UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Region 2

IN THE MATTER OF:

Municipality of Toa Alta
P.O. Box 82
Toa Alta, PR 00953

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-02-2014-7103

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 U.S.C. §§ 6901, *et seq.* (together hereafter the Act or RCRA), for injunctive relief and the assessment of civil penalties. 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 the EPA's preliminary determination that the Municipality of Toa Alta (Respondent) has violated provisions of RCRA and federal regulations concerning the management of hazardous waste the Department of Public Works facility in Toa Alta, Puerto Rico (the "Facility").

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 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 a "state" as that term is defined by Section 1004(31) of the Act, 42 U.S.C. § 6903(31). The Commonwealth of Puerto Rico, however, 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 the implementation and enforcement of RCRA's hazardous waste regulations in the Commonwealth of Puerto Rico. These regulations are set forth in 40 C.F.R. Parts 260 through 273 and 279.

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.

JURISDICTION AND GENERAL PROVISIONS

1. This administrative 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).

2. RCRA establishes a comprehensive federal regulatory program for the management of hazardous waste. 42 U.S.C. § 6901 *et seq*. The Administrator of EPA, pursuant to Sections 3002(a) and 3004(a) of RCRA, 42 U.S.C. §§ 6922(a) and 6924(a), promulgated regulations for the management of hazardous waste and setting standards for generators and treatment, storage and disposal facilities. These regulations are set forth in 40 C.F.R. Parts 260 through 266 and Parts 268, 270, 273 and 279.

3. Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), 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.

4. The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, requires EPA to adjust its penalties for inflation on a periodic basis. The penalty amounts were amended for violations occurring on or after December 6, 2013. The maximum civil penalty under Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), for violations occurring after December 6, 2013 is $37,500 per day of violation. 40 C.F.R. Part 19.

Notice

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

Respondent's Background

6. Respondent is the Municipality of Toa Alta (hereinafter the Municipality or Respondent). Respondent is a municipality of the Commonwealth of Puerto Rico.

7. The Toa Alta Municipal Public Works Department, a division within the Municipality, is located at PR-165 km. 12, Contorno Ward, Toa Alta, Puerto Rico (the Facility).

8. The Facility consists mostly of open, unpaved gated space. A 250-gallon used oil aboveground tank stands close to the entrance. To the south of the property is a roofed area used as mechanic shop, soldering, and tire repair area. Adjacent to the mechanic shop is the administrative office and behind the administrative office is the car wash area. A parking space at the east and north end of the Facility is used to park vehicles scheduled to be decommissioned.

9. The Facility shares the lot with the municipal Department of General Services (DGS). DGS has a building used as an administrative office and a paint storage area.

10. Respondent performs, among other things, auto repair activities at the Facility's mechanic shop. These activities include tires, brakes, oil and batteries replacement. Light mechanic repairs are also performed.

11. The mechanic activities are performed in a roofed area at the Facility. The area has a cement floor and no walls.

12. The Facility is also a temporary storage area for cars and other equipment scheduled to be decommissioned.

13. The Facility is a storage area for used vehicle batteries.

14. 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.

15. Respondent's Facility constitutes a "facility," within the meaning of 40 C.F.R. § 260.10.

16. Respondent is the "owner" and "operator" of the Facility as those terms are defined in 40 C.F.R. § 260.10.

17. In or about January 1995, EPA inspected the Facility and assigned it the EPA Identification Number PRR000001925.

18. Respondent is a "generator" of "hazardous waste," as those terms are defined in 40 C.F.R. § 260.10.

19. Respondent's temporary holding of hazardous waste at its Facility, constitutes "storage" as that term is defined in 40 C.F.R. § 260.10.

20. The requirements for hazardous waste generators are set forth in 40 C.F.R. Part 262.

21. Respondent is a "small quantity handler of universal waste," as that term is defined in 40 C.F.R. § 273.9.

22. The requirements for handlers of universal waste are set forth in 40 C.F.R. Part 273.

23. Respondent is a "used oil generator," as that term is defined in 40 C.F.R. § 279.1.

24. The requirements for "used oil generator" are set forth in 40 C.F.R. Part 279.

EPA INVESTIGATIVE AND ENFORCEMENT ACTIVITIES

25. On or about July 11, 2006, duly designated representatives of EPA conducted an inspection of the Facility pursuant to Section 3007 of RCRA, 42 U.S.C. § 6927, to determine Respondent's compliance with Subtitle C of RCRA and its implementing regulations (the "2006 Inspection").

26. Based on the findings of the 2006 Inspection, EPA determined that Respondent failed to: (1) comply with 40 C.F.R. Part 260; (2) comply with used oil regulations set forth in 40 C.F.R. Part 279; and to comply with universal waste regulations set forth in 40 C.F.R. Part 273.

27. A Notice of Violation was sent to the Facility on September 29, 2006.

28. On January 22, 2014, a duly designated representative of EPA conducted an inspection of the Facility pursuant to Section 308 of the Clean Water Act (CWA), 33 U.S.C. § 1318, to determine Respondent's compliance with the CWA and its implementing regulations (the CWA Inspection).

29. During the CWA Inspection, the EPA representative noticed a spill of used oil on a drainage ditch. Upon return to EPA's office, the CWA inspector notified the spill to the RCRA inspector.

The 2014 RCRA Inspections

30. On January 24, 2014, a duly designated EPA officer conducted an inspection of the Facility pursuant to Section 3007 of RCRA, 42 U.S.C. § 6927, to determine Respondent's compliance with Subtitle C of RCRA and its implementing regulations ("the Inspection").

31. During the Inspection Respondent's representative informed the EPA officer that light mechanic repairs to municipal vehicles, such as tire, brakes and oil changes are performed in the Facility by municipal employees.

Parts Washer Area

32. During the Inspection Respondent's representative informed the EPA officer that the parts washer is no longer used.

33. The EPA officer observed liquid inside the parts washer, and noticed that it had a strong solvent odor.

34. The EPA officer observed a spill right below the parts washer, where the filter was supposed to be located.

35. The EPA Officer observed that the liquid spilled in the dirt looked like the liquid inside the parts washer.

36. The EPA officer explained Respondent's representative that the Facility had to arrange for proper disposal of the spilled substance.

Used Batteries and Trimmers Area

37. During the Inspection Respondent's representative informed the EPA officer that the accumulation area for used batteries is located in the mechanic shop (the used batteries area).

38. The EPA officer observed a stack of fifteen (15) batteries at the mechanic shop entrance.

39. The EPA officer observed that batteries at the mechanic shop entrance were not labeled or in any way identified as "Used Batteries."

40. Respondent's representative explained that the batteries located at the mechanic shop entrance were used batteries waiting for collection.

41. Once in the used batteries area, the EPA officer observed a stack of thirty six (36) batteries covered with dust, giving the impression that they had been stored for a long time.

42. The batteries stacked in the used batteries area were not labeled or in any way identified as "Used Batteries."

43. The EPA officer observed four (4) additional batteries behind the mechanic shop.

44. According to Respondent's representative, these were used batteries that an employee placed behind the shop instead of at the designated used batteries area.

45. The four batteries behind the mechanic shop were not labeled or in any way identified as "Used batteries."

46. Right next to the used batteries area is the entrance to a smaller room where trimmers scheduled to be decommissioned are stored (the trimmer storage area).

47. The EPA officer observed at least ten (10) trimmers and a spill on the concrete floor of what looked like oil and fuel mixture at the trimmer storage area.

Oil Spill Areas

48. The EPA officer observed a dike at the Facility. The dike did not have a valve that would prevent the contents of the dike from escaping it.

49. The EPA officer observed three (3) 55-gallon drums containing used oil inside the dike drain.

50. The EPA officer observed used oil covering the 55-gallon drums and spilled on the floor towards the drain.

51. The EPA officer observed that the drums were not labeled or in any way identified as "Used Oil."

52. To the east of the dike, the EPA officer observed that water and oil had accumulated forming a pool where the drainage ditch is closer to the car wash area (the oil spill).

53. The EPA officer followed the oil spill for approximately 125 feet until it reached a ravine.

54. In addition to oil, the EPA officer smelled something similar to diesel fuel in the drainage ditch.

55. The EPA officer observed that the soil around the drainage ditch was decolorized, suggesting that hydrocarbon spills had been occurring for some time.

56. The EPA officer observed that vegetation close to the drainage ditch was covered in oil.

57. At the end of the Inspection, the EPA officer held a closing conference with Respondent's representatives in which the preliminary findings of the Inspection were discussed. The EPA officer informed Respondent's representative that:

    a. Respondent needed to contain and clean up the oil spill at the earthen ditch and various other spill observed at the Facility.

    b. Respondent needed to label its waste batteries and used oil containers.

    c. Respondent needed to make a hazardous waste determination of the contents of the parts washer and decommissioned cars.

    d. At the decommissioned cars area, Respondent needed to remove the fluids and other hazardous waste and dispose of them properly.

    e. Respondent needed to provide documents regarding the disposal and/or recycling of used oil and batteries within thirty (30) days.

58. On or about February 2, 2014, Respondent submitted to EPA via email the documents that were requested during the closing meeting.

59. On February 20, 2014, a duly designated representative of EPA conducted a follow up inspection ("the Follow-up Inspection").

60. During the Follow-up Inspection, the EPA officer observed that Respondent had cleaned up the used oil spill and collected the water and oil that resulted from the clean-up in ten (10) 55-gallon drums.

61. During the Follow-up Inspection, the EPA officer observed that the contaminated soil was removed from the dike ditch area and placed in a 20 yd^3 container.

62. According to Respondent's representative, the contaminated soil had not been disposed because analysis results were still pending.

63. During the Follow-up Inspection, the EPA officer observed that the used oil area had been pressured washed and the open drain was replaced by a valve.

64. During the Follow-up Inspection, the EPA officer observed that the used batteries were moved to the dike area.

65. During the Follow-up Inspection, the EPA officer observed that the parts washer was cleaned.

66. During the Follow-up Inspection, the EPA officer observed that Respondent had removed cars from the Facility. According to Respondent's representative, a number of cars were sold as scrap metal and others were repaired.

COUNTS

A. Failure to Make a Hazardous Waste Determination

67. Complainant re-alleges each applicable allegation contained in paragraphs "1" through "66", as if fully set forth herein.

68. Pursuant to 40 C.F.R. § 262.11, a person who generates a solid waste, as defined in 40 C.F.R. § 261.2, must determine if that waste is a hazardous waste.

69. At the time of the Inspection, Respondent failed to make a hazardous waste determination of:

    a. the waste inside the parts washer area at the mechanic shop, next to the used oil dike; and

    b. waste, such as gasoline, brake fluids and airbag inflator compounds, left in the vehicles to be decommissioned.

70. Respondent's failure to determine and demonstrate whether each solid waste generated and accumulated at its Facility constitutes a hazardous waste is a violation of 40 C.F.R. § 262.11.

71. Respondent's failure to comply with 40 C.F.R. § 262.11 subjects it to penalties pursuant to Section 3008 of the Act.

B. Failure to Comply with Universal Waste Regulations

72. Complainant re-alleges each applicable allegation contained in paragraphs "1" through "66," as if fully set forth herein.

73. Respondent became a small quantity handler of universal waste since, at least, July 11, 2006, for activities related to the generation and accumulation of universal waste batteries at the Facility.

74. Pursuant to 40 C.F.R. § 273.14(a), universal waste batteries (i.e., each battery), or a container in which the batteries are contained, must be labeled or marked clearly with any one of the following phrases: "Universal Waste-Battery(ies)," "Waste Battery(ies)," or "Used Battery(ies)."

75. At the time of the Inspection Respondent had failed to label or mark clearly the batteries with any one of the following phrases: "Universal Waste-Battery(ies)," "Waste Battery(ies)," or "Used Battery(ies)."

76. Respondent's failure to label each battery or the container in which the batteries are contained with the phrase: "Universal Waste-Battery(ies)," "Waste Battery(ies)," or "Used Battery(ies)," is a violation of 40 C.F.R. § 273.14(a).

77. Pursuant to 40 C.F.R. § 273.15(c), a small quantity handler of universal waste who accumulates universal waste must be able to demonstrate the length of time that the universal waste has been accumulated from the date it becomes a waste or is received.

78. At the time of the Inspection, Respondent was not able to demonstrate the length of time that used batteries had been accumulated from the date they became a waste.

79. Respondent's failure to comply with 40 C.F.R. §§ 273.14(a) and 273.15(c) subjects it to penalties pursuant to Section 3008 of the Act.

C. Failure to Comply With Used Oil Regulations

80. Complainant re-alleges each applicable allegation contained in paragraphs "1" through "68," as if fully set forth herein.

81. Pursuant to 40 C.F.R. § 279.22(c)(1) used oil generators "containers and aboveground tanks used to store used oil at generator facilities must be labeled or marked clearly with the phrase "Used Oil."

82. Pursuant to 40 C.F.R. § 279.22(d) used oil generators "upon detection of a release of used oil to the environment (…) must perform the following cleanup steps: (1) stop the release; (2) contain the released used oil; (3) clean up and manage properly the released used oil and other materials; and (4) if necessary, repair or replace any leaking used oil storage containers or tanks prior to returning them to service."

83. At the time of the Inspection, Respondent had failed to:

    a. label or clearly mark the three (3) 55-gallon drums placed inside the dike with the words "Used Oil;" and

b. clean up an oil spill at the dike drainage ditch. The oil mixed with water in the ditch traveled at least 150 feet into a ravine.

84. Respondent's failure to label used oil containers with the phrase "Used Oil" and failure to perform the appropriate cleanup steps upon detection of a release of used oil, is a violation of 40 C.F.R. § 279.22.

85. Respondent's failure to comply with 40 C.F.R. § 279.22 subjects it to penalties pursuant to Section 3008 of the Act.

II. PROPOSED CIVIL PENALTY

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

Count 1: $39, 375.00
Count 2: $4,462.50
Count 3: $75,739.00

Total Proposed Penalty for Counts 1, 2 and 3 is **$119,576.**

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." 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 (the RCRA Policy), a copy of which is available upon request or can be found on the Internet at the following address:
http://www2.epa.gov/sites/production/files/documents/rcpp2003-fnl.pdf

This RCRA 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.

The maximum civil penalty under Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), for violations after December 6, 2013 is $37,500 per day of violation. See Paragraph 5 supra, and 40 C.F.R. Part 19.

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

III. 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) 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):

1. Within ten (10) calendar days of the effective date of this Compliance Order, Respondent shall, to the extent it has not already done so, clean up and properly manage any spill of hazardous waste or used oil at any area at the Facility

2. Within thirty (30) calendar days of the effective date of this Compliance Order, if it has not already done so, Respondent shall train its employees on hazardous waste (40 C.F.R. § Part 262), universal waste (40 C.F.R. § Part 273) and used oil management (40 C.F.R. § Part 279); and, spill prevention, control and countermeasures (40 C.F.R. § 112). Training will be repeated on a yearly basis. New hires will be trained within 30 days of starting work at areas that generate or manage hazardous waste, universal waste or used oil.

3. Within thirty (30) calendar days of the effective date of this Compliance Order, to the extent it has not already done so, Respondent will update its decommissioning process to include hazardous waste, universal waste and used oil management. At a minimum, it will include:

    a. Instructions to perform a hazardous waste determination.

    b. Instructions to remove and dispose or recycle properly of hazardous waste, universal waste and used oil.

4. Within thirty (30) calendar days of the effective date of this Compliance Order, Respondent shall comply with all other applicable federal and state regulatory requirements for hazardous waste generators for its Facility.

5. Respondent shall submit to EPA within forty (40) calendar days of the effective date of this Compliance Order written notice of its compliance status (accompanied by a copy of all appropriate supporting documentation) for each of the requirements cited in Paragraphs "1" through "4" of this Compliance Order, above. 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.

6. All responses, documentation, and evidence submitted in response to this Compliance Order should be sent to:

    Jesse Avilés
    U.S. Environmental Protection Agency, Region 2
    Caribbean Environmental Protection Division
    Response & Remediation Branch
    City View Plaza 2, suite 7000
    #48 PR-165 km 1.2
    Guaynabo, PR 00968-8069

7. This Compliance Order shall take effect thirty (30) days after its service, 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).

8. 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, state and/or local) provisions, nor does such compliance releases 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 hazardous waste at the 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 is liable for a civil penalty of up to $37,500.00 for each day of continued noncompliance. Such continued noncompliance may also result in suspension or revocation of any permits issued to the violator by EPA.

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 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 can be found at: http://www.epa.gov/oalj/rules/crop.pdf.

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 thirty (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 the Assistant Regional Counsel mentioned in Section VI below 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(s) facts that constitute or that might constitute the grounds of their 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.

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.

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) as set forth in 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) as set forth in 40 C.F.R. § 22.17(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 upon the parties." 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 forty five (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.

VI. 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:

Carolina Jordán-García
U.S. Environmental Protection Agency, Region 2
Caribbean Environmental Protection Division
Office of Regional Counsel-Caribbean Team
City View Plaza 2, Suite 7000
#48 PR-165 km 1.2
Guaynabo, PR 00968-8069
Telephone: (787) 977-5834
jordan-garcia.carolina@epa.gov

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.

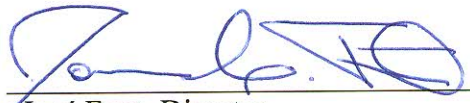
Any settlement that may be reached as a result of an informal settlement conference will be embodied in a written consent agreement. 40 C.F.R. § 22.18(b)(2). In accepting the consent agreement, Respondent waives its right to contest the allegations in the Complaint and waive its right to appeal the final 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 such Consent Agreement terminate 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.

VII. 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 in Section VI.

COMPLAINANT:



José Font, Director
Caribbean Environmental Protection Division
U.S. Environmental Protection Agency, Region 2

July 16, 2014
DATE
San Juan, PR

To: Hon. Clemente Agosto, Mayor
Municipality of Toa Alta
P.O. Box 82
Toa Alta, PR 00953

cc: Hon. Laura Vélez-Vélez
Chairwoman
PR Environmental Quality Board
P.O. Box 11488
San Juan, PR 00910

bcc: Héctor Vélez (2ORC)
William K. Sawyer (2ORC-WTSB)
Jesse Avilés (2CEPD-RRB)

IN THE MATTER OF: **Municipality of Toa Alta** PO Box 82 Toa Alta, PR 00953 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-02-2014-7103

CERTIFICATE OF SERVICE

This is to certify that I have on this day caused to be mailed a copy of the foregoing Complaint, bearing docket number RCRA-02-2014-7103. A copy of the Consolidated Rules of Practice which are codified at 40 C.F.R. Part 22 can be obtained online at http://www.epa.gov/oalj/rules.htm. Copies were sent as follows:

Certified Mail/Return Receipt Requested, to:

Hon. Clemente Agosto
Mayor
Municipality of Toa Baja
PO Box 82
Toa Alta, PR 00953

Original and a copy of the Complaint for filing by certified mail/return receipt:

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

Dated: July 17, 2014

ORC-CT, Guaynabo, Puerto Rico