) discarded medicines generated at the pharmacy area; (b) waste accumulated at the biosafety warehouse area; and (c) waste accumulated at the boiler room area.
25. Respondent's failure to determine and demonstrate whether each solid waste generated at its Facility constitutes a hazardous waste is a violation of 40 C.F.R. § 262.11.
26. Respondent's failure to comply with 40 C.F.R. § 262.11 subjects it to penalties and injunctive relief pursuant to Section 3008 of the Act, 42 U.S.C. § 6928.

CONSENT AGREEMENT

27. For the purpose of this proceeding, Respondent admits the jurisdictional allegations of the Complaint and neither admits nor denies specific factual allegations contained in the Complaint.
28. Respondent shall pay a civil penalty to EPA in the total amount of twenty thousand dollars (\$20,000). Respondent shall pay the total civil penalty amount of twenty thousand dollars (\$20,000) by making installment payments for up to four (4) months from the effective date of the Final Order.
29. All payments shall be made by cashier's or certified checks or by Electronic Fund Transfers (EFT). If the payments are made by checks, then the checks shall be made payable to the "Treasurer, United States of America," and shall be mailed to:

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

30. Each check shall be identified with a notation thereon: **In the Matter of: Mayaguez Medical Center Dr. Ramón Emeterio Betances, Inc.** and shall bear thereon the Docket Number: **RCRA-02-2016-7106**. If Respondent chooses to make the payments by EFT, then Respondent shall provide the following information to its remitter bank:

- a) Amount of Payment
- b) SWIFT address: FRNYUS33, 33 Liberty Street, New York, NY 10045.
- c) Account Code for Federal Reserve Bank of New York receiving payment: 68010727.
- d) Federal Reserve Bank of New York ABA routing number: 021030004.
- e) Field Tag 4200 of the Fedwire message should read: "D68010727 Environmental Protection Agency."
- f) Name of Respondent: **Mayagüez Medical Center Dr. Ramón Emeterio Betances, Inc.**
- g) Case Number: **RCRA-02-2016-7106**

31. Any responses, documentation, and other communications submitted in connection with this Consent Agreement shall be sent to:

Jesse Avilés
Environmental Scientist
Response and Remediation Branch- RCRA Team
Caribbean Environmental Protection Division
U.S. Environmental Protection Agency, Region 2
City View Plaza II, Suite 7000

#48 PR-165 km 1.2
Guaynabo, PR 00968-8069
aviles.jesse@epa.gov

and

Suzette M. Meléndez-Colón
Assistant Regional Counsel
Office of Regional Counsel-Caribbean Team
U.S. Environmental Protection Agency, Region 2
City View Plaza II, Suite 7000
#48 PR-165 km 1.2
Guaynabo, PR 00968-8069
melendez-colon.suzette@epa.gov

Unless the above-named EPA contacts are later advised otherwise in writing, EPA shall address any future written communications related to this matter (including any correspondence related to payment of the penalty) to Respondent at the following address:

Ildefonso Vargas Feliciano
Executive Director
Mayagüez Medical Center Dr. Ramón Emeterio Betances, Inc.
PO Box 600
Mayagüez, PR 00681
Ilde.Vargas@mayaguezmedical.com

and

Édwin R. Cruz
Pietrantoní Méndez & Alvarez
Popular Center – 19th Floor
208 Ponce de León Avenue
San Juan, PR 000918
ecruz@pmaalaw.com

32. Respondent shall make an initial payment of ten thousand dollars (\$10,000) within thirty (30) calendar days of the effective date of the Final Order. Thereafter, Respondent shall make three additional payments, plus the applicable interest, in accordance with the following schedule:
- (a) the second payment of \$4,008.33 no later than sixty (60) calendar days from the effective date of the Final Order;
 - (b) the third payment of \$3,005.00 no later than ninety (90) calendar days from the effective date of the Final Order;

- (c) the last and final payment of \$3,002.50 no later than one-hundred and twenty (120) calendar days from the effective date of the Final Order.
33. The date by which payment must be received shall hereinafter be referred to as the "Due Date."
- (a) Failure to pay the civil penalty in full according to the above provisions may result in referral of this matter to the United States Department of Justice or the United States Department of the Treasury for collection.
 - (b) Further, if the payment is not received on or before the Due Date, interest will be assessed at the annual rate established by the Secretary of the Treasury pursuant to the Debt Collection Act, 31 U.S.C. § 3717, on the overdue amount from the due date through the date of payment. In addition, a late payment handling charge of fifteen dollars (\$15.00) will be assessed for each thirty (30) day period (or any portion thereof) following the due date in which the balance remains unpaid. A six percent (6%) per annum penalty will also be applied on any principal amount not paid within ninety (90) days of the Due Date.
 - (c) The civil penalty constitutes a penalty within the meaning of 26 U.S.C. § 162(f). Respondent has read the Consent Agreement, understands its terms, finds it to be reasonable and consents to its terms. Respondent consents to the issuance of the accompanying Final Order. Respondent agrees that all the terms of the settlement are set forth herein.

General Provisions

34. Full payment of the penalty described in paragraph 28 shall only resolve Respondent's liability for federal civil penalties for the violation(s) and facts alleged in the complaint issued in this matter. Full payment of this penalty shall not in any case affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.
35. This CA/FO and any provision herein shall not be construed as an admission of liability in any criminal or civil action or other administrative proceeding, except in an action, suit or proceeding to enforce this CA/FO or any of its terms and conditions.
36. Respondent waives its right to request a hearing on the Complaint, this Consent Agreement, or the Final Order included herein, including any right to contest any allegations or EPA's Findings of Fact or Conclusions of Law contained within these documents.
37. Respondent waives any right it may have pursuant to 40 C.F.R. § 22.8 to be present during discussions with or to be served with and to reply to any memorandum or communication addressed to the Regional Administrator, the Deputy Regional Administrator or Regional Judicial Officer where the purpose of such discussion, memorandum, or communication is to discuss a proposed settlement of this matter or to recommend that such official accept this

Consent Agreement and issue the attached Final Order.

38. This CA/FO does not waive, extinguish, or otherwise affect Respondent's obligation to comply with all applicable provisions of the Act and the regulations implementing it, nor shall it be construed as the issuance of a permit or a ruling on, or determination of, any issues related to any federal, state or local law, regulation or permit.
39. Each party shall bear its own costs and fees in this matter.
40. The representative of Respondent signing this Consent Agreement certifies that he or she is duly and fully authorized to enter into and ratify this Consent Agreement and all the terms and conditions set forth in this Consent Agreement. The provisions of this Consent Agreement shall be binding upon Respondent and its officials including authorized representatives and successors or assigns.
41. Respondent consents to service upon Respondent by a copy of this CA/FO by an EPA employee other than the Regional Hearing Clerk.
42. The effective date of this CA/FO shall be the date of filing with the Regional Hearing Clerk, U.S. EPA, Region 2, New York, New York.

RESPONDENT:

Mayagüez Medical Center
Dr. Ramón Emeterio Betances, Inc.

BY: 

NAME: Mr. Ildefonso Vargas

TITLE: Executive Director

DATE: March 17th, 2017

COMPLAINANT:

United States Environmental Protection
Agency - Region 2

BY:

CYP.

NAME:

Carmen R. Guerrero-Pérez

TITLE:

Director, Caribbean
Environmental Protection
Division

DATE:

MARCH 29, 2017

FINAL ORDER

The Regional Judicial Officer of the U.S. Environmental Protection Agency, Region 2, ratifies the foregoing Consent Agreement. The Agreement entered into by the parties is hereby approved, incorporated herein, and issued as an Order pursuant to Section 3008 of the Act and 40 C.F.R. § 22.18(b)(3). The effective date of this Order shall be the date of filing with the Regional Hearing Clerk, U.S. EPA, Region 2, New York, New York 10007.



Helen S. Ferrara
Regional Judicial Officer
EPA-Region 2

DATE: April 4, 2017

CERTIFICATE OF SERVICE

APR - 4 2017

I hereby certify that on Lynn Khoury I caused to be mailed a copy of the Consent Agreement and Final Order entered in In the Matter of: Mayaguez Medical Center Dr. Ramón Emeterio Betances, Inc.; Docket No.: RCRA-02-2016-7106 to be sent to the following persons in the manner indicated:

By United States First Class Mail:

Edwin R. Cruz
Pietrantoní Méndez & Alvarez
Popular Center – 19th Floor
208 Ponce de León Avenue
San Juan, PR 00918
ecruz@pmalaw.com

By Hand Delivery:

Karen Maples
Regional Hearing Clerk
U.S. EPA – Region 2
290 Broadway, 16th Floor
New York, New York 10007

Date: April 4, 2017

Lynn Khoury