

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
Region 2

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REGION 2  
2010 JUN -8 AM 10:33  
REGIONAL HEARING  
CLERK

IN THE MATTER OF

Municipality of Toa Baja  
Respondent

Department of Transportation  
and Public Works  
Campanilla Bypass (Rd. 865 and  
867), Campanilla Ward, Toa  
Baja, Puerto Rico

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

Docket No. RCRA-02-2009-7111

**CONSENT AGREEMENT AND FINAL ORDER**

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 ("HSWA"), 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.

Pursuant to Section 3006(b) of the Act, 42 U.S.C. § 6926(b), whereby the Administrator of EPA may, if certain criteria are met, authorize a state to operate a "hazardous waste program" (within the meaning of Section 3006 of the Act, 42 U.S.C. § 6926) in lieu of the federal hazardous waste program, the Commonwealth of Puerto Rico is 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 United States Virgin Islands and EPA has the authority to implement and enforce these regulations.

The Complainant in this proceeding, the Director of the Caribbean Environmental Protection Division, (CEPD) EPA, Region 2, issued a "Complaint, Compliance Order and Notice of

Opportunity for Hearing" ("Complaint") bearing Docket Number RCRA-02-2009-7111, to the Municipality of Toa Baja ("Respondent"), on September 30<sup>th</sup>, 2009, and Respondent served an answer on or about October 30<sup>th</sup>, 2009. The Complaint alleged that Respondent had violated requirements of RCRA and regulations implementing RCRA, concerning the management of hazardous waste at its facility where the Department of Transportation and Public Works operates, located at Campanilla Bypass, Rd. 865 and 867), Campanilla Ward, Toa Baja, Puerto Rico (the "Facility").

Complainant and Respondent agree by entering into this Consent Agreement and Final Order ("CA/FO"), that settlement of this matter upon the terms set forth in this CA/FO is an appropriate means of resolving the claims raised in the Complaint against Respondent at its facility, without further litigation.

This CA/FO is being issued pursuant to, and under the authority of, 40 C.F.R. § 22.18(b). No adjudicated findings of fact or conclusions of law have been made. The following constitute EPA's Findings of Fact and Conclusions of Law.

### **I. EPA's FINDINGS OF FACT**

- 1) Respondent is the Municipality of Toa Baja, a municipal government with a Municipal Assembly, governed under the "Ley de Municipios Autónomos", Public Law, No. 81, of August 30, 1991, as amended. The Municipality of Toa Baja was founded in 1745 and is on the northern coast of Puerto Rico.
- 2) Respondent operates its Department of Transportation and Public Works from a property located at Campanilla Bypass (Rd. 865 and 867), Campanilla Ward, Toa Baja, Puerto Rico ("the Facility").
- 3) The DTPW is divided into various offices or divisions: Public Works (in Spanish known as "Obras Públicas"), Environmental Sanitation (in Spanish known as "Saneamiento"), Upkeep and Beautification (in Spanish known as "Ornato"), Education, and Transportation. The Public Works office is in charge of the maintenance of municipal roads and sidewalks, including painting upkeep, tree trimming and removal of branches, and supporting municipal school cultural activities with tasks such as building

performing stages and kiosks, improving structure aesthetics (e.g. painting), among other things. The Environmental Sanitation office is in charge of the collection, segregation, and final disposition of the solid waste generated by the residents of the Municipality of Toa Baja. The Transportation office is in charge of providing preventive maintenance and mechanic services to the official vehicles of Toa Baja.

- 4) The Facility includes, at a minimum, the following areas:
  - a) Administrative Buildings;
  - b) Public Works Areas:
    1. Wood Shop;
    2. Welding Shop; and,
    3. Painting Warehouse;
  - c) Environmental Sanitation Area;
  - d) Department of Transportation and Maintenance Area:
    1. Tire and Battery Warehouse;
    2. Used Oil and Filter Change Area; and,
    3. Vehicle Preventive & Mechanic Shop;
  - e) Employee's Parking Lot.
- 5) Since at least 1992, Respondent has conducted, and continues to conduct, building maintenance operations; maintenance of municipal roads and sidewalks; tree trimming and removal of branches; paint related work; solid waste collection, segregation and disposal; and preventive maintenance and mechanic services to Toa Baja's motor vehicles in the course of conducting normal operations at the Facility.
- 6) Respondent, in carrying out its preventive maintenance and mechanic services, and in conducting normal building maintenance operations, has been generating "solid waste," in various maintenance areas, mechanic shop, warehouses and other areas of the Facility at all times relevant to this Complaint.
- 7) As part of the above activities and maintenance operations, Respondent has generated, in various maintenance areas, mechanic shop, warehouses, and other areas of the Facility, "hazardous waste".
- 8) The Facility under the name "Toa Baja Department of Transportation and Public Works" and in the course of

carrying out its activities had generated hazardous waste at the Facility.

- 9) The Respondent did not notify EPA nor did it receive an EPA identification number from the Administrator prior to its generation, transportation, recycling and/or disposal activities of regulated wastes. The Respondent did not notify EPA of its activities, including the location and general description of the regulated wastes handled at its DTPW Facility.
- 10) On or about June 27, 2007, duly designated representatives of EPA conducted an inspection of the Facility, pursuant to Section 3007 of RCRA, 42 U.S.C. § 6927 (the "Inspection").
- 11) The purpose of the Inspection was to perform a hazardous waste compliance evaluation, and to determine Respondent's compliance at the Facility with applicable requirements of RCRA and its implementing regulations.
- 12) During the Inspection, EPA also evaluated its compliance with the applicable federal regulations for the management of used oil throughout the Facility.
- 13) On or about June 27, 2007, duly designated representatives of EPA held an inspection closing conference with Respondent's representatives at the Facility.
- 14) During the closing conference, EPA discussed the preliminary findings of the Inspection with Respondent's representatives. EPA informed Respondent's representatives EPA's findings of improper handling, storage, and management of hazardous wastes generated at the Facility and its failure to formally notify EPA, according to the regulations. Furthermore, EPA made emphasis on the numerous spill incidents from abandoned drums and the inadequate management of used oil spills that were not immediately controlled or cleaned-up throughout the Facility. Additionally, EPA informed Respondent's representatives about the improper handling, storage, and management of Universal Wastes generated at the Facility.
- 15) On or about September 30, 2008, pursuant to Sections 3007 and 3008 of RCRA, 42 U.S.C. §§ 6927 and 6928, EPA issued to Respondent a Notice of Violation (the "NOV") and Information Request Letter (the "NOV Request Letter")

citing RCRA violations discovered during the Inspection and requiring the submission of certain information.

- 16) The NOV Request Letter required that Respondent take immediate action to correct the RCRA violations identified during the Inspection and to submit, within thirty (30) days of receipt of such correspondence, a response including: (1) a description of the actions that Respondent had taken to correct the violations; (2) documentation certifying that the violations had been corrected; and (3) a description of the procedures that would be put into place in order to prevent the occurrence of such violations in the future.
- 17) On or about November 17, 2008, Respondent submitted its response (the "Response") to the NOV Request Letter.
- 18) The Response was prepared by an employee or agent of Respondent in the course of carrying out his/her employment or duties.
- 19) Based on information provided by the Respondent in its November 17, 2008 letter, it did not conduct immediate corrective actions at the Facility in order to address the RCRA violations identified by EPA during the Inspection.
- 20) During a re-inspection performed by EPA personnel on February 17, 2010, the facility was found in substantial compliance with the RCRA violations previously identified by EPA.

#### **EPA'S CONCLUSIONS OF LAW**

1. 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.
2. Respondent's Facility constitutes a "facility," within the meaning of 40 C.F.R. § 260.10.
3. Respondent in carrying out its preventive maintenance and mechanic services, and in conducting normal building maintenance operations, has been generating "solid waste," as that term is defined in 40 C.F.R. § 261.2, in various maintenance areas, mechanic shop, warehouses and other areas of the Facility.

4. As part of the above activities and maintenance operations, Respondent has generated, in various maintenance areas, mechanic shop, "hazardous waste," as that term is defined in 40 C.F.R. § 261.3.
5. At all times mentioned in the Complaint and subsequent thereto, Respondent has been a hazardous waste "generator," at its DTPW Facility as that term is defined in 40 C.F.R. § 260.10.
6. The Toa Baja DTPW Facility constitutes an "existing hazardous waste management facility" (or "existing facility") within the meaning of 40 C.F.R. § 260.10.
7. The Toa Baja DTPW Facility is and has been a "storage" facility for "hazardous waste," as those terms are defined in 40 C.F.R. § 260.10.
8. The Facility never received a "permit" to treat, store or dispose of hazardous waste as that term is defined in 40 C.F.R. § 270.2, and never qualified for interim status as a treatment, storage or disposal facility pursuant to 40 C.F.R. § 270.70.
9. A generator may accumulate, for a limited period of time, specified small or large quantities of hazardous waste generated on site without requiring a permit or interim status provided it complies with all applicable conditions set forth in 40 C.F.R. § 262.34. For this exemption to apply, a generator must comply with all of these conditions. A generator may accumulate, for a limited period of time, specified small or large quantities of hazardous waste generated on site without complying with all the requirements set forth in 40 C.F.R. Part 265, provided it complies with all applicable conditions set forth or cross referenced in 40 C.F.R. § 262.34. For this exemption to apply, a generator must comply with all of these conditions.
10. Respondent did not comply with all applicable conditions set forth in 40 C.F.R. § 262.34.
11. Based on EPA's Inspections and Respondent's response, EPA issued a Complaint to Respondent alleging four counts of violations:

Count 1 -Failure to Make a Hazardous Waste Determination, 40 C.F.R. § 262.11;  
Count 2 - Failure to Minimize Risk of a Fire, Explosion, or Release, 40 C.F.R. § 265.31 as referenced by § 262.34(d)(4);  
Count 3 -Failure to Comply with Universal Waste requirements, 40 C.F.R. Part 273, Subpart B; and  
Count 4 -Failure to Comply with the Used Oil Generator Standards, 40 C.F.R. §§ 261.2(a) and (b) and 261.4(b)(13).

#### **CONSENT AGREEMENT**

Based upon the foregoing, and pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928, and 40 C.F.R. § 22.18 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 C.F.R. Part 22, it is hereby agreed by and between Complainant, and voluntarily and knowingly accepted by Respondent, that Respondent, for purposes of this Consent Agreement and in the interest of settling this matter expeditiously without the time, expense or uncertainty of a formal adjudicatory hearing on the merits: (a) admits the jurisdictional allegations of the Complaint; (b) neither admits nor denies the allegations set forth in the Complaint; (c) neither admits nor denies the above "EPA's Findings of Fact" and/or "EPA's Conclusions of Law"; (d) consents to the assessment of the civil penalty as set forth below; (e) consents to the issuance of the Final Order accompanying this Consent Agreement; (f) consents to comply, to the extent that it has not already done so, with the terms and conditions of the Compliance Order that was issued as part of the Complaint, Compliance Order and Notice of Opportunity for Hearing to Respondent, on this matter, bearing Docket Number RCRA 02-2009-7147; and (g) waives its right to contest or appeal that Final Order.

It is further hereby agreed by and between Complainant and Respondent, and voluntarily and knowingly accepted by Respondent, that the parties shall comply with the following terms and conditions:

1. Respondent shall submit payment of a civil penalty in the total amount of THIRTY ONE THOUSAND AND SIX HUNDRED DOLLARS (\$31,600), by cashier's or certified check, or wire transfer, in the following manner:

- a. Four payments of \$7,900 to be paid as follows:
- i. First payment thirty (30) days from the effective date of the Order;
  - ii. Second payment sixty (60) days from the effective date of the Order;
  - iii. Third payment ninety (90) days from the effective date of the Order and
  - iv. Fourth and final payment (120) days from the effective date of the Order.

2. Respondent shall make the payments by cashier's or certified check, payable to the "Treasurer of the United States of America", 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 or by wire transfer. The date by which each of the payments must be received shall hereafter be referred to as the "due date". Respondent shall perform the payments pursuant to the following:

**CHECK PAYMENTS**

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

**WIRE TRANSFERS**

Federal Reserve Bank of New York  
ABA = 021030004  
Account = 68010727  
SWIFT address = FRNYUS33  
33 Liberty Street  
New York NY 10045

Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"



**OVERNIGHT MAIL**

U.S. Bank  
1005 Convention Plaza  
Mail Station SL-MO-C2GL  
ATTN Box 979077  
St. Louis, MO 63101  
Contact: Natalie Peterson  
314-418-4087

Respondent shall also send copies of the payment to each of the following:

Eduardo González  
Response and Remediation Branch  
U.S. Environmental Protection Agency, Region 2  
Caribbean Environmental Protection Agency  
1492 Ponce de León Ave., Suite 417  
San Juan, PR 00907-4127  
Fax Number: (787) 289-7104

and

Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 2  
290 Broadway, 16<sup>th</sup> Floor  
New York, New York 10007

- a. failure to pay the penalty in full according to the above provisions will result in a referral of this matter to the United States Department of Justice or the United States Department of the Treasury for collection;
- b. further, if the payments are not received on or before the due date, interest will be assessed at the annual rate established by the Secretary of 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 dates in which the balance remains unpaid. A 6% per annum penalty also will be applied on any principal amount not paid within 90 days of the due dates;

- c. the civil penalty provided for in this paragraph constitutes a penalty within the meaning of 26 U.S.C. § 162(f); and
- d. Respondent also may be required to pay attorneys fees and costs for collection proceedings in connection with nonpayment.

The penalty to be paid is a civil penalty assessed by the EPA and shall not be deductible from the Respondent's federal or state taxes.

#### **GENERAL PROVISIONS**

The Respondent waives any right it may have pursuant to 40 C.F.R. § 22.8 to be present during discussions with or to be served with and to reply to any memorandum or communication addressed to the Director or the 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 accompanying Final Order.

Nothing in this agreement shall be construed as prohibiting, altering or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this agreement or of the statutes and regulations upon which this agreement is based, or for Respondent's violation of any applicable provision of law.

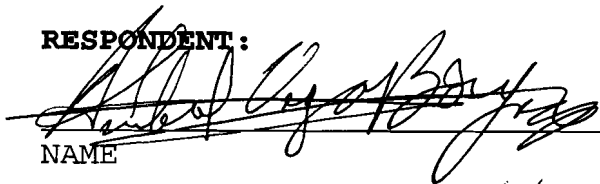
This Consent Agreement and Final Order constitute a Settlement by EPA of all claims for civil penalties pursuant to RCRA, for the violations alleged in the Complaint. Nothing in this Consent Agreement and Final Order is intended to nor shall be construed to operate in any way to resolve any criminal liability of the Respondent. Compliance with this Consent Agreement and Final Order shall not be a defense to any actions subsequently commenced pursuant to Federal laws and regulations administered by EPA, and it is the responsibility of Respondent to comply with such laws and regulations.

Each undersigned representative of the parties to this Consent Agreement certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this Consent Agreement and to execute and legally bind that party to it.

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Each party shall bear its own costs and attorney's fees in connection with the action resolved by this Consent Agreement and Order.

**RESPONDENT:**

  
NAME

Mayer - Municipality of Toa Baja  
POSITION

DATE: 5/4/10

**COMPLAINANT:**

  
Carl Axel-P. Soderberg  
Director

Caribbean Environmental Protection Division  
U.S. Environmental Protection Agency, Region 2

DATE: 05/18/10

**FINAL ORDER**

The Regional Judicial Officer of EPA, Region 2, concurs in the foregoing Consent Agreement in the case of In the Matter of the Municipality of Toa Baja, bearing Docket Number RCRA-02-2009-7111. Said Consent Agreement, having been duly accepted and entered into by the parties, is hereby ratified, incorporated into and issued, as this Final Order, which shall become effective when filed with the Regional Hearing Clerk of EPA, Region 2. 40 C.F.R. § 22.31(b). This Final Order is being entered pursuant to the authority of 40 C.F.R. § 22.18(b)(3) and shall constitute an order issued under the authority of Section 3008 of RCRA, 42 U.S.C. § 6928.

DATED:

May 27, 2010

Helen Ferrara

Helen Ferrara  
Regional Judicial Officer  
U.S. Environmental Protection Agency,  
Region 2  
Office of the Regional Counsel  
290 Broadway, 16<sup>th</sup> Floor  
New York, New York 10007-1866

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Region 2

IN THE MATTER OF:  
Municipality of Toa Baja  
Respondent

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

CONSENT AGREEMENT AND FINAL  
ORDER  
Docket No. RCRA-02-2009-7111

CERTIFICATE OF SERVICE

This is to certify that I have on this day caused to be mailed a copy of the foregoing Consent Agreement and Final Order, bearing docket number RCRA-02-2009-7111, as follows:

Copy by Federal Express:

Copy by Certified Mail:

Hon. Susan L. Biro  
Office of the Administrative Law Judges  
U.S. EPA  
1099 14<sup>th</sup> Street, N.W., Suite 350  
Washington, DC 20005

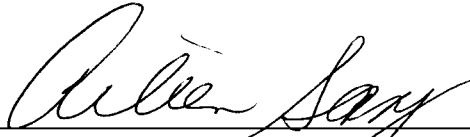
Braulio Garcia, Esq.  
Torres & Garcia, P.S.C.  
Attorneys and Counselors at Law  
P.O. Box 19539  
San Juan, PR 00910-1539

Original and a copy of the Consent Agreement and Final order for filing by Fed Ex:

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

Dated:

6/3/2010

  
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ORC-CT, San Juan, Puerto Rico