



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2  
290 BROADWAY  
NEW YORK, NY 10007-1866

JAN - 7 2009

**CERTIFIED MAIL- RETURN RECEIPT REQUESTED**

U.S. ENVIRONMENTAL  
PROTECTION AGENCY REGIONAL  
200 JAN - 7 11 1:01  
REGIONAL HEARING  
CLERK

Honorable Carlos Mendez-Martinez  
Municipality of Aguadilla  
Municipio Autonomo de Aguadilla  
Oficina del Alcalde  
Apartado 1008  
Aguadilla, Puerto Rico 00605

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

Dear Mr. Castro:

Enclosed is the Complaint, Compliance Order and Opportunity for Hearing in the above-referenced proceeding. The Complaint alleges violations of the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901 *et seq.*

You have the right to a formal hearing to contest any of the allegations in the Complaint and/or to contest the penalty proposed in the Complaint. If you wish to contest the allegations and/or the penalty proposed in the Complaint, you must file an Answer within **thirty (30)** days of your receipt of the enclosed Complaint with the Regional Hearing Clerk of the Environmental Protection Agency ("EPA"), Region 2, at the following address:

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

If you do not file an Answer within thirty (30) days of receipt of this Complaint and have not obtained a formal extension for filing an Answer from the Regional Judicial Officer of Region 2, a default order may be entered against you and the entire proposed penalty may be assessed.

Whether or not you request a formal hearing, you may request an informal conference with EPA to discuss any issue relating to the alleged violations and the amount of the proposed penalty. EPA encourages all parties against whom it files a Complaint to

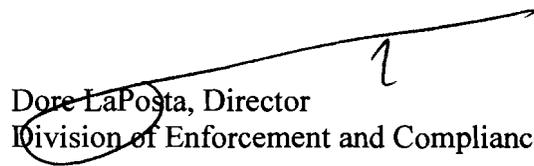
pursue the possibility of settlement and to have an informal conference with EPA. However, a request for an informal conference *does not* substitute for a written Answer, affect what you may choose to say in an Answer, or extend the thirty (30) days by which you must file an Answer requesting a hearing.

You will find enclosed a copy of the "Consolidated Rules of Practice," which govern this proceeding. (A brief discussion of some of these rules appears in the later part of the Complaint.) For your general information and use, I also enclose an "Information Sheet for U.S. EPA Small Business Resources." This document offers some useful information and resources.

EPA encourages the use of Supplemental Environmental Projects, where appropriate, as part of any settlement. I am enclosing a brochure on "EPA's Supplemental Environmental Projects Policy." Please note that these are only available as part of a negotiated settlement and are not available if this case has to be resolved by a formal adjudication.

If you have any questions or wish to schedule an informal conference, please contact the attorney whose name is listed in the Complaint.

Sincerely,

  
Dore LaPosta, Director  
Division of Enforcement and Compliance Assistance

Enclosures

cc: Karen Maples, Regional Hearing Clerk (without enclosures)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
Region 2

U.S. ENVIRONMENTAL  
PROTECTION AGENCY REG. II  
7:03 JAN -7 PM 1:31  
REGIONAL HE  
CLERK

IN THE MATTER OF:

**Municipality of Aguadilla**  
Respondent

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

**COMPLAINT, COMPLIANCE ORDER  
AND NOTICE OF OPPORTUNITY FOR  
HEARING**

Docket No. RCRA-02-2009-7102

**COMPLAINT**

**I. STATUTORY AUTHORITY**

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. (referred to collectively as the "Act" or "RCRA"). The United States Environmental Protection Agency ("EPA") has promulgated regulations governing the handling and management of hazardous waste at 40 C.F.R. Parts 260 through 279.

This COMPLAINT, COMPLIANCE ORDER AND NOTICE OF OPPORTUNITY FOR HEARING ("Complaint") serves notice of EPA's preliminary determination that the Municipality of Aguadilla (hereinafter "Respondent" or "Aguadilla DPW") has violated requirements of RCRA in connection with its facility at State Road PR-467 Cuesta Vieja, Aguadilla, Puerto Rico 00605 (the "facility" or "site").

Pursuant to Section 3006(b) of the Act, 42 U.S.C. § 6926(b), the Administrator of EPA may, if certain criteria are met, authorize a state to operate a "hazardous waste management program" (within the meaning of Section 3006 of the Act, 42 U.S.C. § 6926) in lieu of the federal hazardous waste program. The Commonwealth of Puerto Rico (which is a "State" as that term is defined by Section 1004(31) of the Act, 42 U.S.C. § 6903 (31)) is not authorized by EPA to conduct a hazardous waste management program under Section 3006 of RCRA, 42 U.S.C. § 6926. Therefore, EPA retains primary responsibility for requirements promulgated pursuant to RCRA. As a result, all requirements in 40 C.F.R. Parts 260 through 279 relating to hazardous waste are in effect in the Commonwealth of Puerto Rico and EPA has the authority to implement and enforce these regulations.

Section 3008(a) (1) of RCRA, 42 U.S.C. § 6928(a)(1), provides, in part, that "whenever on the basis of any information the Administrator [of EPA] determines that any person has

violated or is in violation of any requirement of this subchapter [Subtitle C of RCRA], the Administrator may issue an order assessing a civil penalty for any past or current violation.”

Pursuant to Section 3008(a) (3) of RCRA, 42 U.S.C. § 6928(a) (3), “[a]ny penalty assessed in the order [issued under authority of Section 3008(a) of RCRA, 42 U.S.C. § 6928(a)] shall not exceed \$25,000 per day of noncompliance for each violation of a requirement of [Subtitle C of RCRA].” Under authority of the Federal Civil Penalties Inflation Adjustment Act of 1990, 104 Stat. 890, Public Law 101-410 (codified at 28 U.S.C. § 2461 note), as amended by the Debt Collection Improvement Act of 1996, 110 Stat. 1321, Public Law 104-134 (codified at 31 U.S.C. § 3701 note), EPA has promulgated regulations, codified at 40 C.F.R. Part 19, that, inter alia, increased to \$32,500 the maximum penalty EPA might obtain pursuant to Section 3008(a) (3) of RCRA, 42 U.S.C. § 6928(a) (3) for violations occurring after March 15, 2004. 69 Fed. Reg. 7121 (February 13, 2004).

The Complainant in this proceeding, the, Director of the Division of Enforcement and Compliance Assistance Region 2, who has been duly delegated the authority to institute this action, hereby alleges:

## **II. GENERAL ALLEGATIONS**

### **Jurisdiction**

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

### **Respondent's Background**

2. Respondent, the Municipality of Aguadilla, is an entity that was organized pursuant to, and has existed under, the laws of the Commonwealth of Puerto Rico.
3. 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.
4. Respondent’s facility is located at State Road PR-467 Cuesta Vieja in Aguadilla, Puerto Rico 00605. At this facility Respondent provides preventive maintenance and mechanic services to the Aguadilla Municipality vehicle fleet (including motor oil changes).
5. Respondent also provides maintenance service to the municipal buildings located throughout the Municipality.
6. Respondent’s facility is a “facility”, as that term is defined in 40 C.F.R. § 260.10.

7. Upon information and belief, Respondent is the "owner" and "operator" of the facility as those terms are defined in 40 C.F.R. § 260.10.

#### **Respondent is a Used Oil Generator**

8. "Used oil" is any oil that has been refined from crude oil or any synthetic oil that has been used and as a result of such use is contaminated by physical or chemical impurities as that term is defined in 40 C.F.R. § 279.1.
9. A "used oil generator" is any person, by site, whose act or process produces used oil or whose act first causes used oil to become subject to regulation, as that term is defined in 40 C.F.R. §§ 279.1 and 279.20(a).
10. The used oil generated and stored at Respondent's Facility is subject to the requirements of 40 C.F.R. Part 279, Subpart C.
11. By reason of its activities at the facility, Respondent is a "used oil generator."

#### **Respondent's Generation of Waste**

12. Respondent, in carrying out its preventive maintenance and mechanic services to the Aguadilla Region vehicle fleet (including motor oil changes), and in the course of conducting normal building maintenance operations at the facility and municipal buildings, has been generating "solid waste," as defined in 40 C.F.R. § 261.2, in various maintenance areas and other areas of the facility.

#### **EPA Investigative Activity**

13. On or about February 15, 2006, a duly designated representative of EPA conducted the first inspection, of the Facility pursuant to Section 3007 of RCRA, 42 U.S.C. § 6927 (referred to hereinafter as "the First Inspection").
14. The purpose of the Inspection was to determine Respondent's compliance with Subtitle C of RCRA and its implementing regulations.
15. At the time of the First Inspection, Respondent indicated that approximately 700 fluorescent light bulbs/year and fifteen (15) computers and parts had been disposed of into the regular trash.
16. At the time of the First Inspection, used oil was stored in various types of containers with no labels to identify their contents.

17. At the time of the First Inspection, various sized containers and a large tank were storing what appeared to be used oil, or a mixture of used oil and other oil types that were collected from local companies in the municipality. According to Respondent, at the time of the Inspection, these oils were handled as "Used Oil."
18. At the time of the First Inspection, oil spills were present around the large tank referenced in paragraph 17, above, and appeared not to be cleaned up or addressed.
19. On or about April 20, 2006, EPA issued Respondent an Information Request Letter ("IRL") regarding its management of hazardous waste pursuant to Section 3007 of the Act, 42 U.S.C. § 6927.
20. As a part of the aforementioned (see paragraph 19, above) letter, EPA issued to Respondent a Notice of Violation ("NOV") citing RCRA violations discovered during the Facility Inspection.
21. In a letter dated May 18, 2006, Respondent submitted its response to EPA's IRL and EPA's NOV ("Response").
22. The Response was prepared by an employee or agent of the Aguadilla Department of Public Works in the course of carrying out his employment/or agency duties.
23. In its Response, Respondent stated that it had not made a formal hazardous waste determination for the spent fluorescent light bulbs and indicated that it had disposed of approximately 60 fluorescent light bulbs each month.
24. In its Response, Respondent stated that it had disposed of computers and computer parts, consisting of fifteen (15) computer monitors, fifteen (15) CPU units, seven (7) laptop computers, one (1) modem and one (1) CD-writer into the regular trash.
25. In its Response, Respondent stated that used oil filters are disposed in the regular trash. Approximately thirty-four (34) used oil filters/month were disposed of in the regular trash, in the three years prior to the First Inspection.
26. In its Response, Respondent stated that used oil was unknowingly mixed with regular trash.
27. In its Response, Respondent stated that corrective action was taken to reverse the violations found during the Inspection, and noted in the NOV.
28. On or about March 7, 2008, a duly designated representative of EPA conducted the

second inspection, of the Facility pursuant to Section 3007 of RCRA, 42 U.S.C. § 6927 (referred to hereinafter as "the Second Inspection").

29. The purpose of the Inspection was to determine Respondent's compliance with Subtitle C of RCRA and its implementing regulations.
30. At the time of the Second Inspection, Respondent indicated that between 400-600 gallons of used oil are generated on a monthly basis. Other hazardous waste was generated as spent batteries, fluorescent light bulbs, parts washer solvents and diesel with paint (from cleaning paint brushes).
31. At the time of the Second Inspection, various garbage containers had rags with used oil. Many of the containers were storing used oil. These containers were not labeled with the words "Used Oil" and were not closed.

#### **COUNT 1 - Failure to Make Hazardous Waste Determinations**

32. Complainant realleges each allegation contained in paragraphs "1" to "31", inclusive, as if fully set forth herein.
33. Pursuant to 40 C.F.R. § 262.11, a person who generates "solid waste," as defined in 40 C.F.R. § 261.2, must determine if the solid waste is a hazardous waste using the procedures specified in that provision.
34. Pursuant to 40 C.F.R. § 261.2, subject to certain inapplicable exclusions, a "solid waste" is any "discarded material" that includes "abandoned," "recycled" or "inherently waste-like materials," as those terms are further defined therein.
35. Pursuant to 40 C.F.R. § 261.2(b), materials are solid wastes if they are "abandoned" by being "disposed of," "burned or incinerated" or "accumulated, stored, or treated (but not recycled) before or in lieu of being abandoned by being disposed of, burned or incinerated."
36. Prior to at least February 15, 2006 Respondent generated at least the following solid wastes:
  - a) spent fluorescent light bulbs generated as a result of Respondent's maintenance activities. Such spent fluorescent light bulbs were being disposed mixed with other solid waste generated at the facility;
  - b) old used computers, including fifteen (15) computer monitors, fifteen (15) CPU units, seven (7) laptop computers, one (1) modem and one (1) CD-writer;

- c) "oil dry" and oil clean-up material that was thrown into the regular trash after containing an oil spill/leak in the oil change building or garage;
37. Each of the materials identified in paragraph "36" above is a "discarded material" and "solid waste", as defined in 40 C.F.R. § 261.2.
38. Prior to at least March 7, 2008 Respondent generated at least the following solid wastes:
- a) 400-600 gallons of used oil on a monthly basis;
  - b) spent batteries;
  - c) spent fluorescent light bulbs;
  - d) parts washer solvents;
  - e) diesel with paint (from cleaning paint brushes);
  - f) spent coolant drained from vehicles and collected in drip pans in the mechanic shop;
  - g) used oil filters which were disposed in the regular trash in the oil change building, or garage;
  - h) one (1) 40-gallon drum with waste (labeled "diesel fuel conditioner with smoke suppressant in the storage area or warehouse);"
  - i) two (2) 40-gallon drums with unknown contents in the storage area or warehouse;
  - j) three (3) 5-gallon pails with unknown contents in the storage area or warehouse;
  - k) at least four (4) four (4) 55-gallon drums with unknown waste in the parking area close to the building near the northwest gate;
  - 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 the storage area or warehouse; and
  - o) another pail with unknown contents in the storage area or warehouse.
39. Each of the materials identified in paragraph "38" above is a "discarded material" and "solid waste", as defined in 40 C.F.R. § 261.2
40. As of at least February 15, 2006, Respondent had not determined if the materials identified in paragraph "36" constituted hazardous wastes.
41. Upon information and belief, as of at least March 7, 2008, Respondent had not determined if the materials identified in paragraph "38" constituted hazardous wastes.
42. Respondent's failure to determine if each solid waste generated at its facility constituted a hazardous waste is a violation of 40 C.F.R. § 262.11.

**COUNT 2 - Failure to Label or Mark Containers with the Words  
"Used Oil"**

43. Complainant realleges each allegation contained in paragraphs "1" to "31" inclusive, as if fully set forth herein.
44. Pursuant to 40 C.F.R. § 279.22(c)(1), containers and aboveground tanks used to store used oil at generator facilities must be labeled or marked clearly with the words "Used Oil".
45. 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).
46. On at least March 7, 2008, the following used oil 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.)

47. On at least February 15, 2006, Respondent had failed to label or mark the used oil tank and containers identified in paragraph "45", above, with the words "Used Oil".
48. On at least March 7, 2008, Respondent had failed to label or mark the used oil containers identified in paragraph "46", above, with the words "Used Oil".
49. Respondent's failure to label the aforementioned used oil containers and a used oil tank, with the words "Used Oil", constituted a violation of 40 C.F.R. § 279.22(c)(1).

**COUNT 3 - Failure to stop, contain, clean up and manage properly used oil releases**

50. Complainant realleges each allegation contained in paragraphs "1" to "31", inclusive, as if fully set forth herein.
51. Pursuant to 40 C.F.R. § 279.22 (d), upon detection of a release of used oil to the environment, a used oil generator must stop the release, contain the released used oil, clean up and manage properly the released used oil and other materials and, if necessary to prevent future releases, repair or replace any leaking used oil storage containers or tanks prior to returning them to service.
52. 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.
53. The spills referenced in preceding paragraph appeared not to be cleaned up or addressed.
54. 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.
55. Each of the oil leaks/spills, described in paragraph "52", above, constituted a release of used oil to the environment.
  56. The releases of used oil described in paragraph "52", above, were not from an underground storage tank ("UST") system, as that term is defined in 40 C.F.R. § 280.12.
  57. Each of the oil leaks/spills, described in paragraph "54", above, constituted a release of used oil to the environment.
  58. The releases of used oil described in paragraph "54", above, were not from an underground storage tank ("UST") system, as that term is defined in 40 C.F.R. § 280.12.
  59. As of at least February 15, 2006, Respondent had detected the releases of used oil to the environment described in paragraph "52", above, but had failed to stop, contain, clean up and manage them properly.
  60. As of at least March 7, 2008, Respondent had detected the releases of used oil to the environment described in paragraph "54", above, but had failed to stop, contain, clean up and manage them properly.
  61. Respondent's failures to stop, contain, clean up and manage properly the releases of used oil are violations of 40 C.F.R. § 279.22(d).

### III. PROPOSED CIVIL PENALTY

The Complainant proposes, subject to the receipt and evaluation of further relevant information that the Municipality of Aguadilla be assessed the following civil penalty for the violations alleged in this Complaint:

- |          |            |
|----------|------------|
| Count 1: | \$ 22, 750 |
| Count 2: | \$ 2, 924  |

Count 3: \$ 22, 750

Total Proposed Penalty: \$ 48, 424

The proposed civil penalty has been determined in accordance with Section 3008(a) (3) of the Act, 42 U.S.C. § 6928 (a) (3). For purposes of determining the amount of any penalty assessed, Section 3008 (a) (3) requires EPA to “take into account the seriousness of the violation and any good faith efforts to comply with applicable requirements.”

The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, required EPA to adjust its penalties for inflation on a periodic basis. The maximum civil penalty under Section 3008 (a) (3) of RCRA, 42 U.S.C. § 6928 (a) (3), for violations occurring after and March 15, 2004 is \$32,500 per day of violation. 40 C.F.R. Part 19 (2005).

To develop the proposed penalty in this Complaint, the Complainant has taken into account the particular facts and circumstances of this case with specific reference to EPA's 2003 RCRA Penalty Policy, a copy of which is available upon request or can be found on the Internet at the following address: <http://www.epa.gov/compliance/resources/policies/civil/rcra/rcpp2003-fnl.pdf>. The penalty amounts in the 2003 RCRA Civil Penalty Policy were amended later to reflect inflation adjustments. These adjustments were made pursuant to a September 21, 2004 document entitled, “Modifications to EPA Penalty Policies to implement the Civil Monetary Penalty Inflation Rule (pursuant to the Debt Collection Improvement Act of 1996, effective October 1, 2004)” and a January 11, 2005 document entitled “Revised Penalty Matrices for the RCRA Civil Penalty Policy.” This RCRA Penalty Policy provides a rational, consistent and equitable calculation methodology for applying the statutory Penalty factors to particular cases.

A penalty calculation worksheet and narrative explanation to support the penalty figure for each RCRA violation cited in this Complaint is included in Attachment I, below. The matrix employed in the determination of the penalty is included as Attachment II, below. These Attachments are incorporated by reference herein.

#### **IV. COMPLIANCE ORDER**

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

Within thirty (30) calendar days of the effective date of this Compliance Order, Respondent shall:

1. determine whether each solid waste generated and identified in paragraphs "36" and "38", above, is a hazardous waste, to the extent such wastes remains at the Facility. Respondent shall provide information as to the status of such waste and any determinations made with respect to such waste. Respondent shall comply with 40 C.F.R. § 262.11 for any newly generated solid waste;
2. label or mark all containers, present at the Facility now or in the future, containing used oil, with the words "Used Oil";
3. clean up and manage properly all used oil releases at the Facility, including, to the extent they have not yet been cleaned up, the releases described in paragraphs "52" and "54", above, in compliance with 40 C.F.R. § 279.22; and comply with 40 C.F.R. § 279.22 henceforth; and
4. comply with the applicable regulations, and standards governing the handling and management of hazardous waste and used oil as set forth in 40 C.F.R. Parts 260 - 262 and Part 279.

Within forty (40) days of the effective date of this Compliance Order, Respondent shall submit documentation demonstrating compliance with the above-mentioned provisions. All responses, documentation, and evidence submitted in response to this Compliance Order should be sent to:

Marianna Dominguez  
Environmental Engineer  
United States Environmental Protection Agency  
Region 2  
290 Broadway, 21<sup>st</sup> Floor DECA/ RCB  
New York, NY 10007-1866  
212-637-3522

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

## **V. NOTICE OF LIABILITY FOR ADDITIONAL CIVIL PENALTIES**

Pursuant to the terms of Section 3008(c) of RCRA and the Debt Collection Improvement Act of 1996, a violator failing to take corrective action within the time specified in a Compliance Order is liable for a civil penalty of up to the then applicable statutory maximum for each day of continued noncompliance. Such continued noncompliance may also result in suspension or revocation of any permits issued to the violator, whether issued by the Administrator or a State.

## **VI. PROCEDURES GOVERNING THIS ADMINISTRATIVE LITIGATION**

The rules of procedure governing this civil administrative litigation have been set forth in the "CONSOLIDATED RULES OF PRACTICE GOVERNING THE ADMINISTRATIVE ASSESSMENTS OF CIVIL PENALTIES, ISSUANCE OF COMPLIANCE OR CORRECTIVE ACTION ORDERS, AND THE REVOCATION, TERMINATION OR SUSPENSION OF PERMITS," ("CROP") and which are codified at 40 C.F.R. Part 22. A copy of these rules accompanies this "Complaint, Compliance Order, and Notice of Opportunity for Hearing."

### **A. Answering the Complaint**

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

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

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

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

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

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

#### B. Opportunity To Request A Hearing

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

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

#### C. Failure To Answer

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

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

#### D. Exhaustion Of Administrative Remedies

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

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

#### VII. INFORMAL SETTLEMENT CONFERENCE

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

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

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

Melva J. Hayden, Esquire  
Assistant Regional Counsel  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 2  
290 Broadway – 16<sup>th</sup> Floor  
New York, New York 1007-1866  
(212) 637-3230

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

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

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

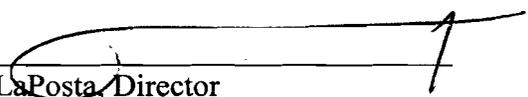
Respondent's entering into a settlement through the signing of such Consent Agreement and its complying with the terms and conditions set forth in the such Consent Agreement terminates this administrative litigation and the civil proceedings arising out of the allegations made in the Complaint. Respondent's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

#### **VIII. RESOLUTION OF THIS PROCEEDING WITHOUT HEARING OR CONFERENCE**

If, instead of filing an Answer, Respondent wishes not to contest the Compliance Order in the Complaint and wants to pay the total amount of the proposed penalty within thirty (30) days after

receipt of the Complaint, Respondent should promptly contact the Assistant Regional Counsel identified, above, in Section VII.

Complainant:

  
\_\_\_\_\_  
Dore LaPosta, Director  
Division of Enforcement and Compliance Assistance  
U.S. Environmental Protection Agency, Region 2

DATE: December 31, 2003

**To**     **Honorable Carlos Mendez-Martinez**  
          **Mayor, Aguadilla, PR**  
          **Municipio Autonomo de Aguadilla (Municipality of Aguadilla)**

**cc:**     Jose Castro, Director (Municipality of Aguadilla DPW)  
          Julio Rodriguez, Puerto Rico Environmental Quality Board

**CERTIFICATE OF SERVICE**

This is to certify that on the day of JAN - 7, 2009, I caused to be mailed a true and correct copy of the foregoing COMPLAINT, COMPLIANCE ORDER AND NOTICE OF OPPORTUNITY FOR HEARING, bearing Docket Number RCRA-02-2009-7102, together with Attachments I and II (collectively referred to as the "Complaint"), and with a copy of the "CONSOLIDATED RULES OF PRACTICE GOVERNING THE ADMINISTRATIVE ASSESSMENTS OF CIVIL PENALTIES, ISSUANCE OF COMPLIANCE OR CORRECTIVE ACTION COMPLIANCE ORDERS, AND THE REVOCATION, TERMINATION OR SUSPENSION OF PERMITS," 40 C.F.R. Part 22, by certified mail, return receipt requested, to: Honorable Carlos Mendez-Martinez, Mayor, Municipality of Aguadilla, Municipio Autonomo de Aguadilla, Oficina del Alcalde, Apartado 1008, Aguadilla, PR 00605.

I hand carried the original and a copy of the Complaint to the Regional Hearing Clerk of the United States Environmental Protection Agency, Region 2, 290 Broadway, 16<sup>th</sup> floor, New York, New York 10007-1866.

Dated: JAN - 7, 2009  
New York, New York

*Shildred N. Baez*

**ATTACHMENT I**

**NARRATIVE EXPLANATION TO SUPPORT COMPLAINT AMOUNT  
Penalty Computation Worksheet (Count 1)**

Respondent: Municipality of Aguadilla

Address: State Road PR-467 Cuesta Vieja, Aguadilla, PR, 00605

Regulation Violated: 40 C.F.R. § 262.11 Failure to make hazardous waste determinations.

**PENALTY AMOUNT FOR COMPLAINT**

1. Gravity based penalty from matrix	\$22, 750
(a) Potential for harm	MAJOR
(b) Extent of Deviation.	MODERATE
2. Select an amount from the appropriate multi-day matrix cell.	\$0
3. Multiply line 2 by number of days of violation minus 1.	\$0
4. Add line 1 and line 3	\$22, 750
5. Percent increase/decrease for good faith.	N/A
6. Percent increase for willfulness/negligence.	N/A
7. Percent increase for history of noncompliance.	N/A
8. Total lines 5 through 7.	
9. Multiply line 4 by line 8.	
10. Calculate economic benefit.           The amount is below the level considered de minimus	
11. Add lines 4, 9 and 10 for penalty amount to be inserted into the complaint.	\$22, 750

\* Additional downward adjustments, where substantiated by reliable information, may be accounted for here.

**NARRATIVE EXPLANATION TO SUPPORT COMPLAINT AMOUNT**  
**Penalty Computation Worksheet (Count 1)**

**1. Gravity Based Penalty**

- (a) Potential for Harm: MAJOR: The potential for harm for a failure to conduct a hazardous waste determination is presumptively deemed to be MAJOR. The RCRA Civil Penalty Policy provides that the potential for harm should be based on two factors: 1) the adverse impact of the noncompliance on the regulatory scheme; and 2) the risk of human or environmental exposure. The RCRA regulatory program is undermined when an owner/operator of a facility generating several streams of solid waste fails to determine whether each of the generated waste streams is hazardous. Failure to make hazardous waste determinations increases the likelihood that the hazardous waste is managed as a non-hazardous waste, outside of the RCRA regulatory universe. This type of violation can result in multiple sequential violations involving each unidentified hazardous waste stream. Further, failure to manage a hazardous waste pursuant to the RCRA regulatory scheme increases the risk of human and environmental exposure. In this instance, Respondent's failure to make hazardous waste determinations may have resulted in illegal, improper solid waste disposal and may have exposed others to hazardous waste.
- (b) Extent of Deviation - The extent of deviation present in this violation was determined to be MODERATE. Respondent failed to make hazardous waste determinations for the spent fluorescent lamps and other wastes. This failure appeared to occur for an extended period of time, generally, with respect to relatively moderate amounts of hazardous waste generated. Respondent's failure to determine if each solid waste constituted a hazardous waste allowed for the waste to be placed in the regular trash. However, the used oil was shipped offsite using a licensed transporter; therefore the deviation from the Regulatory Requirements was determined to be MODERATE.
- (c) The applicable cell ranges from \$19, 500 to \$25, 999. The mid point for the cell matrix, \$22, 750 was selected because Respondent's operations generally generated relatively moderate amounts of hazardous waste.
- (d). Multiple/Multi-day - Failure to make a hazardous waste determination is being considered, initially, a one-time event.

**2. Adjustment Factors**

- a) Good Faith – Based upon facility specific factors and information available indicating that Respondent did not identify the violation and take any corrective action prior to the EPA inspection, no adjustment has been made at this time.
- b) Willfulness/Negligence - N/A
- c) History of Compliance - N/A
- d) Ability to Pay - N/A
- e) Environmental Project - N/A
- f) Other Unique Factors - N/A

**3. Economic Benefit** - The economic benefit resulting from this violation : the amount is considered to be de minimus.

**NARRATIVE EXPLANATION TO SUPPORT COMPLAINT AMOUNT**  
**Penalty Computation Worksheet (Count 2)**

Respondent: Municipality of Aguadilla

Address: State Road PR-467 Cuesta Vieja, Aguadilla, PR, 00605

Regulation Violated: 40 C.F.R. § 279.22(c)(1) Failure to label used oil tank and containers with the words "Used Oil".

**PENALTY AMOUNT FOR COMPLAINT**

1. Gravity based penalty from matrix	\$2,924
(a) Potential for harm.	MINOR
(b) Extent of Deviation.	MAJOR
2. Select an amount from the appropriate multi-day matrix cell.	\$0
3. Multiply line 2 by number of days of violation minus 1.	\$0
4. Add line 1 and line 3	\$2,924
5. Percent increase/decrease for good faith.	N/A
6. Percent increase for willfulness/negligence.	N/A
7. Percent increase for history of noncompliance.	N/A
8. Total lines 5 through 7.	
9. Multiply line 4 by line 8.	
10. Calculate economic benefit.	The amount is considered de minimus
11. Add lines 4, 9 and 10 for penalty amount to be inserted into the complaint.	\$2,924

\* Additional downward adjustments, where substantiated by reliable information, may be accounted for here.

**NARRATIVE EXPLANATION TO SUPPORT COMPLAINT AMOUNT  
Penalty Computation Worksheet (Count 2)**

Regulation Violated: Failure to label used oil tank and containers with the words "Used Oil".

**1. Gravity Based Penalty**

- (a) Potential for Harm: MINOR- The potential for harm in this violation was determined to be MINOR, since Respondent knew that used oil was in the tank and containers and was managing them as used oil. In these circumstances failure to label or mark used oil tanks or containers poses a slight risk of mismanagement, as the facility was aware of the contents of the containers.
- (b) Extent of Deviation: MAJOR - The extent of deviation in this violation was determined to be MAJOR, since the tank and none of the used oil containers were labeled. The violation was not corrected after the first inspection in 2006, and was observed again in the March 2008 inspection.
- (c) The applicable cell ranges from \$1, 950 to \$3, 899. The mid-point range of the cell, \$ 2,924 was chosen.
- (d) Multiple/Multi-day Violations: Same failure to label or mark used oil tank and containers was found in the 2006 inspection and in the 2008 inspection; Based on facility specific factors and available information (e.g. Municipality) and expected deterrent effect of the total penalty, a compressed penalty of \$2,948 is deemed appropriate.

**2. Adjustment Factors**

- a) Good Faith – Based upon facility specific factors and information available indicating that Respondent did not identify the violation and take any corrective action prior to the EPA inspection, no adjustment has been made at this time.
- b) Willfulness/Negligence - N/A
- c) History of Compliance - N/A
- d) Ability to Pay - N/A
- e) Environmental Project - N/A
- f) Other Unique Factors - N/A

- 3. Economic Benefit** - The economic benefit resulting from this violation: the amount is considered to be de minimus

**NARRATIVE EXPLANATION TO SUPPORT COMPLAINT AMOUNT  
Penalty Computation Worksheet (Count 3)**

Respondent: Municipality of Aguadilla

Address: State Road PR-467 Cuesta Vieja, Aguadilla, PR, 00605

Regulation Violated: 40 C.F.R. § 279.22(d) Failure to cleanup and manage released used oil.

**PENALTY AMOUNT FOR COMPLAINT**

1. Gravity based penalty from matrix	\$ 22, 750
(a) Potential for harm.	MAJOR
(b) Extent of Deviation.	MODERATE
2. Select an amount from the appropriate multi-day matrix cell.	\$0
3. Multiply line 2 by number of days of violation minus 1.	\$0
4. Add line 1 and line 3	\$ 22, 750
5. Percent increase/decrease for good faith.	N/A
6. Percent increase for willfulness/negligence.	N/A
7. Percent increase for history of noncompliance.	N/A
8. Total lines 5 through 7.	
9. Multiply line 4 by line 8.	
10. Calculate economic benefit.	The amount is considered to be de minimus
11. Add lines 4, 9 and 10 for penalty amount to be inserted into the complaint.	\$ 22, 750

\* Additional downward adjustments, where substantiated information, may be accounted for here.

**NARRATIVE EXPLANATION TO SUPPORT COMPLAINT AMOUNT**  
**Penalty Computation Worksheet (Count 3)**

**1. Gravity Based Penalty**

- (a) Potential for Harm: MAJOR - The potential for harm in this violation was determined to be major. Releases of used oil were observed at many locations at the Facility. Spills had not been cleaned up. Repeated noncompliance with this requirement undermines the regulatory program.
- (b) Extent of Deviation: MODERATE - The extent of deviation in this violation was determined to be Moderate. At the time of both Inspections, Respondent was aware of the releases of used oil. Facility personnel had in some cases made an attempt to clean up, but it was not adequate to keep the facility clean.
- (c) The applicable cell ranges from \$19,500 to \$25, 999. The mid-point range of the cell, \$22, 750, was chosen.
- (d) Multiple/Multi-day Violations: Violation was found in both Inspections in 2006 and 2008. Based on facility specific factors and available information (e.g. Municipality) and expected deterrent effect of the total penalty, a compressed penalty of \$22,750 is deemed appropriate.

**2. Adjustment Factors**

- a) Good Faith - Based upon facility specific factors and information available indicating that Respondent did not identify the violation and take any corrective action prior to the EPA inspection, no adjustment has been made at this time.
- b) Willfulness/Negligence - N/A
- c) History of Compliance - N/A
- d) Ability to Pay - N/A
- e) Environmental Project - N/A
- f) Other Unique Factors - N/A

**3. Economic Benefit** - The economic benefit resulting from this violation: the amount is considered to be de minimus

**ATTACHMENT II**

**PENALTY ASSESSMENT MATRIX**

<b>P O T E N T I A L  F O R  H A R M</b>	<b>EXTENT OF DEVIATION FROM REQUIREMENT</b>		
	<b>MAJOR</b>	<b>MODERATE</b>	<b>MINOR</b>
	\$32,500	\$25,999	\$19,499
<b>MAJOR</b>	to	to	to
	26,000	19,500	14,300
	\$14,299	\$10,399	\$6,499
<b>MODERATE</b>	to	to	to
	10,400	6,500	3,900
	\$3,899	\$1,949	\$649
<b>MINOR</b>	to	to	to
	1,950	650	130

**ATTACHMENT III**  
**MULTI-DAY MATRIX**

<b>EXTENT OF DEVIATION FROM REQUIREMENT</b>				
<b>P O T E N T I A L  F O R  H A R M</b>		<b>MAJOR</b>	<b>MODERATE</b>	<b>MINOR</b>
		<b>MAJOR</b>	\$6,448 to \$1,290	\$5,158 to \$967
	<b>MODERATE</b>	\$2,837 to \$516	\$2,063 to \$322	\$1,290 to \$193
	<b>MINOR</b>	\$774 to \$129	\$387 to \$129	\$129