

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

_____)	
UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	CIVIL ACTION NO.
v.)	
)	
PUERTO RICO CVS PHARMACY, LLC,)	
)	
Defendant.)	
_____)	

COMPLAINT

The United States of America, by the authority of the Attorney General and through the undersigned attorney, acting at the request of the Administrator of the Environmental Protection Agency (EPA), files this complaint and alleges as follows:

NATURE OF ACTION

1. This is a civil action brought by the United States against Puerto Rico CVS Pharmacy, LLC, (“CVS”) for injunctive relief and civil penalties for violations of the regulations that apply to the storage, disposal, and management of hazardous wastes.

2. This complaint is filed pursuant to the Solid Waste Disposal Act as amended by, *inter alia*, the Resource Conservation and Recovery Act and the Hazardous and Solid Waste Amendments of 1984 (hereinafter, this statute, as amended, is called “RCRA”), set forth at 42 U.S.C. §§ 6901-6992k.

JURISDICTION, VENUE, AUTHORITY AND NOTICE

3. This Court has jurisdiction over the subject matter of this action under Sections 3008(a)(1) and (g) of RCRA, 42 U.S.C. §§ 6928(a)(1) and (g); and 28 U.S.C. §§ 1331, 1345 and 1355.

4. Venue is proper in the District of Puerto Rico under 42 U.S.C. §§ 6928(a)(1) and (g), and 28 U.S.C. §§ 1391 and 1395, because CVS is present in and conducts business in this judicial district, and because the violations alleged occurred within this judicial district.

5. Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2), requires notice to states authorized to implement the federal hazardous waste program, but not to the Commonwealth of Puerto Rico, which is not authorized to implement the federal hazardous waste program.

DEFENDANT

6. CVS is a limited liability company registered in Puerto Rico.

7. The alleged violations occurred at three retail pharmacies in Puerto Rico: Store Number 2869 at 3950 PR Highway #2 in Vega Baja (the “Vega Baja Pharmacy”), Store Number 4596 at Carr. PR-167, Intersection Carr. PR-829 in Bayamón (the “Bayamón Pharmacy”), and Store Number 7979 at 105 Gilberto Concepcion De Gracia in San Juan (the “San Juan Pharmacy”). Collectively, these three pharmacies will be referred to as the “CVS Pharmacies.”

STATUTORY AND REGULATORY FRAMEWORK

8. RCRA establishes a cradle-to-grave hazardous waste handling program. 42 U.S.C. § 6901 *et seq.*

9. RCRA's Subchapter III (RCRA §§ 3001 – 3023, 42 U.S.C. §§ 6921 – 6940) (also known as "Subtitle C"), requires EPA to promulgate regulations establishing performance standards for facilities that generate, transport, treat, store and/or dispose of hazardous wastes. Together, RCRA Subtitle C and its implementing regulations, set forth at 40 C.F.R. Parts 260 – 273, comprise EPA's RCRA hazardous waste program.

10. Under RCRA and its implementing regulations, a waste is "hazardous" if it is a "solid waste," which includes solid, semi-solid, or liquid discarded material resulting from commercial operations, RCRA § 1004(5), 42 U.S.C. § 6903(5), and 40 C.F.R. § 261.2; and if it is either listed as a hazardous waste, or exhibits the characteristics of ignitability, corrosivity, reactivity, or toxicity. RCRA § 1004(27), 42 U.S.C. § 6903(27), and 40 C.F.R. § 261.3.

11. Under RCRA, a generator means any person whose act or process at a site produces hazardous waste identified or listed in 40 C.F.R. Part 261 or whose act first causes a hazardous waste to become subject to regulation. 40 C.F.R. § 260.10.

12. Any person who generates a solid waste must determine whether that waste is hazardous waste. 40 C.F.R. § 262.11.

13. At all times relevant to this Complaint, a generator was not a conditionally exempt small quantity generator and was subject to full regulation under 40 C.F.R. Parts 124, 262 - 268, and 270, if it accumulated more than 1 kg of acute hazardous waste at any time. 40 CFR § 261.5(e) and (f) (effective June 16, 2010 – May 29, 2017 and May 30, 2017; reserved by 81 F.R. 85806). EPA called this type of generator a "Large Quantity Generator."

14. At all times relevant to this Complaint, EPA's regulations allowed Large Quantity Generators to accumulate hazardous waste on-site for up to 90 days without a RCRA waste

storage permit, provided the generator complied with the following requirements (among other requirements for the permit exemption):

- Label containers of hazardous waste with the words “hazardous waste,” 40 C.F.R. § 262.17(a)(5)(i)(A)¹;
- Label containers of hazardous waste with the date waste accumulation begins, 40 C.F.R. § 262.17(a)(5)(i)(C)²;
- Keep containers of hazardous waste closed, except when waste is being added or removed, 40 C.F.R. § 265.173(a); and
- Maintain a complete contingency plan, 40 C.F.R. § 265.51-265.54.

15. Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), as modified by the Civil Monetary Penalty Inflation Adjustment Rule, authorizes the United States to seek up to \$37,500 per day for each violation of Subtitle C of RCRA that occurred between January 12, 2009 and November 2, 2015. *See* 40 C.F.R. Part 19, 74 Fed. Reg. 628 (Jan 7, 2009); 78 Fed. Reg. 66,643 (Dec. 6, 2013).

FACTUAL ALLEGATIONS

16. CVS is a “person” as that term is defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), 40 C.F.R. § 260.10.

17. At all times relevant to this Complaint, CVS was the “operator” of the CVS Pharmacies as defined in 40 C.F.R. § 260.10.

¹ This regulation became effective May 30, 2017. Between June 16, 2010 and May 30, 2017, the same requirement was found at 40 C.F.R. § 262.34(a).

² This regulation became effective May 30, 2017. Between June 16, 2010 and May 30, 2017, the same requirement was found at 40 C.F.R. § 262.34(a).

18. The CVS Pharmacies are “facilities” as defined in 40 C.F.R. § 260.10.

19. “Hazardous wastes” are those solid wastes that are listed by EPA as hazardous in 40 C.F.R. §§ 261.31 – 261.33 or are ignitable, corrosive, reactive, or toxic as defined in 40 C.F.R. § 261.3.

20. Each of the CVS Pharmacies is a “generator” because each of the CVS Pharmacies produces “hazardous waste” or “acute hazardous waste” as those terms are defined in 40 C.F.R. §§ 260.10 and 261.3

21. To provide an example, at all times relevant to this Complaint, the “hazardous wastes” produced by one or more of the CVS Pharmacies included chemicals used to develop photographs, as well as waste consumer products such as certain hair products and over-the-counter medications.

22. To provide an example, at all times relevant to this Complaint, the “acute hazardous wastes” produced by one or more of the CVS Pharmacies include waste pharmaceutical products such as chemotherapy drugs, blood thinners like warfarin and coumarin, and nicotine replacement therapy products.

23. At all times relevant to this Complaint, under 40 C.F.R. § 262.41, CVS or its corporate parent prepared a Hazardous Waste Report each even numbered year identifying the amount of hazardous waste generated by each of the CVS Pharmacies within the previous calendar year.

24. EPA inspected the Vega Baja Pharmacy on February 26, 2013 (the “Vega Baja Inspection”).

25. In 2013, the Vega Baja Pharmacy was a Large Quantity Generator as reported in its 2013 Hazardous Waste Report, generating 151 pounds of hazardous waste and 21 pounds of acute hazardous waste that year.

26. EPA inspected the Bayamón Pharmacy on April 17, 2013 (the “Bayamón Inspection”).

27. In 2013, the Bayamón Pharmacy was a Large Quantity Generator as reported in its 2013 Hazardous Waste Report, generating 268 pounds of hazardous waste and 46 pounds of acute hazardous waste.

28. EPA inspected the San Juan Pharmacy on March 15, 2013 (the “San Juan Inspection”).

29. Generators are required to prepare manifests to document the waste transported from the generator’s facility. 40 C.F.R. § 262.20(a).

30. The San Juan Pharmacy’s manifest, at the time of the San Juan Inspection, indicated that the San Juan Pharmacy had accumulated 8 pounds of acute hazardous waste by August 22, 2013.

31. Based on this manifest, the San Juan Pharmacy was a Large Quantity Generator in 2013.

32. At all times relevant to this complaint, CVS did not have a RCRA permit to store waste at the CVS Pharmacies, making CVS subject to the requirements set forth in Paragraph 14.

33. StrongPak is a brand name used by the contractor that arranged for transport and disposal of hazardous wastes from the CVS Pharmacies throughout 2013. The contractor

provided StrongPak-branded containers to CVS in which CVS stored hazardous wastes at the CVS Pharmacies between StrongPak pick-ups.

FIRST CLAIM FOR RELIEF

(Failure to Make Hazardous Waste Determination)

34. The allegations in Paragraphs 1 through 33 are realleged and incorporated herein by reference.

35. Pursuant to 40 C.F.R. § 262.11, a person who generates a solid waste must determine whether that waste is a hazardous waste prior to making any decisions about how to manage the waste, first by determining if the waste is excluded from regulation under 40 C.F.R. § 261.4; then by determining if the waste is listed as a hazardous waste in 40 C.F.R. Part 261, Subpart D; then, by either applying knowledge of the hazardous characteristic(s) of the waste in light of the materials or the processes used, or by testing the waste using specified methods, determining if the waste is a characteristic hazardous waste under 40 C.F.R. Part 261, Subpart C.

36. CVS is a person who generates solid waste.

37. In the San Juan Inspection, EPA inspectors observed mixed hazardous and non-hazardous wastes in a Strong Pak box located in the rear warehouse area of the San Juan Pharmacy. This box contained hazardous wastes such as hair dyes and batteries along with non-hazardous wastes such as soup cans, snack bars, and hair picks.

38. CVS violated 40 C.F.R. § 262.11 when it failed to make a hazardous waste determination on the non-hazardous wastes placed into the Strong Pak box described in Paragraph 37.

39. Pursuant to Section 3008(g) of RCRA, CVS is subject to penalties for each violation of 40 C.F.R. § 262.11.

SECOND CLAIM FOR RELIEF

(Failure to Maintain Hazardous Waste Containers Closed)

40. The allegations in Paragraphs 1 through 33 are realleged and incorporated herein by reference.

41. Pursuant to 40 C.F.R. § 265.173, a generator operating without a permit must keep the container holding hazardous waste closed during storage, except when adding or removing waste.

42. During the Vega Baja Inspection, inspectors noted six StrongPak boxes containing hazardous waste that were open even though waste was not being removed or added. Two of the open StrongPak boxes were marked “Hazardous Waste” and were located in the pharmacy area of the Vega Baja Pharmacy, and four of the open StrongPak boxes were located in the rear warehouse area of the Vega Baja Pharmacy.

43. During the San Juan Inspection, inspectors noted two StrongPak boxes containing hazardous wastes that were open even though waste was not being removed or added. One of the open StrongPak boxes was located in the pharmacy area of the San Juan Pharmacy. The other open StrongPak box was located in the rear warehouse area of the San Juan Pharmacy.

44. CVS violated 40 C.F.R. § 265.173 by failing to close the containers it used to store hazardous waste as described in Paragraphs 42 and 43.

45. Pursuant to Section 3008(g) of RCRA, CVS is subject to penalties for each violation of 40 C.F.R. § 265.173.

THIRD CLAIM FOR RELIEF

(Failure to Mark Waste Accumulation Start Date)

46. The allegations in Paragraphs 1 through 33 are realleged and incorporated herein by reference.

47. A generator operating without a permit must mark the waste accumulation start date on the containers it uses to accumulate hazardous wastes. 40 C.F.R. § 262.17(a)(5)(i)(C). This date must be clearly visible for inspection on each container. *Id.*

48. During the Bayamón Inspection, inspectors observed ten StrongPak boxes containing hazardous wastes and/or marked hazardous wastes with no accumulation start dates marked on the boxes.

49. During the San Juan Inspection, inspectors observed one StrongPak box containing hazardous wastes with no accumulation start date marked on the box.

50. During the Vega Baja Inspection, inspectors observed eight StrongPak boxes containing hazardous wastes with no accumulation start dates marked on the boxes.

51. CVS violated 40 C.F.R. § 262.17(a)(5)(i)(C) when it failed to mark the containers used to accumulate hazardous wastes with the accumulation start date.

52. Pursuant to Section 3008(g) of RCRA, CVS is subject to penalties for each violation of 40 C.F.R. § 262.17(a)(5)(i)(C).

FOURTH CLAIM FOR RELIEF

(Failure to Mark Container “Hazardous Waste”)

53. The allegations in Paragraphs 1 through 33 are realleged and incorporated herein by reference.

54. A generator operating without a permit must label the containers it uses to accumulate hazardous wastes with the words “Hazardous Waste.” 40 C.F.R. § 262.17(a)(5)(i)(A).

55. During the San Juan Inspection, EPA inspectors observed one StrongPak box containing hazardous wastes but not labeled or marked with the words “Hazardous Waste.”

56. During the Vega Baja Inspection, EPA inspectors observed eight StrongPak containers containing hazardous wastes but not labeled or marked with the words “Hazardous Waste.”

57. CVS violated 40 C.F.R. § 262.17(a)(5)(i)(A) when it failed to mark the containers used to accumulate hazardous wastes with the words “Hazardous Waste.”

58. Pursuant to Section 3008(g) of RCRA, CVS is subject to penalties for each violation of 40 C.F.R. § 262.17(a)(5)(i)(A).

FIFTH CLAIM FOR RELIEF

(Failure to Maintain a Copy of Contingency Plan at Facility)

59. The allegations in Paragraphs 1 through 33 are realleged and incorporated herein by reference.

60. Pursuant to 40 C.F.R. § 265.51, an operator must have a contingency plan for his or her facility designed to minimize hazards to human health or the environment from fires, explosions, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water. Pursuant to 40 C.F.R. § 265.53, a copy of the contingency plan must be maintained at the facility.

61. Bayamón Pharmacy is a facility within the meaning of 40 C.F.R. § 265.51 and 40 C.F.R. § 265.53.

62. At the Bayamón Inspection, EPA inspectors requested a copy of the Bayamón Pharmacy contingency plan, but the store manager was unable to provide the contingency plan.

63. CVS violated 40 C.F.R. § 265.53(a) by failing to maintain a copy of the contingency plan at the Bayamón Pharmacy.

64. Pursuant to Section 3008(g) of RCRA, CVS is subject to penalties for each violation of 40 C.F.R. § 265.53(a).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, the United States of America, respectfully requests that the Court:

- a. Permanently enjoin CVS from further violations of the Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. § 6901, *et seq.*, and its implementing regulations;
- d. Assess civil penalties against CVS not to exceed \$37,500 per day for each violation.
- e. Order CVS to take all steps necessary to redress or mitigate the impact of its violations.
- f. Award such other relief as this Court may deem just and proper.

Respectfully submitted,

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