UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 BROADWAY
NEW YORK, NEW YORK 10007-1866

SEP 23 2009

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Honorable Carlos Mendez-Martinez, Mayor
Municipality of Aguadilla
Municipio Autonomo de Aguadilla
Oficina del Alcalde - Apartado 1008
Aguadilla, PR 00605.

Re: In the Matter of **Municipality of Aguadilla**
Docket No. RCRA-02-2009-7102

Dear Honorable Carlos Mendez-Martinez:

Enclosed is the fully executed Consent Agreement and Final Order ("CA/FO"), with original signatures for the Municipality's records, in settlement of the above-captioned matter. A copy of the fully executed CA/FO has been provided to Attorney Negron.

Please note the due date and manner of payment of the civil penalty as set forth on page 7 of the CA/FO. In addition, please be certain to comply with all the terms and requirements for performance of the Supplemental Environmental Project (SEP) and reporting deadlines.

The Municipality and Ms. Negron's cooperation in settlement of this matter is greatly appreciated.

Sincerely yours,

Melva J. Hayden, Esquire
Assistant Regional Counsel
Office of Regional Counsel
Water and General Law Branch/Waste and Toxic Substances Branch

cc: Karen Maples, Regional Hearing Clerk
Lizabel M. Negron-Vargas, Esq. - Legal Counsel for the Municipality of Aguadilla
Julio Rodriguez - PREQB

bcc: Hanna Maciejko (2DEPP-RPB)
John Senn (PAD-POB)
George Meyer (2DECA-RCB)
William Sawyer (2ORC-WTSB)
Blake Edwards, Cincinnati Finance Center
Marianna Dominguez (2DECA-RCB)
Melva Hayden (2ORC-WGLB/WTSB)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

In the Matter of	:	**CONSENT AGREEMENT**
	:	**AND**
Municipality of Aguadilla	:	**FINAL ORDER**
Respondent.	:	
	:	**Docket No.**
Proceeding Under Section 3008 of the Solid Waste Disposal Act, as amended.	:	**RCRA-02-2009-7102**

PRELIMINARY STATEMENT

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, 42 U.S.C. §§ 6901, et seq. ("RCRA" or "the Act").

Section 3008 of RCRA, 42 U.S.C. § 6928, authorizes the Administrator to enforce violations of the Act and the regulations promulgated or authorized pursuant to it. Complainant in these proceedings, the Director of the Division of Enforcement and Compliance Assistance ("DECA"), EPA Region 2, issued a Complaint, Compliance Order and Notice of Opportunity for Hearing to Respondent Municipality of Aguadilla (hereinafter, "Respondent" or "the Municipality") on December 31, 2008, bearing the docket number RCRA-02-2009-7102. The Complaint alleged that Respondent had violated requirements of RCRA and regulations concerning the management of hazardous waste and used oil.

The parties have reached an amicable resolution of this matter and have agreed to this Consent Agreement and Final Order ("CA/FO"), pursuant to Title 40 of the Code of Federal Regulations ("C.F.R.") Section 22.18(b) of the revised Consolidated Rules of Practice, as a resolution of this proceeding without further litigation.

EPA'S FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Respondent is the Municipality of Aguadilla ("the Municipality"), an entity that was organized pursuant to, and has existed under the laws of the Commonwealth of Puerto Rico.

2. 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.

3. The Department of Public Works ("DPW"), a department of the Municipality of Aguadilla, has operated a facility ("DPW facility", or "the Facility") located at State Road PR-467, Cuesta Vieja in Aguadilla, PR 00605, as that term is defined at 40 C.F.R. §260.10.

4. The DPW facility provides preventive maintenance and mechanic services, including motor oil changes, for the vehicle fleet of the Municipality of Aguadilla (the "Municipality").

5. The Respondent's facility includes:

   a. A two-story office building used to house several municipal agencies;
   b. Three (3) additional buildings used as storage space and workshops. The agencies located in the facility are: (1) Transportation, (2) Waste Management/Collection, and (3) Landscaping;
   c. A mechanic shop;
   d. A warehouse;
   e. An oil change building;
   f. A parking area for the Municipality's vehicles; and
   g. A motor pool area for trucks and cars.

6. Respondent is the "owner" and/or "operator" of the DPW facility as those terms are defined in 40 C.F.R. § 260.10.

7. Respondent, in carrying out the preventive maintenance, oil changes, and mechanic services for the Municipality's vehicle fleet (including motor oil changes), and in the course of conducting normal building maintenance operations at the Facility, has generated solid waste (within the meaning of 40 C.F.R. §261.2) in various maintenance areas and other areas of its DPW Facility, and continues to do so at its DPW facility.

8. At all times mentioned herein and subsequent thereto, Respondent has been a "generator," as that term is defined in 40 C.F.R. § 260.10, of hazardous waste at its DPW facility.

9. The Respondent's facility constitutes an "existing hazardous waste management facility" (or "existing facility") within the meaning of 40 C.F.R. § 260.10.

10. Respondent's activities at its DPW facility included the maintenance and repair of vehicles and equipment.

11. Respondent's activities at its DPW facility have included the collection and accumulation of used oil, within the meaning of 40 C.F.R. § 279.1.

12. On or about February 15, 2006, a duly designated representative of EPA

conducted the first Compliance Inspection of the DPW Facility pursuant to Section 3007 of RCRA, 42 U.S.C. §6927, to evaluate Respondent's compliance with applicable requirements of RCRA and its implementing regulations (hereinafter "the First Inspection").

13. On or about April 20, 2006, EPA issued to Respondent a combined Notice of Violation ("NOV") and Information Request Letter ("IRL") pursuant to Sections 3007 and 3008 of the Act, 42 U.S.C. §§ 6927 and 6928. The NOV and IRL informed the Municipality that EPA had identified a number of RCRA Subtitle C violations at its DPW facility during the February 2006 Inspection and requested that the Municipality provide a description and documentation of the actions DPW had taken to correct the RCRA Subtitle C violations identified by EPA in that NOV.

14. On or about May 18, 2006, Respondent submitted its response to the NOV and IRL.

15. On or about March 7, 2008, a duly designated representative of EPA conducted the second Compliance Inspection of the DPW Facility pursuant to Section 3007 of RCRA, 42 U.S.C. §6927, to evaluate Respondent's compliance with applicable requirements of RCRA and its implementing regulations (hereinafter "the Second Inspection").

16. Based on EPA's February 15, 2006 First Inspection, Respondent's May 18, 2006 response to EPA's combined NOV and IRL, and EPA's March 7, 2008 Second Inspection, EPA issued an Administrative Complaint against the Respondent on January 7, 2009, bearing docket number RCRA-02-2009-7102.

17. Respondent submitted to EPA a letter, dated April 30, 2009, which described the compliance measures undertaken by Respondent to comply with the Compliance Order section of the Complaint.

Failure to Make Hazardous Waste Determinations

18. Prior to at least February 15, 2006, Respondent generated at least the following solid wastes at its DPW facility:
    a) spent fluorescent light bulbs;
    b) old used computers and computer components;
    c) "oil dry" and oil clean-up material;

19. Prior to at least March 7, 2008, Respondent generated at least the following solid waste:
    a) used oil on a monthly basis;
    b) spent batteries;
    c) spent fluorescent light bulbs;

d) parts washer solvents;
e) diesel fuel with paint (from cleaning paint brushes);
f) spent coolant drained from vehicles and collected in drip-pans (in mechanic shop);
g) used oil filters (in oil change building, or garage);
h) one (1) 40-gallon drum with waste (labeled "diesel fuel conditioner with smoke suppressant in storage area or warehouse);
i) two (2) 40-gallon drums with unknown contents (in storage area or warehouse);
j) three (3) 5-gallon pails with unknown contents (in storage area or warehouse);
k) at least four (4) 55-gallon drums with unknown waste (parking area);
l) five (5) 20-gallon containers with roof sealant (in the storage area or warehouse);
m) two (2) 55-gallon drums with spent diesel (in the storage area or warehouse);
n) a 5-gallon pail labeled "Nitro Gizer" fuel stabilizer (abandoned in storage area or warehouse); and
o) another pail with unknown contents (in storage area or warehouse).

20. Respondent discarded or disposed of the waste materials identified above by placing them in the regular trash.

21. Each of the materials identified above was a discarded material and a solid waste, as defined in 40 C.F.R. § 261.2. A used light bulb becomes a waste when it is discarded, pursuant to 40 C.F.R. § 273.5(c).

22. As of at least February 15, 2006, Respondent failed to determine, or have a third party determine for it, whether each of the solid wastes described above in paragraph "18", was a hazardous waste, which constitutes violations of 40 C.F.R. § 262.11.

23. As of at least March 7, 2008, Respondent failed to determine, or have a third party determine for it, whether each of the solid wastes described above in paragraph "19", was a hazardous waste, which constitutes violations of 40 C.F.R. § 262.11.

Failure to Label or Mark Containers with the Words "Used Oil"

24. On at least February 15, 2006, the following used oil tank and containers were present at the Facility:

a) the large used oil tank that Respondent used to collect and store used oil from throughout the facility in the garage area. (There were no "Used Oil" markings indicating that used oil was being stored in the aforementioned large tank);

b) three (3) detergent containers labeled "Clorox" and "Wisk had been used to store used oil in the oil change area at the back of the garage. (There were no "Used Oil" markings indicating that used oil was being stored in the aforementioned three (3) detergent containers);
c) along the back of the garage, there were 5-gallon buckets holding used oil. (There were no labels indicating that used oil was being stored in the aforementioned 5-gallon buckets);
d) one (1) 55-gallon drum that was open and had used oil in it that was in the oil change garage area. The drum also had regular trash in it as well. (There were no "Used Oil" markings indicating that used oil was being stored in the aforementioned 55-gallon drum); and
e) in front of the large used oil tank were several (approximately 13) small one, two and 5-gallon containers in the garage area holding used oil, that were dropped off by local companies in the municipality. (There were no "Used Oil" markings indicating that used oil was being stored in the aforementioned several small one, two and 5-gallon containers).

25. On at least March 7, 2008, the following used oil tank and containers were present at the Facility:
    a) three (3) 55-gallon drums had used oil in them. The drums were located in an out of use truck west of the building where the mechanical shop was located. (There were no "Used Oil" markings indicating that used oil was being stored in the aforementioned 55-gallon drums);
    b) the various garbage containers in the mechanic shop area. One of these containers had rags with used oil. Next to a 16-gallon parts washer was an open 5-gallon pail with spent solution used in the parts washer. The solution was a mixture of gasoline and diesel. At least four (4) of the containers stored used oil. (These containers were not labeled with the words "Used Oil" and were not closed); and
    c) two (2) 5-gallon pails with used oil were in the storage area or warehouse. (The aforementioned two (2) 5-gallon pails containing used oil were open and were not labeled.)

26. On at least February 15, 2006, Respondent had failed to label or mark the used oil tank and containers identified in paragraph "24", above, with the words "Used Oil".

27. On at least March 7, 2008, Respondent had failed to label or mark the used oil tank and containers identified in paragraph "25", above, with the words "Used Oil".

28. Respondent's failure to label the aforementioned used oil tank and containers with the words "Used Oil" constitute violations of 40 C.F.R. §279.22(c)(1).

Failure to Stop, Contain, Clean Up and Manage Properly Used Oil Releases

29. As of at least February 15, 2006, Respondent had failed to stop, contain, clean up and manage properly used oil releases in the following area at the time of the First Inspection:

    a) oil spills were noticed around the area of the tank that held the used oil, just outside of the garage

30. As of at least March 7, 2008, Respondent had failed to stop, contain, clean up and manage properly used oil releases in the following areas at the time of the Second Inspection:

    a) a stain of oil that appeared recent was observed outside of the mechanic shop area;
    b) outside, west of mechanic shop building, spills were visible on the ground below an abandoned pick-up truck;
    c) in the parking area, used for Municipal vehicles, some of the vehicles were out of use and oil spills were observed around them; and
    d) the hose that connected from the pit to the large tank, next to and outside of the oil change building, was not properly attached causing oil to be spilled.

31. Each of the oil leak/spills, described in paragraph "29", above, constitute a release of used oil to the environment.

32. Each of the oil leak/spills, described in paragraph "30", above, constitute a release of used oil to the environment.

33. Respondent's failure to clean up and manage the released used oil constituted a violation of 40 C.F.R. § 279.22(d).

CONSENT AGREEMENT

Based on the foregoing, and pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a) and in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 C.F.R. § 22.18 (hereinafter "Consolidated Rules"), it is hereby agreed by and between the parties, and Respondent voluntarily and knowingly agrees as follows:

1. Respondent shall:
    a) make all required hazardous waste determinations for solid wastes still present at or generated in the future at its DPW facility, in compliance with 40 C.F.R. § 262.11;

b) maintain and operate its facility to minimize the risk of release of hazardous waste to the environment, in compliance with 40 C.F.R. § 265.31, or manage fluorescent light bulb waste at the facility to prevent releases to the environment, in compliance with 40 C.F.R. §§ 273.13(d) or 273.33(d); and,
c) manage used oil in compliance with 40 C.F.R. § 279.22(c)(1) and clean up any released used oil in accordance with 40 C.F.R. § 279.22(d).

2. For the purpose of this proceeding, Respondent:
   a) admits all jurisdictional allegations of the Complaint; and,
   b) neither admits nor denies the above Findings of Fact and Conclusions of Law.

3. Respondent shall pay, by cashier's or certified check, a civil penalty in the amount of **Seven Thousand Two Hundred Fifty Dollars ($ 7,250.00)**, payable to the **"Treasurer of the United States of America."** The check shall be identified with a notation of the name and docket number of this case, set forth in the caption on the first page of this document. The check shall be mailed to:

US Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000

Respondent shall also send a copy of this payment to each of the following:

Ms. Karen Maples, Regional Hearing Clerk
Office of the Regional Hearing Clerk
U.S. Environmental Protection Agency - Region 2
290 Broadway, 16th Floor (Rm. 1631)
New York, New York 10007-1866

and

Melva J. Hayden, Esq.
Office of Regional Counsel
U.S. Environmental Protection Agency - Region 2
290 Broadway, 16th floor
New York, New York 10007-1866

4. Payment must be received at the above address on or before sixty (60) calendar days after the date of signature of the Final Order at the end of this document (the date by which payment must be received shall hereafter be referred to as the "due date").
   a) Failure to pay the penalty in full according to the above provisions will result in the referral of this matter to the United States Department of Justice or the United States Department of the Treasury for collection.

b) Further, if 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 $15.00 will be assessed for each 30 day period (or any portion thereof) following the due date in which the balance remains unpaid.
c) A 6% per annum penalty also will be applied on any principal amount not paid within 90 days of the due date.
d) The effective date of this CA/FO shall be the date of filing with the Regional Hearing Clerk, U.S.E.P.A., Region 2, New York, New York.

Description of the Supplemental Environmental Project

5. Respondent agrees to commence the implementation of the following Supplemental Environmental Project ("SEP") within three (3) months of the date of signature of the Final Order, which the parties agree is intended to secure significant environmental or public health protection and improvements.

6. Respondent agrees to implement a pollution prevention assessment and audit Supplemental Environmental Project ("PPAA-SEP") at the Municipality's DPW facility and other municipal agency facilities identified by Respondent and approved by EPA. The PPAA-SEP will be implemented with two (2) components. Component I consists of a Self-Audit of compliance with federal environmental regulations. Component II consists of a Pollution Prevention Assessment. Respondent will spend at least $43,500 on this SEP.

Component I Self Audit of Environmental Compliance

7. The Self-Audit component will include a compliance assessment of the municipality's facilities with the following federal rules:
   a. hazardous waste;
   b. universal waste;
   c. spent light bulbs;
   d. used batteries;
   e. used oil; and
   f. other applicable rules identified by Respondent and approved by EPA for inclusion in this self-audit.

8. Respondent agrees to perform a self-audit every six (6) months for a period of two (2) years as follows:
   a. the initial audit shall be performed within six (6) months after the effective date of this Order; and
   b. Respondent shall have the audits conducted by a qualified entity of the Municipality's choice to ensure the audits are independent evaluations.

9. Respondent further agrees that within ten (10) days of discovery of any noncompliance, it shall effect corrective action as follows:
   a. Respondent shall be responsible for correcting each instance of

noncompliance with applicable RCRA hazardous and universal waste regulations, [listed in paragraph 7, above,] and any other applicable federal regulations identified by Respondent during the Self-Audit and shall take those steps necessary to prevent the recurrence of any such instance(s) of noncompliance identified during the Self-Audit as soon as possible, but no later than thirty (30) days from the date of discovery of any such instance.

b. In the event Respondent is unable to correct an identified violation with thirty (30) days, it shall request an extension of time from EPA in writing. The Municipality shall provide with such a request a corrective action schedule, accompanied by a justification for the extension requested. Any extension of the corrective action period shall be subject to EPA approval.

c. EPA shall not impose gravity-based penalties for instances of noncompliance discovered if such instances are within the scope of the audit under this SEP and are timely disclosed and timely corrected, and provided that the applicable provisions of the SEP have been satisfied. Where any disclosed instances of noncompliance entail economic benefits and the total potential economic benefit for such noncompliance is calculated to be less than ten thousand dollars ($10,000), the economic benefit will be considered *de minimis* and may be waived by EPA.

10. A Self-Audit Report shall be submitted to EPA within one (1) month of completion of each self-audit. Each report must indicate that results of the self-audit including:

    a. list of inspected facilities,
    b. incidences of noncompliance,
    c. corrective action taken to correct the noncompliance, and the date the violations were corrected;
    d. actions taken to prevent future noncompliance;
    e. a list of incidences of noncompliance still uncorrected thirty (30) days after discovery and the corrective action schedule and justification submitted to EPA in accordance with paragraph 9.b., above; and
    f. Component I SEP costs incurred to date.

If any incidences of noncompliance are uncorrected when the fourth (4^{th}) Self-Audit Report is submitted (following the final self-audit), Respondent shall submit a report indicating, by no later than sixty (60) days later, the status of its efforts to correct those incidences of noncompliance.

Component II Pollution Prevention Assessment

11. Component II consists of a Prevention Pollution Assessment ("PPA"). PPAs are systematic, internal reviews of specific processes designed to identify and provide information about opportunities to reduce the use, production, and generation of toxic and hazardous materials and other wastes. Respondent agrees that it shall conduct said PPA as follows:

    a. Respondent shall use an EPA-approved and recognized pollution

prevention assessment methodology or waste minimization procedure.

b. Respondent shall, within nine (9) months of the effective date of the Final Order, submit to EPA a workplan on how it proposes to perform the PPA. This workplan will be subject to EPA comment and approval before Respondent proceeds with the PPA.

c. Respondent agrees to submit to EPA a SEP progress report, by no later than fifteen (15) months of the effective date of the Final Order, and shall include the following information:

(i) Respondent shall report on the status of its efforts to perform the PPA Component of the SEP;

(ii) Respondent shall include detailed documentation of expenditures the Municipality has made in connection with performing the PPA Component of the SEP such as documentation of labor costs (e.g., names, titles, works hours, and specific activities) and any other significant costs; and

(iii) Description of any problems encountered during performance of the PPA Component of the SEP.

d. Respondent shall, within eighteen (18) months of the effective date of the Final Order, complete the PPA.

e. Respondent shall submit to EPA for review and approval a PPA Report within twenty (20) months of the effective date of the Final Order.

f. The PPA Report shall include at a minimum the following:

1) A list of the facilities and activities evaluated;

2) A list of toxic or hazardous materials and wastes generated by each activity and the amount generated per year;

3) The pollution prevention opportunities for each activity and the potential environmental benefits including pounds of toxic or hazardous materials and wastes that could be reduced each year;

4) A cost benefit analysis of the pollution prevention waste minimization opportunities; and

5) A statement whether the Municipality plans to act on any of these opportunities.

12. Respondent agrees to submit to EPA Periodic SEP Progress Reports which may (where the timing allows) be coordinated and submitted along with the self-audit reports specified in paragraph 10., above, every four (4) months, and shall include the following information:

a. Respondent shall report on efforts to implement the PPAA-SEP;

b. Respondent shall include detailed documentation of expenditures the Municipality has made in connection with implementation of the PPASEP;

c. description of the status of its efforts to correct any ongoing noncompliance that was not corrected within thirty days; and

d. description of any problems encountered during implementation of the SEP

13. To evidence compliance with paragraphs 6 through 12, above, Respondent

further agrees to submit a SEP Completion Report to EPA no later than twenty-six (26) months from the effective date of the Final Order, attaching a copy of the audit reports and documenting the completion of the project, PPA, and monies expended on the SEP described in paragraph 6 above. The SEP Completion Report shall be mailed to:

Marianna Dominguez
Environmental Engineer
RCRA Compliance Branch
U.S. Environmental Protection Agency
290 Broadway – 21st Floor
New York, New York 10007-1866

and

Melva J. Hayden, Esq.
Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th Floor
New York, New York 10007-1866

14. Following receipt of the draft completion report as set forth in paragraph 13, above, EPA will notify the Municipality in writing that it either (i) accepts said report, or (ii) rejects said report.

15. If EPA accepts the draft completion report said report shall constitute a final report. In the event that EPA rejects said report, EPA shall notify the Municipality in writing of any questions it has and/or deficiencies in said report (such notification henceforth referred to as the "notification of deficiency"), and EPA shall grant the Municipality an additional thirty (30) days in which to answer any questions, to correct any deficiencies in said report, and to resubmit said report to EPA. EPA and the Municipality shall, if appropriate, meet to discuss and resolve the issues causing rejection of said report, and the terms of any agreement reached in any such meeting shall be set forth in writing.

16. If EPA accepts the resubmitted draft completion report, said report shall constitute a final report. In the event that EPA rejects the resubmitted draft completion report, EPA shall issue a second notification of deficiency to the Municipality in accordance with paragraph 15, above, and EPA shall permit the Municipality the opportunity to object in writing to the second notification of deficiency within ten (10) days of the Municipality's receipt thereof. EPA and the Municipality shall have thirty (30) days after said receipt to reach agreement on the contents of the resubmitted draft completion report. If no agreement is reached within this 30-day period, unless EPA has in writing extended said 30-day period, EPA shall then **1)** provide a written statement of its decision to the Municipality, which decision shall be final and binding upon the Municipality and **2)** have the right to seek stipulated penalties in accordance with paragraph 24 below.

17. In all documents or reports the Municipality submits to EPA pursuant to the terms and conditions of this Consent Agreement, the Municipality shall, by a responsible and authorized official, sign and certify under penalty of perjury that the information contained in any such document or report is true, accurate and correct by attesting as follows:

> I certify under penalty of perjury that I have examined and am familiar with the information submitted in this document and all attachments, and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information set forth in this document is true, accurate and complete. I am aware that there are significant penalties for submitting materially false information, including the possibility of fines and imprisonment.

The responsible official(s) of the Municipality shall send all communications to EPA regarding this SEP to:

> Marianna Dominguez
> Environmental Engineer
> RCRA Compliance Branch
> Division of Enforcement and Compliance Assistance
> U.S. Environmental Protection Agency
> 290 Broadway, 21st floor
> New York, New York 10007-1866

Project Timeline and Reporting Requirements

18. Respondent, or the Municipality, will commence this SEP within three (3) months of signature of the Final Order.

19. Respondent agrees that failure to timely submit the Progress Reports or SEP Completion Report shall be deemed a violation of this Consent Agreement and Final Order, and Respondent shall become liable for stipulated penalties pursuant to paragraph 24, below.

20. Respondent agrees that EPA may inspect the facilities at any time in order to confirm that the SEP is operating properly and in conformity with the representations made herein. The provisions of this paragraph shall remain effective for thirty (30) months from the effective date of this Consent Agreement and Final Order or from 1 year from satisfactory completion of the SEP (including submittal of SEP Completion Report), whichever is later.

21. Following receipt each Self-Audit Report and the PPA Report, EPA will:
    a. accept the report;

b. reject the report, notify Respondent in writing of deficiencies in the report and grant Respondent an additional 30 days in which to correct any deficiencies; or
c. reject the report and seek stipulated penalties in accordance with paragraph 24, below.

22. If EPA elects to exercise option 21(b) above, EPA shall permit Respondent the opportunity to object in writing to the notification of deficiency or disapproval given pursuant to this paragraph within 10 days of receipt of such notification. EPA and Respondent shall have an additional 30 days from the due date of Respondent's notification of objection to reach agreement. If agreement cannot be reached on any such issue within this 30-day period, EPA shall provide a written statement of its decision to Respondent, which decision shall be final and binding upon Respondent. Respondent agrees to comply with any requirements imposed by EPA as a result of any such deficiency or failure to comply with the terms of this Consent Agreement and Final Order. In the event the SEP is not completed as contemplated herein, stipulated penalties shall be due and payable by Respondent to EPA in accordance with paragraph 24 below.

23. Whether Respondent has complied with the terms of this Consent Agreement and Final Order through the implementation of the SEP project as herein required, whether the SEP has been satisfactorily completed, whether the Respondent has made good faith, timely effort to implement the SEP, and whether costs are creditable to the SEP shall be the sole determination of EPA.

Stipulated Penalties

24. Stipulated penalties will be calculated as follows:
a) In the event that Respondent fails to comply with any of the terms or provisions of this Consent Agreement and Final Order relating to the performance of the SEP described in paragraphs 5 through 12 above, and/or to the extent that the actual allowable expenditures for the SEP do not equal or exceed the required minimum expenditure for the SEP described in paragraph 6 above, Respondent shall be liable for stipulated penalties according to the provisions set forth below:
ii) Except as provided in subparagraphs (ii) and (iii) immediately below, for a SEP which has not been completed satisfactorily, Respondent shall pay a stipulated penalty in the amount of **Twenty-Five Thousand Dollars ($25,000).** Payment shall be transmitted using the same procedure specified in paragraph 3 above.
iii) If the SEP is not completed satisfactorily, but Respondent:
(1) made good faith and timely efforts to complete the project; and
(2) certifies, with supporting documentation, that at least 90 percent of the amount of money which was required to be spent was expended on the SEP, and EPA accepts that such expenditures are creditable to the SEP, Respondent shall not pay any stipulated penalty.

iv) If the SEP is satisfactorily completed, but Respondent spent less than 90 percent of the amount of money required to be spent for the project, Respondent shall pay a stipulated penalty in the amount determined as follows:

Stipulated penalty = [$ 43,500 - $ allowable SEP expenditures] x $ 21,750
$ 43,500

b) Stipulated penalties shall accrue for failure to timely submit any Progress Report, Self-Audit Report, PPA Report, or SEP Completion Report. Respondent shall pay a stipulated penalty in the amount of $200 per day for the first ten days, $500 per day for days 11-45, and $1000 per day after 45 days. Such penalties shall begin to accrue on the day after the given Progress Report, Self-Audit Report, PPA Report, or SEP Completion Report is due and shall continue to accrue until the report is submitted.

c) Unless Respondent writes EPA pursuant to paragraph 24(d) below, Respondent shall pay stipulated penalties within 30 days of receipt of written demand by EPA for such penalties. Method of payment shall be in accordance with the provisions of paragraph 3, herein. Interest and late charges shall be paid as stated in paragraph 4, herein.

d) After receipt of a demand from EPA for stipulated penalties pursuant to the preceding paragraph, Respondent shall have twenty (20) calendar days in which to provide Complainant with a written explanation of why it believes that a stipulated penalty is not appropriate for the cited violation(s) of this Consent Agreement (including any technical, financial or other information that Respondent deems relevant).

e) Failure of Respondent to pay any stipulated penalty demanded by EPA pursuant to this Consent Agreement may result in referral of this matter to the United States Department of Justice or the Department of the Treasury for collection.

25. Complainant at her discretion may reduce or eliminate any stipulated penalty due if Respondent has in writing demonstrated to EPA's satisfaction good cause for such action by EPA, or for good cause as independently determined by the Complainant. If, after review of Respondent's submission pursuant to the preceding paragraph, Complainant determines that Respondent has failed to comply with the provisions of this Consent Agreement, and Complainant does not, in her sole discretion, eliminate the stipulated penalties demanded by EPA, Complainant will notify Respondent, in writing, that either the full stipulated penalty or a reduced stipulated penalty must be paid by Respondent. Respondent shall pay the stipulated penalty amount indicated in EPA's notice within ten (10) calendar days of its receipt of such written notice from EPA.

26. Any public statement, oral or written, made by Respondent making reference to the SEP shall include the following language: This project was undertaken in connection with the settlement of an enforcement action taken by the U.S. Environmental Protection Agency for violations of RCRA and regulations concerning the management of solid waste and used oil.

27. Delays:

a) If any event occurs which causes or may cause delays in the completion of the SEP as required under this Consent Agreement, Respondent shall notify EPA in writing within fourteen (14) days of the delay or Respondent's knowledge of the anticipated delay, whichever is earlier. The notice shall describe in detail the anticipated length of delay, the precise cause of delay, the measures taken by Respondent to prevent or minimize delay, and the timetable by which those measures will be implemented. Respondent shall adopt all reasonable measures to avoid or minimize any such delay. Failure by Respondent to comply with the notice requirements of this paragraph shall render this paragraph void and of no effect as to the particular incident involved and may constitute a waiver of Respondent's right to request an extension of its obligation under this Consent Agreement based on such incident.

b) If the parties agree that the delay or anticipated delay in the completion of the SEP has been or will be caused by circumstances entirely beyond the control of Respondent, the time for performance hereunder may be extended for a period no longer than the delay resulting from such circumstances. In such event, the parties shall stipulate to such extension of time.

c) In the event that EPA does not agree that a delay in completing the SEP in compliance with the requirements of this Consent Agreement has been or will be caused by circumstances beyond the control of Respondent, EPA will notify Respondent in writing of its decision and any delays in completion of the SEP shall not be excused.

d) The burden of proving that any delay is caused by circumstances entirely beyond the control of Respondent shall rest with Respondent. Increased cost or expenses associated with the performance of the SEP under this Consent Agreement shall not, in any event, be a basis for changes in this Consent Agreement or extensions of time under section b) of this paragraph. Delay in achievement of one interim step shall not necessarily justify or excuse delay in achievement of subsequent steps.

28. EPA Region 2 may grant an extension of the date(s) of performance or such other dates as are established in this Consent Agreement with regard to any of the SEP components, if Respondent has first demonstrated in writing good cause for such extension. If Respondent submits a request for extension, such request shall be documented and submitted to EPA no later than fourteen (14) calendar days prior any due date set forth in this Consent Agreement, or other deadline established pursuant to this Consent Agreement. Such extension, if any, shall be approved in writing.

29. Respondent hereby certifies that, as of the date of this Consent Agreement and Final Order, Respondent is not required to perform or develop the SEP by any federal, Commonwealth, or local law or regulation; nor is Respondent required to perform or develop the SEP by agreement, grant, or as injunctive relief in this or any other case or in compliance with state or local requirements. Respondent further certifies that

Respondent has not received, and is not presently negotiating to receive, credit in any other enforcement action for the SEP. Respondent certifies that it had not committed to perform the SEP prior to the commencement of this action.

30. Respondent shall not use or expend any money received from the federal government, as a grant or otherwise, to directly finance, implement or perform any aspect or portion of the aforementioned SEP.

31. If in the future EPA believes that any of the information certified to, pursuant to paragraphs 17 or 29, above, was inaccurate, EPA will so advise the Respondent of its belief and its basis, and will afford Respondent an opportunity to submit comments to EPA. If EPA later determines that Respondent was already required to perform the SEP, Respondent shall pay a stipulated penalty in the amount of **$ 25,000.** This payment shall not preclude EPA from initiating a separate criminal investigation pursuant to 18 U.S.C. § 1001 et seq., or any other applicable law.

32. This Consent Agreement is being voluntarily and knowingly entered into by the parties to resolve the civil and administrative claims alleged in the Complaint in this matter (upon full payment of the penalty and any stipulated penalty that comes due). Nothing herein shall be read to preclude EPA or the United States, however, from pursuing appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

33. Respondent has read the Consent Agreement, understands its terms, finds it to be reasonable and consents to the issuance and its terms. Respondent consents to the issuance of the accompanying Final Order. Respondent agrees that all terms of settlement are set forth herein.

34. Respondent explicitly and knowingly consents to the assessment of the civil penalty and stipulated penalties as set forth in this Consent Agreement and agrees to pay these penalties in accordance with the terms of this Consent Agreement.

35. Respondent explicitly waives its right to request or to seek any Hearing on the Complaint or any of the allegations therein asserted, on this Consent Agreement or on the Findings of Fact and Conclusions of Law herein, or on the accompanying Final Order.

36. This Consent Agreement 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 or proceeding to enforce this Consent Agreement and its accompanying Final Order.

37. Respondent explicitly waives any right it may have pursuant to 40 C.F.R. § 22.08 to be present during discussions with or to be served with and to reply to any memorandum or communication addressed to the Regional Administrator or the Deputy Regional Administrator 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 Consent Agreement and Final Order does not waive, extinguish, or otherwise affect Respondent's obligation to comply with all applicable provisions of RCRA and the regulations promulgated thereunder.

39. The SEP to be implemented by Respondent has been accepted by Complainant solely for purposes of settlement of this civil administrative proceeding. Nothing in this document is intended or shall be construed to be a ruling on or determination of any issue related to a federal or Commonwealth permit.

40. Each undersigned signatory to 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.

41. The provisions of this Consent Agreement and Final Order shall be binding upon Respondent, its officials, officers, directors, agents, servants, authorized representatives and successors or assigns.

42. Each party hereto agrees to bear its own costs and fees in this matter.

43. Respondent consents to service upon Respondent of a copy of this Consent Agreement and Final Order by an EPA employee other than the Regional Hearing Clerk.

44. Pursuant to 40 C.F.R. § 22.31(b), the effective date of the Final Order herein shall be the date when filed with the Regional Hearing Clerk of the United States Environmental Protection Agency, Region 2.

In the Matter of Municipality of Aguadilla
Docket No. RCRA-02-2009-7102

RESPONDENT: Municipality of Aguadilla

BY: _____
Authorized Signature

NAME: Carlos Méndez Martínez
(PLEASE PRINT)

TITLE: Mayor of Aguadilla

DATE: 9/09/09

COMPLAINANT: _____

Dore LaPosta, Director
Division of Enforcement and Compliance Assistance
U.S. Environmental Protection Agency - Region 2
290 Broadway
New York, New York 10007

DATE: September 15, 2009

In the Matter of the Municipality of Aguadilla
Docket No. RCRA-02-2009-7102

FINAL ORDER

The Regional Administrator of the U.S. Environmental Protection Agency, Region 2, concurs on the foregoing Consent Agreement in the case of *In the Matter of the Municipality of Aguadilla*, bearing Docket No. RCRA-02-2009-7102. Said Consent Agreement having been duly accepted and entered into by the parties, is hereby ratified, incorporated herein, and issued as an Order. 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. 40 C.F.R. § 22.31(b). This Final Order is being entered pursuant to the authority under 40 C.F.R. § 22.18(b)(3) and shall constitute an order issued under authority of Section 3008(a) of RCRA, 42 U.S.C. § 6928(a).

DATE: 9/16/09

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

In the Matter of Municipality of Aguadilla
Docket No. RCRA-02-2009-7102

CERTIFICATE OF SERVICE

I certify that I have this day caused to be sent the foregoing fully executed CONSENT AGREEMENT and FINAL ORDER, bearing the above-referenced docket number, in the following manner to the respective addressees below:

Original and One Copy
by Hand:

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

Copy by Certified Mail,
Return Receipt Requested:

Lizabel M. Negrón-Vargas, Esq.
Attorney At Law
P.O. Box 380764
San Juan, PR 00936-0764

Dated: SEP 23 2009
New York, NY

Mildred N. Baez