

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
Region 2

In the matter of:

Carlos Rosaly Molina, doing business as  
"Bechara Junkyard and/or Taller & Piezas  
Rosaly"

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-02-2013-7103

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REG. 2  
2013 MAY -2 A 8:15  
REGIONAL HEARING  
CLERK

**I. COMPLAINT**

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 United States Code (U.S.C.) §§ 6901-6991 (together hereafter the "Act" or "RCRA"), for injunctive relief and the assessment of civil penalties.

This COMPLAINT, COMPLIANCE ORDER AND NOTICE OF OPPORTUNITY FOR HEARING ("Complaint") serves notice of the United States Environmental Protection Agency's ("EPA") preliminary determination that Carlos Rosaly Medina, doing business as "Bechara Junkyard and/or Taller & Piezas Rosaly" ("Respondent") has violated provisions of RCRA and federal regulations concerning the management of hazardous waste.

Under 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 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 ("Puerto Rico" or "the Commonwealth") is a "State" within the meaning of this provision. Puerto Rico has not received authorization to operate a hazardous waste program pursuant to this provision. As a result, federal hazardous waste regulations remain in effect.

The Complainant in this proceeding, the Director of the Caribbean Environmental Protection Division, EPA, Region 2, has been duly delegated the authority to institute this action. For all times relevant to this Complaint, Complainant hereby alleges:

## **GENERAL ALLEGATIONS**

### **Jurisdiction**

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

### **Notice**

2. EPA has given notice of this action to the Commonwealth of Puerto Rico.

### **Respondent's Background**

3. Respondent is Carlos Rosaly Molina, d/b/a "Bechara Junkyard and/or Taller & Piezas Rosaly" ("Bechara Junkyard").
4. Since 2008, Respondent has been, at all relevant times to the allegations of this complaint, the owner and/or operator of a scrap recycling business located at Barriada Bechara 10-B, Sector Bechara, along the Kennedy Avenue in San Juan, Puerto Rico, 00934.
5. The Respondent also operates at the Bechara Junkyard an auto body paint and mechanic shop, and prior to 2009; the Respondent also operated a commercial auto crushing business at the site.
6. In the course of doing business, Respondent receives decommissioned or "junked" vehicles at its Facility. Vehicles contain numerous materials, including gasoline; diesel fuel; fuel filters; mercury switches; lead wheel weights; battery cable ends and terminals; air bags; batteries; high intensity lights; instrument panels; antifreeze oil filters; and oil.
7. Respondent stores and then dismantles junked vehicles at its Facility. Respondent sells the dismantled vehicles, which are valued for their metal, to shredders and/or foundries.
8. Since at least from 2008, Respondent has crushed and sold junked vehicles at its Facility.
9. Prior to crushing or dismantling operations, Respondent systematically removes the batteries; tires; wheels; and catalytic convertors from vehicles. However, Respondent does not remove the vehicles' engines; transmissions; airbags or airbag components; mercury switches; oil filters; fuel filters; or air conditioners, nor does he drain fuel tanks, air conditioner fluids, or any other auto fluids, from the junked vehicles prior to storing or selling the vehicles.

10. Respondent is a “person” as that term is defined in Section 1004(15) of the Act, and 40 C.F.R. § 260.10.

### **Notification of Hazardous Waste Generation**

11. Pursuant to Sections 3002(a) and 3004(a) of RCRA, the Administrator of EPA has promulgated regulations for the management of hazardous waste including standards to be applicable to generators, and treatment, storage and disposal (TSD) facilities. These regulations are set forth in 40 C.F.R. Parts 260 through 266 and Parts 268, 270 and 273.
12. Pursuant to Section 3014 of RCRA, the Administrator of EPA has promulgated regulations governing the management of used oil. These regulations are set forth in 40 C.F.R. Part 279.
13. Section 3008(a) of RCRA, authorizes the Administrator of EPA to issue an order assessing a civil penalty and/or requiring compliance for any past or current violation(s) of Subtitle C (Hazardous Waste Management) of RCRA, which includes the regulations referenced above.
14. 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), is \$37,500 per day of each violation occurring after January 12, 2009. 40 C.F.R. Part 19.
15. The Bechara Junkyard property , where Respondent conducts its scrap recycling business, constitutes a “new Facility” and a “Facility” as those terms are defined in 40 C.F.R. § 260.10 (hereinafter the “Facility”).
16. Respondent is and/or has been the "owner" of the Facility as that term is defined in 40 C.F.R. § 260.10.
17. Respondent is and/or has been the "operator" of the Facility as that term is defined in 40 C.F.R. § 260.10.
18. Respondent has never submitted a RCRA Section 3010 Notification of Regulated Waste Activity to EPA. However, EPA assigned Respondent the Identification Number PRN008020737 after it conducted an inspection of the Facility in 2008.
19. Respondent is and has been a “generator” of “hazardous waste” at its Facility as those terms are defined in 40 C.F.R. § 260.10. The requirements for generators are set forth in 40 C.F.R. Part 262.

20. Respondent never submitted to EPA a RCRA Part A or a Part B Permit Application, pursuant to Section 3005 of RCRA and 40 C.F.R. Parts 270 and 124 for its Facility and never received “interim status” or a hazardous waste permit to treat, store or dispose of hazardous waste at its Facility.
21. On or about October 22, 2008; September 16, 2010; and, April 13, 2012, EPA inspected Respondent’s Facility to determine its compliance with RCRA and its implementing regulations (hereafter “the 2008 Inspection,” “the 2010 Inspection,” and the “2012 Inspection,” or if referred to jointly, “the Inspections”).
22. On June 12, 2012, a RCRA Sections 3007 and 3008 Request for Information and Notice of Violation Letter (“Request for Information and Notice of Violation”) was issued to the Respondent. The Request for Information and Notice of Violation letter was hand-delivered on June 28, 2012. The letter addressed the issues related to the findings of the 2012 Inspection regarding the management of hazardous waste, universal waste and used oil disposal requirements. Respondent failed to respond to EPA’s first request letter.
23. On August 21, 2012, a second Request for Information and Notice of Violation was issued to the Respondent. Respondent failed to respond to EPA’s second request letter.

**Count 1 - Failure to Make Hazardous Waste Determination**

24. Complainant re-alleges each allegation above, as if fully set forth herein.
25. 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 method set forth therein.
26. Pursuant to 40 C.F.R. § 261.2(b)(3) materials are solid wastes if they are “abandoned by being disposed of ... or accumulated, stored, or treated (but not recycled) before or in lieu of being abandoned by being disposed of....”
27. In the course of its operations, Respondent receives at its Facility vehicles and other discarded goods for recycling. Many if not most of the vehicles received at the Facility contain fluids and/or parts that may constitute and/or contain hazardous waste. These fluids and parts include gasoline; diesel fuel; fuel filters; coolant; used oil; lead wheel weights; automobile components that may contain mercury (including light switches, anti-lock brake systems, ride leveling sensors, headlights and taillights, and virtual image instrument panels); and/or airbag cartridges that may contain sodium azide .

28. At a minimum, since the date of the 2008 Inspection and up to the date of the 2012 Inspection, Respondent has stored, dismantled and crushed junked vehicles without first removing or draining all of the fluids and parts from the vehicles, referenced in Paragraph 27 above.
29. At a minimum, since the date of the 2008 Inspection and up to the date of the 2012 Inspection, Respondent has stored, dismantled and crushed vehicles directly on top of earthen ground (soil) at its Facility. While some fluid was captured in concrete pads during the dismantling and previous crushing processes, the storage and dismantling and previous crushing of the vehicles resulted in the release, leaking, spilling or placing (hereafter the “disposal”) of the fluids and parts referenced in Paragraph 27 above, directly onto the soil and into Rio Puerto Nuevo, which flows into the Atlantic Ocean, a water of the United States.
30. At a minimum, since the time of the Inspections, fluorescent lights and mercury lamps were discarded in the trash or were not properly managed at the Facility.
31. Each material identified in Paragraph 27 was “abandoned by being disposed of” at Respondent’s Facility, within the meaning of 40 C.F.R. § 261.2(b) and each material therefore constitutes a “solid waste,” as defined in 40 C.F.R. § 261.2.
32. Respondent did not make the required determinations as to whether any of the solid wastes referenced in Paragraph 27 constituted hazardous wastes.
33. Each failure by Respondent to determine if the solid wastes referenced in Paragraphs 27 constitute a hazardous waste is a violation of 40 C.F.R. § 262.11.
34. Pursuant to Sections 3008(a) of RCRA, Respondent is subject to injunctive relief and liable for civil penalties for its violation of 40 C.F.R. § 262.11.

**Count 2 - Disposal of Hazardous Waste without a Permit**

35. Complainant re-alleges each allegation above, as if fully set forth herein.
36. Pursuant to Section 3005 of RCRA and 40 C.F.R. § 270.1(c), an owner or operator cannot dispose of hazardous wastes at its Facility without having obtained a permit or interim status authorizing such disposal.
37. “Disposal” is defined in 40 C.F.R. § 260.10 as the “discharge, deposit, injection, dumping, spilling, leaking or placing of any solid waste or hazardous waste into or onto any land so that such solid waste or hazardous waste or constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters.”

38. At a minimum, from the date of the 2008 Inspection and up to the date of the 2012 Inspection, Respondent, in the course, or as a result of, dismantling and previously crushing vehicles, has deposited, disposed of, dumped, spilled and/or leaked (hereafter referred to as “released”) gasoline directly onto the soil at its Facility.
39. The gasoline released onto the soil at Respondent’s Facility constitutes a “solid waste,” as that term is defined 40 C.F.R. § 261.2.
40. Pursuant to 40 C.F.R. § 261.3, any solid waste which exhibits any characteristic identified in Subpart C of 40 C.F.R. Part 261, such as ignitability or toxicity, constitutes a hazardous waste.
41. Gasoline is ignitable, and toxic for benzene, as those characteristics are defined in 40 C.F.R. § 261.21 and 40 C.F.R. § 261.24, respectively.
42. The gasoline disposed of at Respondent’s Facility constitutes a “hazardous waste” as defined in 40 C.F.R. §§ 261.21 and 261.24.
43. Each release of gasoline onto the soil at Respondent’s Facility constitutes a “disposal” of “hazardous waste” as defined in 40 C.F.R. § 260.10 and 40 C.F.R. § 261.3, respectively.
44. Respondent’s disposal of hazardous waste at its Facility, which does not have interim status or a permit authorizing such disposal, is a violation of Section 3005 of RCRA and 40 C.F.R. § 270.1.
45. Pursuant to Section 3008(a) of RCRA, Respondent is subject to injunctive relief and liable for civil penalties for each violation of Section 3005 of RCRA and 40 C.F.R. § 270.1.

### **Count 3 - Failure to Minimize the Possibility of Releases**

46. Complainant re-alleges each allegation above, as if fully set forth herein.
47. Pursuant to 40 C.F.R. § 264.1(b), owners and operators of all facilities which treat, store or dispose of hazardous waste must, unless subject to certain exceptions which are inapplicable here, comply with the requirements set forth in 40 C.F.R. Part 264.
48. Pursuant to 40 C.F.R. § 264.31, owners and operators must maintain their facilities to “minimize the possibility of a fire, explosion or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water which could threaten human health or the environment.”

49. During the operations and maintenance of its Facility, from the date of the 2008 Inspection and up to the date of the 2012 Inspection:
- a. Respondent failed to have procedures in place, to remove all fluids (such as gasoline and diesel fuel) and parts (such as mercury containing light switches, high intensity discharge systems -e.g., headlights and tail lamps-), and mercury containing G-force sensors in anti-lock brake systems from junked vehicles prior to receiving and storing such vehicles, potentially permitting the release of hazardous waste and/or hazardous waste constituents into the environment from such fluids and parts;
  - b. Respondent stored, dismantled and previously crushed vehicles directly on the soil rather than on a non-porous surface pad, thereby allowing fluids that may contain hazardous waste or hazardous waste constituents to be released directly onto the soil and into a channel which flows into Rio Puerto Nuevo, which flows into the Atlantic Ocean, a water of the United States;
  - c. Respondent dismantled and previously crushed vehicles containing volatile hazardous waste constituents, including benzene, thereby allowing fluids that may contain hazardous waste or hazardous waste constituents to volatilize into the air;
  - d. Respondent failed to have an adequate storm water runoff collection system to minimize or eliminate runoff or percolation of storm water and fluids released from vehicles before, during, or after, dismantling and crushing, thereby allowing storm water, which may be contaminated with hazardous wastes and/or hazardous waste constituents from the vehicles, to spread to and contaminate additional areas at the Facility;
  - e. Respondent stored lead-based battery cable ends and wheel weights uncovered in the open air on bare soil permitting the release of hazardous waste or hazardous waste constituents into the environment; and
  - f. Respondent stored fluids collected in the dismantling process and in the mechanic shop repairs in drip pans (which were not capped, enclosed or otherwise contained), and in open containers and drums, risking the release of an amalgamation of hazardous wastes and/or hazardous waste constituents into the environment.
50. Respondent's Facility is bordered at the North and the East by mangrove forests and scrublands and at the South and the West side by the Puerto Nuevo River, which flows into the Atlantic Ocean, a water of the United States.
51. Each action or inaction set forth in Paragraph 49 constitutes a failure by Respondent to maintain or operate its Facility in a manner that minimizes the possibility of a fire,

explosion or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water which could threaten human health or the environment in violation of 40 C.F.R. § 264.31.

52. Pursuant to Section 3008(a) of RCRA Respondent is subject to injunctive relief and subject to civil penalties for each violation of 40 C.F.R. § 264.31.

#### **Count 4 – Improper Disposal of Used Oil**

53. Complainant re-alleges each allegation above, as if fully set forth herein.
54. “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.” 40 C.F.R. § 279.1.
55. Subpart I of 40 C.F.R. Part 279 sets forth the standards for the disposal of used oil that is not being recycled and is being disposed of. Pursuant to 40 C.F.R. § 279.81, used oils that are not recycled and are identified as hazardous waste must be managed and/or disposed of in accordance with hazardous waste requirements set forth in 40 C.F.R. Parts 260-266, 268 and 270. Pursuant to 40 C.F.R. § 279.81(b), used oils that do not constitute hazardous waste must be disposed of under the requirements of 40 C.F.R. Parts 257 and 258.
56. At a minimum, from the 2008 Inspection through the 2012 Inspection, Respondent received junked vehicles which contained “used oil” as defined in 40 C.F.R. § 279.1.
57. During the period of time mentioned in paragraph 56 above, Respondent dismantled and crushed vehicles directly on the soil without first removing all of the used oil from the vehicles. In addition, Respondent conducted vehicle repairs without controlling the releases of used oil from the vehicles. Used oil was released or otherwise disposed of onto the soil at Respondent’s Facility and into a channel which flows into Puerto Nuevo River, during the dismantling and crushing processes.
58. At the time of the 2012 Inspection, EPA observed that Respondent had installed an above ground tank that was properly labeled, and it disposed of most of the used oil generated at the Facility with an approved used oil transporter.
59. Respondent’s disposal of used oil at its Facility without complying with hazardous waste requirements (if the used oil was a hazardous waste) or without complying with 40 C.F.R. Parts 257 and 258 (if the used oil was not a hazardous waste) constitutes violations of 40 C.F.R. § 279.81.
60. Pursuant to Section 3008(a) of RCRA Respondent is subject to injunctive relief and liable for civil penalties for each violation of 40 C.F.R. § 279.81.

**Count 5 – Failure to Label Used Oil Storage Containers**

61. Complainant re-alleges each allegation above, as if fully set forth herein.
62. A “used oil generator” is defined at 40 C.F.R. § 279.20 as any person, by site, whose act or process produces used oil or whose act first causes used oil to become subject to regulation.”
63. Respondent removes and accumulates “used oil” as that term is defined in 40 C.F.R. § 279.1 from its service and support vehicles, as well as from heavy equipment used and/or maintained on site. Respondent is a “used oil generator” as that term is defined in 40 C.F.R. § 279.20.
64. Subpart C of 40 C.F.R. Part 279 (“Standards for Used Oil Generators”) sets forth the requirements for used oil generators.
65. 40 C.F.R. § 279.22(c) requires that containers used to store used oil at generator facilities must be labeled or marked with the words “used oil.”
66. At a minimum, from the time of the 2008 Inspection through the 2012 Inspection, Respondent stored used oil in numerous containers and drums that were not labeled or marked with the words “used oil.”
67. During the 2012 Inspection, EPA observed that Respondent was implementing measures to comply with some of the used oil disposal requirements. Respondent obtained a used oil permit from the Puerto Rico Environmental Quality Board, Respondent had installed an above ground tank that was properly labeled, and was disposing the used oil with an approved used oil transporter.
68. Respondent violated 40 C.F.R. § 279.22 by failing to properly label containers used to store used oil.
69. Pursuant to Section 3008(a) of RCRA Respondent is subject to injunctive relief and liable for civil penalties for its violation of 40 C.F.R. § 279.22.

## **II. PROPOSED CIVIL PENALTY**

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

Count 1: \$28,330.00  
Count 2: \$28,330.00  
Count 3: \$28,330.00  
Count 4: \$ 430.00  
Count 5: \$ 430.00

Total Proposed Penalty for Counts 1-5 is \$85,850.00

The proposed civil penalty has been determined in accordance with Section 3008(a) (3) of the Act. 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." To develop the proposed penalty in this complaint, the Complainant has taken into account the particular facts and circumstances of this case and used EPA's 2003 RCRA Civil 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>***

This policy provides a rational, consistent and equitable calculation methodology for applying the statutory penalty factors to particular cases.

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. Consistent with this, the penalty amounts in the 2003 RCRA Civil Penalty Policy have been amended to reflect inflation adjustments. These adjustments were made pursuant to the December 29, 2008 document entitled Amendments to EPA's Civil Penalty Policies to Implement the 2008 Civil Penalty Monetary Penalty Inflation Adjustment Rule (effective January 12, 2009); and the November 16, 2009 document entitled Adjusted Penalty Policy Matrices based on the 2008 Civil Monetary Inflation Rule (with a further revision not relevant to this action on April 6, 2010).

The maximum civil penalty under Section 3008(a) (3) of RCRA, for violations after January 12, 2009 is \$37,500 per day of violation.

The Complainant proposes, subject to receipt and evaluation of further relevant information from the Respondent, that the Respondent be assessed the civil penalty as set out above for the violations alleged in this Complaint. A penalty calculation worksheet and narrative explanation

to support the penalty figure for each violation cited in this Complaint are included in Attachment I, below. Matrices employed in the determination of individual and multi-day penalties are included as Attachments II, and III, below.

### **III. COMPLIANCE ORDER**

Based upon the foregoing and pursuant to the authority of Section 3008 of the Act, 42 U.S.C. § 6928, Complainant herewith issues the following Compliance Order to Respondent:

1. Within twenty (20) calendar days of the effective date of this Compliance Order, Respondent shall:
  - a. make hazardous waste determinations for each solid waste generated at its Facility pursuant to 40 C.F.R. § 262.11;
  - b. maintain and operate the Facility in a manner that minimizes the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil or surface water which could threaten human health or the environment pursuant to 40 C.F.R. § 264.31;
  - c. cease the disposal of hazardous waste at its Facility unless or until it receives a hazardous waste permit from EPA authorizing such disposal pursuant to Section 3005 of RCRA and 40 C.F.R. § 270.1;
  - d. cease the disposal of used oil at its Facility unless or until receiving permits authorizing such disposal, or otherwise in accordance with 40 C.F.R. Parts 257, 258, 260 - 266, 268, and 270; and
  - e. Comply with all applicable requirements for used oil generators set forth in 40 C.F.R. Part 279 including labeling containers used to store used oil.
2. Respondent shall submit to EPA within thirty (30) calendar days of the effective date of this Compliance Order written notice of its compliance (accompanied by a copy of all appropriate supporting documentation) or noncompliance for each of the requirements cited in paragraph "1" of this Compliance Order. If Respondent is in noncompliance with a particular requirement, the notice shall state the reasons for noncompliance and shall provide a schedule for achieving prompt compliance with the requirement(s).
3. All responses, documentation, and evidence submitted in response to this Compliance Order should be sent to:

Eduardo R. Gonzalez, P.E.  
U.S. Environmental Protection Agency, Region 2  
Caribbean Environmental Protection Division  
Response & Remediation Branch  
City View Plaza II, Suite 7000  
Road PR-165, Km 1.2, #48  
Guaynabo, PR 00968

4. This Compliance Order shall take effect thirty (30) 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).
5. 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 (federal and/or commonwealth) provisions, nor does such compliance release Respondent from liability for any RCRA violations occurring or existing at the Bechara Junkyard Facility. In addition, nothing herein waives, prejudices or otherwise affects EPA's right to enforce against Respondent 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 hazardous waste at the Bechara Junkyard Facility.

#### **IV. 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 regarding hazardous waste violations is liable for a civil penalty of up to \$37,500 for each day of continued noncompliance (73 Fed. Reg. 75340, December 11, 2008).

#### **V. 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 COMPLIANCE ORDERS, AND THE REVOCATION, TERMINATION OR SUSPENSION OF PERMITS." These rules are codified at 40 C.F.R. Part 22. A copy of these rules accompanies this Complaint.

##### **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 are 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  
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 the 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 affirmatively to 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 requests 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 either Respondent requests a hearing pursuant to 40 C.F.R. § 22.15 within 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.

