

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2

In the Matter of:

Commonwealth of Puerto Rico  
Respondent

Proceeding Under Section 7003 of the Solid  
Waste Disposal Act, as amended.

**ADMINISTRATIVE ORDER**  
**ON CONSENT**

**Docket No. RCRA-02-2009-7301**

**I. JURISDICTION**

1. This Administrative Order (the “Order”) is issued on consent to the Commonwealth of Puerto Rico, the Respondent in this administrative proceeding, for activities of the Puerto Rico Police Department.
2. This Administrative Order on Consent is issued by the United States Environmental Protection Agency (“EPA”) pursuant to the authorities vested in the Administrator of EPA by Section 7003 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act and the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. § 6901 *et seq.* (“RCRA” or “the Act”). These authorities have been duly delegated to the Regional Administrator of EPA, Region 2.
3. Notice of this Order has been provided to the Commonwealth of Puerto Rico pursuant to Section 7003 of RCRA, 42 U.S.C. § 6973.
4. Respondent agrees to undertake all actions required by the terms and conditions of this Order, consents to and will not contest EPA's jurisdiction to issue and if necessary enforce this Order, and will not contest the terms of this Order.

**II. PARTIES BOUND**

5. This Order shall apply to and be binding upon the Respondent and its successors, each and every agent of the Respondent, and upon all other persons and entities who are under the direct or indirect control of the Respondent including, but not limited to, any contractor or independent agent retained to perform work in accordance with this Order. Respondent shall supply any such agent(s), person(s), entity(ies), or contractor(s) working on matters covered by the Order with a complete copy of the Order.

### III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

6. Respondent is a "person," as that term is defined in Section 1004(15) of the Act, 42 U.S.C. § 6903(15).
7. Respondent is the Commonwealth of Puerto Rico, acting through its Police Department.
8. The Puerto Rico Police Department Headquarters is located on Franklin Delano Roosevelt Avenue in the Hato Rey Section of San Juan, Puerto Rico and has a mailing address of P.O. Box 70166, San Juan, Puerto Rico 00936.
9. Respondent has in the past confiscated illegal pyrotechnic devices, pyrotechnic material and other similar reactive and/or explosive material from the general public (hereinafter individually or collectively referred to as the "past confiscated material"). As part of its responsibility, Respondent may confiscate from the general public in the future illegal explosives, fireworks, consumer fireworks, display fireworks, pyrotechnic devices, pyrotechnic material, and other similar reactive and/or explosive material as defined by the American Pyrotechnics Association (hereinafter referred to as the "future confiscated material").
10. In August 2005, EPA conducted inspections of Respondent's five storage facilities in Puerto Rico (the "EPA Inspection").
11. At the time of the EPA Inspection, Respondent had placed the past confiscated material in tractor trailers located at its owned facilities at (1) Centro de Adiestramiento Isla de Cabras, Carr. 870 Bo. Palo Seco Final, Toa Baja, P.R.; (2) Unidad Montada San Juan, Carr. 21 Anexo Penitenciaria Estatal, Rio Piedras, P.R.; (3) Comandancia Policia Area de Humacao, Calle 8 Tomas L. Boyle, Solar Vehiculos Hurtados, Humacao, P.R.; (4) Solar Vehiculos, Calle Burn, Base Ramey, Aguadilla, P.R.; and (5) Comandancia de Mayaguez, Carr. 114 Bo. Castillo, Edificiode Vehiculos Hurtados, Circa de Obras Publicas, Mayaguez, P.R.
12. Respondent has been responsible for the proper handling, accumulation, storage, and disposal of the past confiscated material mentioned in paragraph "9," above.
13. Respondent continues to be responsible for the proper handling, accumulation, storage, and disposal of the future confiscated material mentioned in paragraph "9," above.
14. At the time of the EPA Inspection, there were no explosion resistant containment structures at these facilities.
15. Some of the past and future confiscated material has been used or will continue to be used as evidence in legal proceedings. Once those proceedings are concluded, Respondent no longer needs the past or future confiscated material as evidence and it is stored pending disposal.

16. The past and future confiscated material stored pending disposal meets the statutory definition of a solid waste at Section 1004(27) of RCRA, 42 U.S.C. § 6903(27).
17. While regulatory definitions are not strictly applicable to an order issued pursuant to Section 7003 of RCRA, the past and future confiscated material which is stored pending disposal meets the definition of a solid waste at 40 C.F.R. § 261.2.
18. In accordance with 40 C.F.R. § 261.20, a solid waste is a hazardous waste if it exhibits the characteristic, *inter alia*, of reactivity provided in 40 C.F.R. § 261.23. In accordance with 40 C.F.R. § 261.23(a)(6), a solid waste is a hazardous waste exhibiting the characteristic of reactivity if it is capable of detonation or explosive reaction when subjected to a strong initiating source or if heated under confinement.
19. Generally, the past and future confiscated material may explode when exposed to a strong ignition source. As such, the past confiscated material that was stored at the time of the EPA Inspection pending disposal at the facilities mentioned in paragraph "11" above, exhibited the hazardous waste characteristic of reactivity. Hereinafter, the past confiscated material that was stored at the time of the inspection pending disposal and the future confiscated material that Respondent may store pending disposal are each referred to as "solid and/or hazardous waste."
20. Respondent has been and continues to be a generator of solid and hazardous waste as those terms are defined in Sections 1004(5) and (27) of RCRA, 42 U.S.C. § 6903 (5) and (27), and 40 C.F.R. § 260.10.
21. Respondent currently and historically generates, transports, stores, and otherwise handles solid and hazardous waste and assumes the responsibility for the handling, storage, and disposal of these wastes.
22. There are no authorized commercially permitted hazardous waste treatment, storage, and/or disposal facilities (TSDFs) in Puerto Rico able to handle and/or dispose of Respondent's hazardous waste.
23. In 1999 Respondent, under an emergency response order under the Comprehensive Environmental Response, Compensation and Liability Act, as amended, ("CERCLA"), 42 U.S.C. § 9601 *et seq.*, destroyed hazardous waste that it had been storing for several years at the Isla de Cabras facility.
24. As of the time of the EPA Inspection, Respondent had accumulated and stored solid and hazardous waste at the five (5) locations mentioned in paragraph "11" above, since 1999. Each year, from 20,000 to 40,000 pounds of explosive material was added to storage.
25. During the EPA Inspection, EPA found the following conditions:

Isla de Cabras facility:

- a. Past confiscated material was stored in 2 tractor trailers.
- b. The trailers were located just beneath the major flight path to the San Juan Airports, about 150 feet west of the major shipping lanes in San Juan Harbor. A public park was located approximately 35 feet south of the facility outside the fencing.
- c. There were discarded empty beer bottles, soda cans, cigarette butts, and other material in and around the area of the storage trailers suggesting that the public had access to the area.
- d. The trailers had signs that read "Explosives", "Danger", and "No smoking within 50 feet." They were placarded with the DOT quadrangle showing highly flammable material was stored in the trailers.
- e. There were holes in the fence.
- f. Both trailers showed evidence of deterioration including pervasive corrosion and holes in the roof, some of which could have been used to gain access to the interior of the trailers.
- g. In 2005, Respondent estimated that 50,000 pounds of past confiscated material were being stored at this location.
- h. Many of the cardboard boxes containing the past confiscated material were in very poor condition having been wet and dried numerous times. Some of the boxes had collapsed.
- I. There were no accumulation start dates, or other markings on the boxes to allow differentiation between the past confiscated material being stored as evidence and the past confiscated material stored for disposal and to help to identify the length of storage.
- j. No weekly inspections were done in the trailers; and no inspection logs were kept.
- k. There was no aisle space in either tractor trailer; and the interiors of the trailers were inaccessible because they were totally filled.
- l. There was no fire or smoke alarm system in either trailer.
- m. There was no fire fighting equipment readily accessible.
- n. There were no telephones in the immediate area.
- o. There was no emergency preparedness plan or procedures in place.
- p. There was no contingency plan.
- q. Some of the above-described past confiscated material was solid waste and hazardous waste.

Rio Piedras facility:

- a. Past confiscated material was stored in one forty-foot trailer. The trailer was about half full.
- b. A State Penitentiary was located next door separated by a cyclone fence which was approximately 75 feet from the trailer. The trailer was also about 20 feet

from the horse stables of the Puerto Rico Police Department Mounted Division and approximately 30 feet from the police barracks and caretakers quarters.

- c. There was no fence around the trailer that would effectively block public access.
- d. There was no air circulation in the trailer making the trailer very hot.
- e. In 2005, Respondent estimated that 10,000 pounds of past confiscated material were being stored at this location.
- f. There were no accumulation start dates or other markings on the boxes to allow differentiation between the past confiscated material being stored as evidence and the past confiscated material stored for disposal and to help to identify the length of storage.
- g. No weekly inspections were done in the trailer; and no inspection logs were kept.
- h. There was no aisle space in the tractor trailer; and the rear of the trailer was inaccessible because there were stacks of boxes of past confiscated material placed on the floor.
- i. There was no fire or smoke alarm system in the trailer.
- j. There was no fire fighting equipment readily accessible.
- k. There were no telephones in the immediate area.
- l. There was no emergency preparedness plan or procedures in place.
- m. There was no contingency plan.
- n. Some of the above-described past confiscated material was solid waste and hazardous waste.

Humacao facility:

- a. Past confiscated material was stored in one forty-foot trailer. The trailer was about half full.
- b. The trailer was within 100 feet of the main precinct.
- c. The precinct was occupied 24 hours a day, 7 days a week. Besides being an active general precinct, the facility also served as a storage location for stolen vehicles.
- d. There was no "Hazardous Waste" sign.
- e. There was an approximately 12 foot high, barbed-wired cyclone fence surrounding the facility.
- f. In 2005, Respondent estimated that 3,000 pounds of past confiscated material were being stored at this location.
- g. There were no accumulation start dates or other markings on the boxes to allow differentiation between the past confiscated material being stored as evidence and the past confiscated material stored for disposal and to help identify the length of storage.
- h. No weekly inspections were done in the trailer; and no inspection logs were kept.
- i. There was no aisle space in the tractor trailer; and the rear of the trailer was inaccessible because there were stacks of boxes of past confiscated material placed on the floor.
- j. There was no fire or smoke alarm system in the trailer.
- k. There was no fire fighting equipment readily accessible.

- l. There were no telephones in the immediate area.
- m. There was no emergency preparedness plan or procedures in place.
- n. There was no contingency plan.
- o. Some of the above-described past confiscated material was solid waste and hazardous waste.

Aguadilla facility:

- a. Past confiscated material was stored in a marked forty-foot trailer. The trailer was about half full.
- b. The trailer was located in the yard of the Regional Precinct which was surrounded by a cyclone-fence. The trailer was approximately 30 feet from residential homes.
- c. In 2005, Respondent estimated that 20,000 pounds of past confiscated material were being stored at this location.
- d. There were no accumulation start dates or other markings on the boxes to allow differentiation between the past confiscated material being stored as evidence and the past confiscated material stored for disposal and to help to identify the length of storage.
- e. No weekly inspections were done in the trailer; and no inspection logs were kept.
- f. There was no aisle space in the tractor trailer; and the rear of the trailer was inaccessible because there were stacks of boxes of past confiscated material placed on the floor.
- g. There was no fire or smoke alarm system in the trailer.
- h. There was no fire fighting equipment readily accessible.
- i. There were no telephones in the immediate area.
- j. There was no emergency preparedness plan or procedures in place.
- k. There was no contingency plan.
- l. Some of the above-described past confiscated material was solid waste and hazardous waste.

Mayaguez facility:

- a. Past confiscated material was stored in a well marked forty-foot trailer. The trailer was about half full.
- b. The trailer was located in the yard of the Regional Precinct which was surrounded by a cyclone-fence. The trailer was approximately 50 feet from residential homes.
- c. In 2005, Respondent estimated that 20,000 to 30,000 pounds of past confiscated material were being stored at this location.
- d. There were no accumulation start dates or other markings on the boxes to allow differentiation between the past confiscated material being stored as evidence and the past confiscated material stored for disposal and to help to identify the length of storage.
- e. No weekly inspections were done; and no inspection logs were kept.

- f. There was no aisle space in the tractor trailer; and the rear of the trailer was inaccessible because there were stacks of boxes of past confiscated material placed on the floor.
- g. There was no fire or smoke alarm system in the trailer.
- h. There was no fire fighting equipment readily accessible.
- I. There was no emergency preparedness plan or procedures in place.
- j. There was no contingency plan.
- k. Some of the above-described past confiscated material was solid waste and hazardous waste.

26. EPA issued a Notice of Violation (“NOV”) to the Respondent on September 6, 2005. The NOV cited alleged violations of 40 C.F.R. §§ 262.34 (a)(4) and 265.31 regarding the maintenance and operation of the facilities and 40 C.F.R. § 262.34(a) regarding the allowed time for accumulating hazardous waste without a permit.

27. In response to the NOV and meetings with representatives of EPA Region 2 on May 8, 2007, Respondent submitted a Workplan that was entitled, “The Removal and Disposition of the Waste Fireworks/Pyrotechnics Currently in Storage” also known as Phase 1. EPA accepted the Plan on June 26, 2007. Phase 1 dealt with the consolidation and repackaging of past confiscated material stored at the time. This material was shipped to and disposed of at the authorized treatment, storage, and disposal facility (TSDF), Clean Harbors, in Louisiana. The plan was implemented from early July through the middle of September, 2007 when the estimated 150,000 pounds of solid and hazardous waste that had been accumulated and stored over 8 years was shipped to the TSDF. Phase 1 activities were substantially completed except for the past confiscated material collected by Respondent since September 2007.

28. As of the issuance of this order, Respondent has not presented EPA with a plan for the future handling of its hazardous waste in accordance with RCRA. Given the prior history of unsafe storage of the solid and hazardous waste and the fact that Respondent will keep handling and storing the future confiscated material, EPA finds that the management of the solid and hazardous waste by Respondent may still present a potential threat to human health and the environment.

#### IV. DETERMINATION

29. Based on the foregoing FINDINGS OF FACT AND CONCLUSIONS OF LAW, and the full Administrative Record, the Regional Administrator of EPA Region 2, upon receipt of evidence and information that the past and present handling, storage, treatment, transportation or disposal in Puerto Rico of solid waste or hazardous waste by Respondent at locations in Isla de Cabras, Rio Piedras, Humacao, Aguadilla, and Mayaguez may present an imminent and substantial endangerment to health or the environment, has determined that issuance of this Order is necessary to protect public health and the environment.

## V. ORDER

30. Based on the FINDINGS OF FACT AND CONCLUSIONS OF LAW, the full administrative record, and the foregoing DETERMINATION, IT IS HEREBY ORDERED THAT:

- A. Respondent shall perform all actions required by this Order in accordance with the WORK REQUIREMENTS AND SCHEDULES provision of the Order, as set forth below.
- B. Respondent shall fully cooperate with EPA representatives in carrying out all the provisions of this Order.
- C. Respondent shall comply with applicable federal hazardous waste regulations in its management of solid and hazardous waste. In the event the wording of such regulations differs from the description of regulatory requirements set forth below in this Order, the text of the then applicable regulation shall govern unless the requirements of this Order are more stringent.

## VI. WORK REQUIREMENTS AND SCHEDULES

### **Phase 1:**

31. To the extent that Respondent has not completed Phase 1 activities, Respondent shall remove and properly dispose of all past confiscated material currently stored within thirty (30) days of the date that this material is no longer evidence and becomes a waste.

### **Phase 2:**

#### **The Workplan**

32. Within ninety (90) days of the effective date of this Order, Respondent must develop and submit to EPA for acceptance a Workplan (in English). The Workplan must ensure that future confiscated material collected is handled in compliance with all applicable EPA RCRA regulations in a safe, secure and timely manner to prevent the imminent and substantial endangerment and threat to human health and the environment that may result from the improper storage and unsafe handling or untimely disposition of solid and hazardous waste. The Workplan shall describe in detail how Respondent will handle the future confiscated material under its control from storage through transportation and disposal of the waste.

33. The Workplan must take into account steps required to comply with applicable hazardous waste requirements set forth in 40 C.F.R. Parts 260 through 279. The Workplan must also take into account any other regulatory requirements enforced by other agencies (e.g., DOT, ATF, fire department) that may apply to the handling of future confiscated material.

34. The Workplan must include a set of standard operating procedures (SOPs) that will be followed to ensure that the requirements mentioned in paragraph "33" are met.
35. The Workplan must present a detailed implementation schedule covering all stages and aspects of management and disposal of the future confiscated material waste.
36. EPA will review the Workplan and provide its written acceptance, disapproval, comments, and/or modifications. Unless otherwise specified by EPA, Respondent shall revise, in accordance with the modifications requested, and submit the Workplan to EPA within thirty (30) working days of receiving EPA's comments. The revised plan, as accepted by EPA, shall become final. If, however, additional changes to the Workplan are necessary, Respondent shall revise the Workplan, in accordance with the modifications requested, and, within thirty (30) days submit a revised Workplan to EPA. Within thirty (30) days of EPA's acceptance of the Workplan, Respondent must commence implementation of the Workplan. (Note: the term "working" as used in this paragraph and hereinafter in this Order shall mean normal business days and shall exclude Saturdays, Sundays, and official federal and Commonwealth of Puerto Rico Holidays).
37. Within thirty (30) working days of the effective date of this Order and continuing in the future, Respondent must determine whether or not each of the different types of the future confiscated material waste it is handling is a hazardous waste. Respondent must also produce and maintain for the term of this Order a written record of the reasons for each decision.
38. Within five (5) working days of the effective date of this Order, Respondent shall submit to EPA a Notification of Hazardous Waste Activities Form, Form Number EPA 8700-12, for its activities, such as the generation, storage, and transportation involving hazardous waste. Upon receipt EPA will assign a RCRA Identification (EPA) Number to Respondent for each site where hazardous waste is generated or otherwise handled. Respondent will thereafter use the RCRA Identification Number for each site on all documents involving its hazardous waste activities.
39. Within ten (10) working days of the hazardous waste determination, Respondent must determine if it is a large quantity generator (LQG) generating more than 1,000 kg or 2,200 pounds in a calendar month, or a small quantity generator (SQG) generating between 100 kg. (220 pounds) and 1,000 kg. (2,200 pounds) in a calendar month. (Note that currently when a facility generates less than 100 kg of hazardous waste per month, but accumulates more than 1,000 kg at any one time, the facility is considered at least a SQG until such time as the accumulated waste is reduced below 1,000 kg; similarly, if a facility generates less than 1,000 kg of hazardous waste per month, but accumulates more than 6,000 kg per month, the facility is considered a LQG until such time as the accumulation waste is reduced below 6,000kg). Depending on the generator status, Respondent is limited to storing the hazardous waste for less than ninety (90) days if it is a LQG or one hundred eighty (180) days if it is a SQG. If Respondent is a SQG and the TSDF to which it is sending hazardous waste is located over two hundred (200) miles away, Respondent can store the hazardous waste up to two hundred seventy

(270) days. Regardless of the generator status, Respondent shall not accumulate acutely hazardous waste listed in 40 C.F.R. § 261.33(e) (e.g., nitroglycerin) longer than ninety (90) days. The generator status may change as time passes depending on the amount of hazardous waste generated or that is accumulated.

40. Respondent must use a hazardous waste manifest in order to track the transportation or offer for transportation the hazardous waste from the storage area to an authorized treatment, storage, disposal facility.

### **Requirements for Any Area Being Used for the Storage of Hazardous Waste**

41. Prior to transporting the hazardous waste off-site, Respondent must comply with all applicable Pre-Transport Requirements in 40 C.F.R. Section 262 Subpart C.

42. Respondent shall secure all areas in which it accumulates and/or stores the hazardous waste.

43. Respondent shall maintain an inventory, including a record of the dates when accumulation of the waste started for the future confiscated material which is evidence and the future confiscated material which is waste.

44. Respondent must perform weekly inspections of the accumulation and storage areas. The inspections must be logged and dated documenting the observations made, remedial actions taken, conditions in the storage/accumulation area(s), containers' condition, emergency equipment, external and internal security measures, and must include the inspector's signature.

45. Respondent must mark individual units of hazardous waste, or cartons and boxes containing hazardous waste, with an accumulation start date and with the words "Hazardous Waste." The hazardous waste must be separated from non-waste materials being stored in the storage area.

46. Containers holding the hazardous waste shall remain closed unless it is necessary to remove or add waste to the container. The requirements of 40 C.F.R. Part 265 Subpart I, Use and Management of Containers, must be followed.

47. Respondent shall post signs easily observed in the storage area indicating "Explosives, Danger, No Smoking" as well as "Hazardous Waste Storage".

48. Respondent shall ensure that anyone entering the storage area has access to an emergency communication system including either telephones or alarm systems.

49. Respondent shall provide readily accessible emergency equipment such as fire extinguishers that have been tagged, tested, and inspected as appropriate. Respondent may choose to select another fire control system.

50. Respondent shall ensure that no rain water enters the storage area.
51. Respondent shall ensure that any lighting systems or other electrical or electronic devices used or placed in the storage area are explosion proof.
52. The storage area must meet the requirements set forth in the FBI Guidance Document pertaining to the safe storage of explosive material, ATF requirements for safe storage of explosives as applicable, and Subpart DD (design and operating standards and closure and post-closure care) and Subpart EE (Hazardous Waste Munitions and Explosives Storage) of 40 C.F.R. Part 265.
53. Respondent shall develop a Contingency Plan and be prepared to implement emergency preparedness and prevention measures when necessary. Respondent must ensure that the Plan and procedures are in compliance with 40 CFR Part 265, Subparts C and D.

### **Transportation**

54. Upon transporting, or offering for transportation, hazardous waste to an authorized disposal facility, including an intermediate location on the island prior to shipment off-island for disposal, Respondent must ensure that it complies with the hazardous waste manifest requirements (applicable as of September 5, 2006) set forth in or cross-referenced in Subpart B of 40 C.F.R. Part 262 and any land disposal restriction notification requirements.
55. Respondent must ensure that the transporter(s) used has notified EPA, obtained a RCRA EPA Identification Number, and is authorized to transport hazardous waste.
56. An intermediate storage area or transfer facility such as one at the port during the transportation of the hazardous waste may be used by Respondent or its contractor for ten (10) days or less in accordance with Section 40 C.F.R. 263.12.
57. Respondent shall comply with any other applicable regulations pertaining to the shipment of explosives and/or reactive material (e.g., DOT, transporter requirements, ship requirements, etc.).

### **Disposal**

58. Respondent must send its hazardous waste to an authorized treatment, storage and/or disposal facility (TSDF) that can accept, handle, and appropriately dispose of its waste.
59. On an annual basis, Respondent must certify that the TSDF to which Respondent is sending its hazardous waste has the capacity and ability to accept Respondent's hazardous waste for disposal.

60. Respondent may not dispose of its hazardous waste by burning the wastes itself unless it obtains the necessary permits or there is an exemption from the requirement to obtain a permit (such as the one for an emergency situation under 40 C.F.R. 270.1 (c)(3)(D)). If an emergency occurs, Respondent must attempt to notify EPA within twenty four (24) hours of Respondent realizing that an emergency situation has occurred. Procedures that Respondent will attempt to follow in case of an emergency need to be specified in the Contingency Plan and the Emergency Preparedness and Prevention Plan. Respondent shall keep documentation of Respondent's attempt to notify EPA for five (5) years from the time of such attempt. Respondent shall also submit to EPA, within thirty (30) working days of such attempt, a written report detailing the activities undertaken to respond to any emergency.

### **Reporting and Record Keeping**

61. The result of inspections of and logs of the areas where hazardous waste is stored shall be kept for five (5) years after the date of the inspection.

62. Inventory records shall be kept for five (5) years after the last item in the inventory was shipped off-site for disposal.

63. Hazardous waste manifests and associated land disposal restriction notifications shall be available for review by EPA and its agents for at least five (5) years from the date the waste was accepted by the initial transporter.

64. Respondent shall submit to EPA three consecutive annual reports, the first due one year after Respondent is required to commence implementation of the Workplan for Phase 2. Each report shall include for the prior year:

1. The amount of future confiscated material collected,
2. The amount determined to be a hazardous waste,
3. The amount of hazardous waste disposed,
4. The method of disposal,
5. Documentation from the TSDF that it had the capacity and ability to dispose of the hazardous waste,
6. Copies of hazardous waste manifests that accompanied shipment of hazardous waste,
7. A summary of issues and problems found during weekly inspections or at other times, remedies implemented, and the dates the issues and problems were found and remedied.
8. The status of the future confiscated material that was not determined to be hazardous waste.
9. Documentation of hazardous waste determination,
10. Financial information as specified in paragraph "69" below.

Thereafter, after submittal of the three annual reports, Respondent shall submit a copy of the biannual reports required by the RCRA regulations.

## **Changes in the Workplan**

65. Changes may be made to the Workplan accepted by EPA to reflect improvements identified during implementation or changes in storage facilities or in other management practices. The Workplan shall also be adjusted as needed to reflect any changes in legal requirements. Respondent must obtain EPA's approval in writing of any proposed changes.

## **VII. FINANCIAL ASSURANCE**

66. Respondent shall, within four (4) months of the effective date of this Order, submit to EPA a written financial plan ("Financial Plan") for carrying out the requirements of the Order. The Financial Plan shall:

- i. Provide an estimate of the total cost of complying with the major elements of the the Workplan developed pursuant to paragraph "32;" and
- ii Identify the source(s) of funds that will be utilized to finance the major elements of the Workplan developed pursuant to paragraph "32."

67. Upon specific request by EPA, Respondent shall provide copies to EPA of all or specifically identified executed contracts for work carried out under this Order.

68. Respondent shall update the financial plan upon request by EPA. It is the obligation of Respondent to provide sufficient funding to carry out the requirements of the Order and to keep EPA informed of any important changes in such funding sources that may occur.

69. Respondent is required, in its annual report (paragraph "64") to EPA, to provide information pertaining to the costs of implementing the Workplan and the funds that were made available to implement the Workplan.

## **VIII. RETENTION OF RECORDS**

70. Respondent shall preserve or make arrangements for the preservation of, during the pendency of this Order and for a minimum of five (5) years after its termination as specified in Section XXIV of this Order, all data, records and documents in the possession of Respondent, its employees, and its agents, consultants and contractors (including subcontractors and independent contractors) which relate in any way to this Order, work being performed under it, or to the past and/or current hazardous waste management practices. Respondent shall make such records available to EPA and/or shall provide copies of any such documents that EPA requests. Written notification shall be provided to EPA at least sixty (60) days prior to the destruction of any or all such documents. Such written notification shall reference the date, caption, and docket number of this Order and shall be addressed to the individuals listed in section X of this Order. Respondent shall store copies of all documents being preserved pursuant to the terms of this Order in a limited number of locations to afford ease of access.

## IX. PROJECT COORDINATORS

71. Within thirty (30) days of the effective date of this Order, EPA and Respondent shall designate a Project Coordinator ("PC") and name at least one alternate who may function in the absence of the designated Project Coordinator. The Project Coordinators shall be responsible for overseeing implementation of this Order. EPA and the Respondent shall each have the right to change the designated Project Coordinator and shall inform the other party should such change occur. The EPA has designated Steven Petrucelli as Project Coordinator and Leonard Voo as Alternate Project Coordinator.

72. All communications between Respondent and EPA, and all documents, reports, acceptances, and other correspondence concerning the activities performed pursuant to the terms and conditions of this Order, shall be directed to and through the respective Project Coordinators.

## X. NOTICES

73. For purposes of this Order, all written communications, notices or submissions required by this Order shall be directed to a person specified by each party. EPA and the Respondent with written advance notice shall each have the right to change the person(s) who are to receive documents. The EPA has designated the EPA Project Coordinator as recipient, at the following address:

Steven Petrucelli  
U.S. Environmental Protection Agency, Region 2  
RCRA Compliance Branch  
290 Broadway, 21st Floor  
New York, New York 10007-1866

74. In addition copies of all reports, communications, and plans shall be sent to the following addressee:

Angel Rodriguez  
U.S. Environmental Protection Agency, Region 2  
Caribbean Environmental Protection Division  
Centro Europa Building, Suite 207  
1492 Ponce de Leon Ave., Stop 22  
San Juan, Puerto Rico 00907-4127

## XI. EMERGENCY PROVISIONS

75. In the event Respondent identifies a potential threat to human health or the environment relating to the activities under the Order (but not being addressed by work already required under this Order), such Respondent shall immediately notify EPA orally and in writing within twenty four (24) hours summarizing the immediacy and magnitude of the potential threat to human health

or the environment. Respondent shall thereafter submit to EPA for acceptance, as soon as possible, a plan to mitigate the potential threat. EPA will approve or modify the plan, and Respondent shall implement the plan as accepted or modified by EPA. Alternatively, if time allows, EPA may request that Respondent modify the Plan and resubmit it and or implement it. In the event Respondent identifies an actual threat to human health or the environment, Respondent may act as it deems appropriate, at its own discretion and risk, without providing prior notification to EPA. In that event, Respondent shall provide to EPA, as soon as possible, a description of the threat and the measures taken to mitigate it.

76. If EPA determines that activities in compliance or non-compliance with this Order have caused or may cause a release of a hazardous waste or hazardous constituent, or may otherwise pose a threat to human health or the environment, EPA may direct the Respondent to stop further implementation of this Order, or any portion of this Order, for such period of time as may be needed to abate any such release or threat and/or undertake any action which EPA determines to be necessary.

## XII. RESERVATION OF RIGHTS

77. EPA expressly reserves, without limitation, all of its statutory and regulatory powers, authorities, rights, remedies and defenses, both legal and equitable, including the right to seek injunctive relief, cost recovery, monetary penalties, or punitive damages. EPA may exercise its authority under CERCLA to undertake removal or remedial actions.

78. This Order shall not be construed as a covenant not to sue, or as a release, waiver or limitation of any claim, right(s), remedy(ies), defense(s), power(s) and or authority(ies) which EPA has under RCRA, CERCLA, or any other statutory, regulatory or common law authority of the United States.

79. This Order shall not limit or otherwise preclude EPA from taking any additional legal action against the Respondent, should EPA determine that any such additional legal action is necessary or warranted.

80. Notwithstanding compliance with the terms of this Order, Respondent is not released from liability for the costs of any response actions taken by EPA. EPA reserves the right to seek reimbursement from Respondent for any costs incurred by the United States.

## XIII. STIPULATED PENALTIES

81. Unless excused under the "Force Majeure and Excusable Delay" provision of the Order, Respondent shall pay a stipulated penalty for failure to comply in a timely manner with any requirement, term, or condition set forth in or required of Respondent by this Order. Some of the requirements that, if violated, will be subject to this provision include, but not limited to (1) submission of a Phase 2 Workplan, (2) implementation of the EPA approved Workplan in

accordance with its schedule, (3) submission of financial assurance documentation, and (4) submission of adequate annual reports. The stipulated penalty for each non-complying act is as follows:

<u>Period of Failure to Comply</u>	<u>Penalty (Per Day)</u>
1 <sup>st</sup> through 14 <sup>th</sup> day	\$1000
15 <sup>st</sup> through 60 <sup>th</sup> day	\$2000
61 <sup>st</sup> day and thereafter	\$5000

- i. Stipulated penalties shall be paid by cashier's or certified check, payable to the Treasurer, United States of America, and mailed to the U.S. Environmental Protection Agency, Fines and Penalties, Cincinnati Finance Center, P.O. Box 979077, St. Louis, MO 63197-9000. Said payment(s) shall be identified as: **Commonwealth of Puerto Rico (Puerto Rico Police Department)**; and must reference the **Docket Number RCRA-02-2009-7301** set forth on the title page of this Order.
- ii. All stipulated penalties begin to accrue on the day each act of noncompliance with any requirement, term, or condition set forth in or required pursuant to this Order first takes place. Said stipulated penalties shall continue to accrue through, and including, the day on which any failure to comply with such requirement, term, or condition is remedied. Nothing herein shall preclude, or is intended to preclude, the simultaneous accrual of separate stipulated penalties for each separate act of noncompliance with this Order. Penalties shall accrue regardless of whether EPA has notified Respondent of the act or acts of non-compliance, but need only be paid upon demand.
- iii. After receipt of a demand from EPA for stipulated penalties pursuant to this Section of the Order, Respondent may, within thirty (30) days of such demand, pay the penalties demanded or may within twenty (20) days of such demand, provide EPA with a written explanation of why Respondent believes the stipulated penalties are not appropriate for the act(s) of non-compliance cited by EPA.
- iv. The Director of the Division of Enforcement and Compliance Assistance may, in his/her sole discretion, reduce or eliminate such stipulated penalties based on Respondent's written explanation as specified in subparagraph "iii," above. If the Division Director does not eliminate the stipulated penalties, then EPA will again notify Respondent that the original or reduced stipulated penalties must be paid. Respondent shall pay the stipulated penalties as set forth in EPA's notice pursuant to this sub-section within thirty (30) days of receipt of the notice.
- v. At any time prior to payment of stipulated penalties by Respondent, the Director of the Division of Enforcement and Compliance Assistance may, for good cause as independently determined by him or her, reduce or eliminate the stipulated

penalties. If the Director makes such determination, EPA will notify Respondent in writing of the change.

- vi. All penalties owed to EPA under this Section shall be due and owing as of the date of Respondent's receipt of the notice, described in subparagraph "iii" or "iv," above. Interest shall also accrue on any amount not paid when due at the rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717.
- vii. If Respondent fails to pay stipulated penalties as required under this Order, EPA may refer this matter to the U.S. Department of Justice or the Department of the Treasury, as appropriate, for collection under applicable law. Nothing in this section, however, limits, or shall be construed as limiting, any right(s) or remedy(ies) available to EPA to enforce this Order and to seek compliance with the terms and conditions of this Order or any other applicable law or regulation.

#### XIV. NON-RELEASE OF OTHER CLAIMS AND PARTIES

82. Nothing in this Order shall constitute, or be construed to constitute, a release from any claim, cause of action or demand in law or equity brought by EPA against any person, firm, partnership, or corporation for any liability it may have arising out of, or relating in any way to, the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous constituent, hazardous substance, solid waste, hazardous waste, pollutant, or contaminant as a result of the implementation of this Order and the work to be performed thereunder.

#### XV. INDEMNIFICATION OF THE UNITED STATES GOVERNMENT

83. To the extent permitted by Commonwealth law, Respondent shall indemnify, save and hold harmless the United States Government, its agencies, departments, agents, and/or employees, from any and all claims or causes of action arising from or on account of acts or omissions of Respondent or its agents, independent contractors, receivers, trustees, subcontractors or successors and/or assigns in carrying out activities required by this Order. This indemnification shall not be construed as in any way affecting or limiting the rights or obligations of the Respondent or the United States under their various contracts or statutes.

#### XVI. OTHER APPLICABLE LAWS

84. Respondent shall undertake all actions required by this Order in accordance with the requirements of all applicable local, commonwealth, and federal laws and regulations. Respondent shall obtain all permits or approvals necessary to perform the work required by this Order.

## XVII. SEVERABILITY

85. If any provision or authority of this Order or the application of this Order to any party or circumstance is found to be invalid, or is temporarily stayed, the remainder of this Order shall remain in force and shall not be affected thereby.

## XVIII. FORCE MAJEURE AND EXCUSABLE DELAY

86. Respondent shall perform all the requirements of this Order within the time limits set forth, accepted, or established herein, unless the performance is prevented or delayed solely by events which constitute a force majeure. A force majeure is defined as any event arising from causes not reasonably foreseeable and beyond the control of the Respondent which could not be overcome by due diligence and which delays or prevents performance by a date required by this Order. Such events do not include unanticipated or increased costs of performance, changed economic circumstances, normal precipitation events, or failure to obtain federal, commonwealth, or local permits.

87. Respondent shall notify in writing the EPA Project Coordinator within five (5) working days after becoming aware of any event, which it knows or should know, constitutes a force majeure. Such notice shall detail the estimated length of delay, including necessary demobilization and remobilization, its causes, measures taken or to be taken to minimize the delay, and an estimated timetable for implementation of these measures. Respondent shall adopt all reasonable measures to avoid and minimize the delay. Failure to comply with the notice provision of this section shall constitute a waiver of Respondent's right to assert a force majeure and shall be grounds for EPA to deny Respondent an extension of time for performance.

88. After receiving notice that Respondent is invoking the force majeure provisions of this Order, EPA will respond in writing indicating either its agreement that the event constitutes a force majeure or its disagreement and the reasons therefore.

89. If the parties agree that a force majeure has occurred, the time for performance may be extended, upon EPA acceptance, for a period equal to the delay resulting from such circumstances. This shall be accomplished through written amendment to this Order, or modifying the schedule in a previously accepted Workplan. Such an extension or modification will not alter the schedule for performance or completion of any other tasks required by this Order unless these are also specifically altered in accordance with the Modification Section, or by modifying a previously accepted Workplan.

90. In the event the parties cannot agree that any delay or failure has been or will be caused by a force majeure, or if there is no agreement on the length of the extension, the dispute will be resolved in accordance with the Dispute Resolution provisions contained in this Order.

## XIX. ON-SITE AND OFF-SITE ACCESS

91. Until this Order is terminated, Respondent shall permit EPA representatives, including but not be limited to, authorized designees, employees, agents and contractors to enter, at any time, any area/place (e.g. document storage/files, future confiscated material storage area) where files pertaining to the Order might be kept or implementation of the Workplan might take place for, but not limited to, the following purpose(s): making observations and/or conducting inspections, interviewing personnel, conducting sampling or monitoring, taking photographs, and verifying information or data that have been submitted.

92. Respondent shall make available to EPA for inspection, copying, or photographing, all records, files, photographs, documents, or any other writing that pertain to any work undertaken pursuant to this Order. Upon EPA request, Respondent is required to provide to EPA all the specific locations (including addresses and telephone numbers and the name of a contact person) where documents pertaining to this Order will be kept. EPA shall be granted access to these documents during regular business hours upon request. Respondent's personnel (and those in its employ) working on any aspect of this Order or the work required by this Order shall be made available, upon reasonable notice, during regular business hours to speak with EPA concerning any portion of this Order or the work required by this Order.

93. To the extent that work required by this Order must be performed on property not owned or controlled by Respondent, the Respondent shall (unless other arrangements for access and use of these properties have been made) use best efforts to obtain "Site Access Agreements" to perform such work within thirty (30) working days of the date Respondent becomes aware or should be aware of the need to perform such work. Any such access agreement shall provide for reasonable access by EPA. In the event that Site Access Agreements are not obtained within the thirty (30) day period, Respondent shall notify EPA, in writing, documenting efforts to obtain such agreements.

94. Nothing in this Order shall be construed to limit or otherwise affect EPA's right of access and entry pursuant to any applicable laws and regulations, including the Act and CERCLA.

95. Nothing in this Order shall be construed to limit or otherwise affect Respondent's liabilities and obligations to perform required actions under this Order and any other legal requirements, notwithstanding any lack of access. EPA may determine that additional measures must be taken if access to off-site areas cannot be obtained.

## XX. NO FINAL AGENCY ACTION

96. Notwithstanding any other provision of this Order, no action or decision by EPA pursuant to this Order, including without limitation, decisions of the Regional Administrator, Region 2, or any authorized representative of EPA, shall constitute final agency action giving rise to any rights of judicial review prior to EPA's initiation of a judicial action for a violation of this Order, which

may include an action for penalties, an action to compel Respondent's compliance with the terms and conditions of this Order, or such other relief as may be available at law.

97. In an action brought by EPA for a violation of this Order, Respondent shall bear the burden of proving that EPA's position was arbitrary and/or capricious and not in accordance with law, or this Order. In any such action, EPA will bear the burden of proving that Respondent has violated a term or terms of this Order.

## XXI. MODIFICATION

98. This Order may be amended by Respondent and EPA. Such amendment(s) shall be in writing, shall first be signed by Respondent, and shall have as their effective date the date on which they are signed by the EPA Regional Administrator.

99. Notwithstanding the above, EPA's and the Respondent's project coordinators may agree to changes in the scheduling of activities required under the Order. Any such changes shall be requested in writing by the Respondent, and must be accepted in writing by the EPA project coordinator, in his sole discretion, in order to become effective.

100. No informal advice, guidance, suggestions, or comments by EPA regarding reports, plans, specifications, schedules, and any other writing submitted by Respondent will be construed as an amendment or modification to this Order.

## XXII. TRANSFER OF OBLIGATIONS

101. Respondent shall give notice and a copy of this Order to a new party prior to any transfer of responsibility for implementation of the Workplan. Respondent shall give notice to EPA at least sixty (60) days prior to any such transfer. No such transfer shall in any way alter, extinguish or otherwise affect Respondent's responsibility to meet all the terms and obligations of this Order. Respondent may, however, transfer the responsibility for unperformed work obligations imposed by this Order to a new party, provided a demonstration is made to EPA's satisfaction that the new party is an appropriate party to be assuming these work obligations and is capable of undertaking these work obligations and has expressly agreed to do so in writing, provided further that EPA has given its acceptance in writing to any such transfer of work obligations, and provided finally that this Order has been modified to reflect the transfer. Any stipulated penalties that may have accrued pursuant to the terms of this Order shall remain the responsibility of the party against whom the penalties accrued. The Order Modification reflecting the transfer of obligations to a new party or parties may, if appropriate, establish modified schedules for continuing obligations under the Order.

### XXIII. DISPUTE RESOLUTION

102. The parties shall use their best efforts to informally and in good faith resolve all disputes and differences of opinion. Notwithstanding the above, if Respondent disagrees, in whole or in part, with any disapproval, modification, directive or other decision made by EPA pursuant to this Order, Respondent shall notify EPA in writing of such disagreement and the basis (bases) thereof within ten (10) working days of receipt of EPA's disapproval, modification, directive or other decision. Said notice shall set forth the specific points of the dispute, the position Respondent maintains, the basis (bases) for Respondent's position, and any matters the Respondent considers necessary for EPA's determination. EPA, acting through the Director, Division of Enforcement and Compliance Assistance, Region 2, will provide Respondent its decision on the pending dispute, which decision shall be binding on the parties to this Order. The parties may continue to confer and to use informal efforts to resolve the dispute during the period that EPA's final determination is pending.

103. The existence of a dispute as defined herein, and EPA's consideration of such matters as placed into dispute shall excuse, toll, or suspend during the pendency of the dispute resolution process the compliance obligation or deadline which is in dispute and any other obligation or deadline which is demonstrably dependent on the matters in dispute, and EPA will not seek to assess a penalty for noncompliance with the obligation or deadline for the period of time during which the obligation or deadline was excused, tolled, or suspended, regardless of the decision on the dispute. No obligation or deadline shall be excused, tolled, or suspended, unless Respondent's dispute is in good faith and Respondent exercises due diligence to resolve the dispute.

### XXIV. TERMINATION

104. This Order and all of its terms and provisions shall remain in effect for at least five (5) years from the effective date of this Order. Thereafter, Respondent may submit a request in writing to EPA that the Order be terminated and shall supply EPA with such information, including certifications, as EPA may specify.

105. EPA will issue, in writing, a termination of this Order if EPA determines that Respondent has satisfactorily complied with the terms and provisions of the Order for the two (2) consecutive years prior to the date EPA receives the request of termination from Respondent.

### XXV. ENFORCEMENT

106. The failure of Respondent to comply with any provision of this Order may be considered a violation of this Order. Such violation may give rise to an enforcement action pursuant to Section 7003(b) of the Act, 42 U.S.C. § 6973(b), as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 et seq., or other law.

107. Nothing herein shall preclude EPA from taking any additional enforcement actions, and/or

such other actions as it may deem necessary for the abatement or prevention of an imminent threat to public health or the environment based on: (1) conditions at the Hazardous Waste Storage Areas, (2) conditions at the five (5) areas where Respondent had been storing the past confiscated material prior to the implementation of the Workplan, and (3) any other concerns arising from or during the implementation of the Workplan or Respondent's management of future confiscated material. Consistent with Section XII, EPA reserves the right to take any such other enforcement actions as EPA may deem necessary based on information about conditions at the Storage Areas or as a result of the implementation of the Workplan under the Act or other environmental laws. EPA does not, however, currently expect that additional civil enforcement action under the Act will be required with respect to specific actions required to be taken by Respondent under this Order, if such actions are implemented to EPA's satisfaction.

#### XXVI. GENERAL PROVISIONS

108. Nothing in this Order constitutes a satisfaction or release from liability with respect to any conditions or claims arising as a result of past, current or future operations involving the generation, storage, transportation, and disposal of fireworks and/or pyrotechnic material by the Respondent, its agents, officials, successors or assigns.

109. Nothing in this Order affects any right, claim, interest, defense or cause of action of EPA with respect to the Respondent or any other party.

#### XXVII. CONSENT

110. Respondent consents to and agrees not to contest EPA's jurisdiction to issue this Order. In addition, whether brought in an administrative or judicial proceeding, Respondent consents to and agrees not to contest EPA's jurisdiction to enforce or compel compliance with any term of this Order.

111. Finding this Order to be accurate and reasonable, Respondent consents to its issuance and its terms, and agrees to undertake all actions required by the terms and conditions of this Order. Respondent consents to the issuance of this Order, as an Order, pursuant to Section 7003 of RCRA, 42 U.S.C. § 6973, and explicitly waives any rights it may have to request a hearing on this matter.

112. Respondent agrees not to contest and agrees to waive any defense concerning the validity of this Order, or any particular provision contained herein. However, the foregoing sentence shall not preclude Respondent (in an action filed by the United States or EPA for enforcement of this Order) from contesting EPA's administration or interpretation of the Order, or any particular provision thereof, as being inconsistent with the Administrative Procedure Act, 5 U.S.C. § 551 et seq., or other applicable federal law.

113. The signatory for Respondent certifies that he or she is fully authorized to sign this Order

without reservation.

XXVIII. EFFECTIVE DATE

114. The effective date of this Order shall be fifteen (15) days after the date the Order is signed by the Regional Administrator, EPA Region 2.

**In the Matter of Commonwealth of Puerto Rico  
(Puerto Rico Police Department)  
Docket Number RCRA-02-2009-7301**

Respondent: **Commonwealth of Puerto Rico**

By: \_\_\_\_\_  
Signature

Date: \_\_\_\_\_

\_\_\_\_\_  
Signatory's Name (Print)

\_\_\_\_\_  
Signatory's Title (Print)

**In the Matter of Commonwealth of Puerto Rico  
(Puerto Rico Police Department)  
Docket Number RCRA-02-2009-7301**

**It is so Ordered:**

\_\_\_\_\_

Date: \_\_\_\_\_

Regional Administrator  
U.S. Environmental Protection Agency, Region 2  
290 Broadway  
New York, New York 10007-1866