

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REG. II  
2013 OCT 17 P 12:21  
REGIONAL HEARING  
CLERK

IN THE MATTER OF:

**Landfill Technologies of Fajardo, Corp.**  
P.O. Box 1322  
Gurabo, Puerto Rico 00778

**Fajardo Municipal Landfill**  
**NPDES MSGP Tracking Number**  
**PRR05BK88**

**DOCKET NUMBER CWA-02-2013-3454**

PROCEEDING PURSUANT TO SECTION  
309(g) OF THE CLEAN WATER ACT,  
33 U.S.C. § 1319(g), TO ASSESS CLASS  
II CIVIL PENALTY

**RESPONDENT**

**ADMINISTRATIVE COMPLAINT, FINDINGS OF VIOLATION,  
NOTICE OF PROPOSED ASSESSMENT OF AN ADMINISTRATIVE PENALTY,  
AND NOTICE OF OPPORTUNITY TO REQUEST A HEARING**

**I. Statutory and Regulatory Authorities**

1. This Administrative Complaint, Findings of Violation, Notice of Proposed Assessment of a Civil Penalty, and Notice of Opportunity to Request a Hearing (Complaint) is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency (EPA) by Section 309(g)(2)(B) of the Clean Water Act ("CWA" or "Act"), 33 U.S.C. § 1319(g)(2)(B). The Administrator has delegated this authority to the Regional Administrator of EPA, Region 2, who in turn has delegated it to the Director, Caribbean Environmental Protection Division (CEPD) of EPA, Region 2 (Complainant).
2. Pursuant to Section 309(g)(2)(B) of the Act, and in accordance with the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits" (CROP), 40 Code of Federal Regulations (C.F.R.) Part 22, a copy of which is attached, Complainant hereby requests that Regional Administrator assess a civil penalty against Landfill Technologies of Fajardo, Corp. (Respondent), as a result of Complainant's determination that the Respondent is in violation of Sections 301 and 402 of the Act, 33 U.S.C. §§ 1311 and 1342, for its failure to comply with certain requirements of the National Pollutant Discharge Elimination System (NPDES) Storm Water Multi-Sector General Permit for Storm water Discharges Associated with Industrial Activity, for its discharges of storm water runoff associated with

industrial activities from its facility in Fajardo, Puerto Rico, into waters of the United States.

3. Section 301(a) of the Act, provides in part that "[e]xcept as in compliance with this Section and Sections ...402, and 404 of the Act, the discharge of any pollutant by any person shall be unlawful."
4. Section 308(a)(A) of the Act, establishes that whenever required to carry out the objective of the Act, the Administrator shall require the owner or operator of any point source to:
  - a. establish and maintain such records;
  - b. make such reports;
  - c. install, use and maintain such monitoring equipment or methods;
  - d. sample such effluents; and
  - e. provide such other information as may be required.
5. Section 402 of the Act, defines the National Pollutant Discharge Elimination System "or NPDES" as the national program for, among other things, issuing and enforcing permits.
6. Section 402 of the Act, authorizes the Administrator to issue a NPDES permit for the discharge of any pollutant, or combination of pollutants, subject to certain requirements of the Act and such conditions as the Administrator determines are necessary.
7. Section 402(p) of the Act, requires a permit with respect to a discharge associated with industrial activity.
8. Section 402 of the Act authorizes the Administrator to promulgate regulations for the implementation of the NPDES requirements.
9. Pursuant to the Act, on April 1, 1983, EPA promulgated regulations to implement the NPDES program, under EPA Administered Permit Programs: the NPDES, at 40 C.F.R. Part 122, as amended.
10. Pursuant to the NPDES regulations at 40 C.F.R. § 122.5(b), the NPDES program requires permits for the discharge of any pollutant from any point source into waters of the United States.



11. Pursuant to the NPDES regulations at 40 C.F.R. § 122.26(a)(1)(ii) and § 122.26(b)(14), operators are required to obtain a NPDES permit for storm water discharges associated with industrial activity.
12. The Act and its implementing regulations and applicable NPDES permit contain the following definitions:
  - a. "discharge of a pollutant" as any addition of any pollutant to navigable waters and/or waters of the United States from any point source. Section 502(12) of the Act, 33 U.S.C. § 1362(12), and 40 C.F.R. § 122.2;
  - b. "facility" or "activity" as any NPDES point source or any other facility or activity (including land or appurtenances thereto) that is subject to the regulations of the NPDES program. 40 C.F.R. § 122.2;
  - c. "industrial activity" as the 10 categories of industrial activities included in the definition of "storm water discharges associated with industrial activity" as defined in 40 C.F.R. §§ 122.26(b)(14)(i)-(ix) and (xi);
  - d. "navigable waters" as the waters of the United States, including the territorial seas. Section 502(7) of the CWA, 33 U.S.C. § 1362(7); "Waters of the United States" means all waters such as lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, among others, and their tributaries. 40 C.F.R. § 122.2;
  - e. "owner" or "operator" as the owner or operator of any facility or activity subject to regulation under the NPDES program. 40 C.F.R. § 122.2;
  - f. "operator" as any entity with a storm water discharge associated with industrial activity that meets either of the following two criteria as defined in Appendix A of the 2008 NPDES Multi-Sector General Permit for Storm Water Discharges Associated with Industrial Activity :
    - i. the entity has operational control over industrial activities, including the ability to modify those activities; or
    - ii. the entity has day-to-day operational control of activities at a facility necessary to ensure compliance with the permit (e.g., the entity is authorized to direct workers at a facility to carry out activities required by the permit).
  - g. "person" as an individual, corporation, partnership or association. Section 502(5) of the CWA, 33 U.S.C. § 1362(5), and 40 C.F.R. § 122.2;

- h. "point source" as any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged. Section 502(14) of the Act, 33 U.S.C. § 1362(14), and 40 C.F.R. § 122.2;
  - i. "pollutant" as including, among others, solid waste, dredged spoil, rock, sand, cellar dirt, sewage, sewage sludge and industrial, municipal and agricultural waste discharged into water. Section 502(6) of the CWA, 33 U.S.C. § 1362(6), and 40 C.F.R. § 122.2; and
  - j. "storm water associated with industrial activity" means the discharge from any conveyance which is used for collecting and conveying storm water and which is directly related to manufacturing, processing or raw materials storage areas at an industrial plant. 40 C.F.R. §§ 122.2 and 122.26(b)(14).
14. On October 30, 2000, EPA issued the NPDES Storm Water Multi-Sector General Permit for Storm water Discharges Associated with Industrial Activity (2000 MSGP) pursuant to Section 402 of the Act, 33 U.S.C. § 1342. The 2000 MSGP became effective on October 30, 2000 and expired on October 30, 2005 but was administratively continued in accordance with the Administrative Procedures Act and remained in force until September 2008.
  15. On September 29, 2008, EPA re-issued the Multi-Sector General Permit for Storm water Discharges Associated with Industrial Activity (2008 MSGP). The 2008 MSGP became effective on September 29, 2008, and expires on September 29, 2013.
  16. The 2000 and 2008 MSGPs establish among others, Notice of Intent (NOI) requirements, Storm Water Pollution Prevention Plans (SWPPP), best management practices (BMP), monitoring, reporting and other conditions.
  17. The 2000 and 2008 MSGPs require facilities who seek coverage under this permit to submit a complete NOI form in order to obtain authorization to discharge storm water associated with industrial activity.
  18. 40 CFR §122.41(a) states: "The permittee must comply with all conditions of this permit. Any permit non-compliance constitutes a violation of the Clean Water Act and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or denial of a permit renewal application."



## II. Jurisdictional Findings

19. Respondent is a for profit corporation operating under the laws of the Commonwealth of Puerto Rico.
20. This corporation is registered in the Commonwealth of Puerto Rico Department of State under registration number 117416.
21. Respondent is a person within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5).
22. The Fajardo Municipal Landfill is located at State Road # 983, Demajagua Ward, Fajardo, Puerto Rico 00738 (the "Facility").
23. At all relevant times to this Complaint, Respondent was the operator of the Facility.
24. The industrial activities conducted by Respondent at the Facility consist of managing and disposal of non-hazardous wastes generated in municipal, commercial and industrial activities.
25. The Facility is best described by the Primary Standard Industrial Classification (SIC) code 4953.
26. Respondent's operations at the Facility are classified as an "industrial activity" as defined in 40 C.F.R. § 122.26(b)(14)(v).
27. Respondent discharges storm water containing "pollutants" from the Facility into the Chiquito River, Fajardo River and the Caribbean Sea.
28. The Chiquito River, Fajardo River and the Caribbean Sea are waters of the United States, pursuant to Section 502(7) of the Act, 33 U.S.C. § 1362(7), and 40 C.F.R. § 122.2.
29. At all times relevant to this Complaint, Respondent's activities at the Facility have been covered by the above NPDES permit application regulations for industrial activities (2000 MSGP and 2008 MSGP).
30. Respondent is the operator of the Facility, as defined in 40 C.F.R. § 122.2. Respondent is subject to the provisions of the Act, 33 U.S.C. § 1251, et seq., and the applicable NPDES permit application regulations found at 40 C.F.R. Part 122. Respondent was required to apply for and obtain NPDES permit coverage for the Facility's storm water discharges associated with industrial activities pursuant to 40 C.F.R. § 122.26(b)(14)(v).

### III. Findings of Violations

31. Complainant re-alleges Paragraphs 19-30 above.
32. On June 6, 2011, an EPA official reviewed the EPA Storm Water Notice of Intent (NOI) Processing Center database and the EPA files located at EPA Region 2's Caribbean Environmental Protection Division (the "EPA Review") in order to determine if Respondent had obtained NPDES coverage for the Facility.
33. The Review revealed that:
  - a. Respondent filed a NOI form seeking coverage under the 2000 MSGP, for its discharges of pollutants from the Facility into waters of the United States on, November 8, 2001. Respondent obtained coverage under the 2000 MSGP on December 8, 2001. The 2000 MSGP tracking number assigned for the Facility was PRR05B095; and
  - b. Respondent filed a NOI seeking coverage under the 2008 MSGP, for its discharges of pollutants from the Facility into waters of the United States on, January 4, 2009. Respondent obtained coverage under the 2008 MSGP on February 3, 2009. The 2008 MSGP tracking number assigned to the Facility is PRR05BK88.
34. On June 6, 2011, an EPA official conducted a Compliance Evaluation Inspection (Inspection) of the Facility to determine Respondent's compliance with the Act and the applicable NPDES regulations.
35. The findings of the Inspection revealed that:
  - a. the SWPPP was incomplete since it did not comply with all requirements of Part 5.1.2 of the 2008 MSGP;
  - b. comprehensive site evaluations were not conducted as required by Part 4.3 of the 2008 MSGP;
  - c. benchmark and effluent limits based monitoring were not performed as required by Parts 6.2.1 and 6.2.2 of the 2008 MSGP;
  - d. the SWPPP did not meet the minimum requirements of Part 4.2 and did not contain as required by Part 5.1.5.2 the routine facility inspections, the comprehensive site compliance evaluation, quarterly visual examination, and benchmark monitoring reports;
  - e. Respondent failed to implement effective erosion and sediment controls necessary to minimize erosion and sedimentation, and the resulting



discharge of pollutants as required by Part 2.1.2.5 and Part 2.1.2.6 of the 2008 MSGP;

- f. BMPs have not been selected, installed, and maintained as required by Part 2.1.1 of the 2008 MSGP;
  - g. Respondent discharges storm water associated with industrial activities from the Facility into the Chiquito River, Fajardo River and the Caribbean Sea;
  - h. the SWPPP had not been amended to reflect the changes in design, construction, operation, or maintenance at the facility which has a significant effect on the discharge, or potential to discharge, of pollutants from the facility as required by Part 5.2 of the 2008 MSGP;
  - i. BMPs identified in the SWPPP were not being maintained in effective operating condition as required by Part 2.1.2.3 of the 2008 MSGP;
  - j. Respondent failed to evaluate the Facility for the presence of non-stormwater discharges in order to eliminate all unauthorized discharges as required by Part 5.1.3.4 of the 2008 MSGP;
  - k. Respondent had failed to take corrective actions after a triggering condition of the requirements of the permit in violation of Part 3.1 of the 2008 MSGP; and
  - l. leachate from the old cells of the municipal portion of the landfill and from the leachate collection tank was observed flowing through the storm water channel reaching a storm water retention pond. The leachate discharges into waters of the United States or into a separate municipal storm sewer system were not authorized, therefore, Respondent did not comply with Part 8.L.3.1 of the 2008 MSGP.
36. Based on the observations made by EPA during the Inspection, EPA issued the Administrative Compliance Order CWA-02-2012-3105 (ACO), dated September 28, 2012, against Respondent to address the violations mentioned above.
37. The ACO incorporated findings of violations, and required Respondent to, among other things, cease and desist the discharge of pollutants (leachate) into waters of the United States and submit a Compliance Plan to implement all required activities to bring the Facility into compliance with the Act and the 2008 MSGP.
38. On October 4, 2012, Respondent received the ACO.

39. On November 7, 2012, EPA received Respondent's answer to the ACO, dated November 5, 2012, addressing all ordered provisions.
40. In its answer to the ACO, Respondent provided: a response addressing the ACO's findings of violations; a certification stating that all unauthorized and unpermitted discharges of pollutants from the Facility into waters of the United States had been eliminated; a report regarding an evaluation it performed of the Facility to identify and eliminate all unauthorized and unpermitted discharges of pollutants; and a compliance plan regarding the activities it planned to implement at the Facility in order to comply with the requirements of the ACO and the 2008 MSGP (this included an amendment of the SWPPP).
41. On January 28, 2013, Respondent submitted an amended SWPPP for the Facility addressing the requirements of the ACO and the 2008 MSGP.
42. On January 28, 2013, Respondent also submitted its first quarterly report as required by the ACO informing about the activities it had implemented at the Facility in addressing the ordered provisions of the ACO.
43. On April 26, and July 24, 2013, Respondent also submitted additional quarterly reports as required by the ACO.
44. As of the date of issuance of this enforcement action, Respondent has implemented and continues to implement and address all ordered provisions of the ACO.
45. Based on the findings on paragraphs 31-44 above, Respondent is liable for the violations of Sections 301(a) and 402 of the Act, 33 U.S.C. §§ 1311(a) and 1342, as specified below:

**a. Claim 1 - Failure to review and revise SWPPP**

Respondent failed to update the Facility's SWPPP to address changes in design, construction, operation, or maintenance at the Facility as required by the 2008 MSGP. This is considered a one-time occurrence.

**b. Claim 2 - Failure to implement adequate control measures**

Respondent failed to implement adequate erosion control measures as required by Part 2.1.2.5 of the 2008 MSGP from June 6, 2011 (date when EPA conducted the Inspection of the Facility) to January 28, 2013 (date when Respondent submitted the first quarterly report informing about the progress done in implementing the requirements of the ACO and the 2008 MSGP, which included the adequate implementation of control measures). Respondent failed to implement adequate erosion control measures at the Facility for approximately 222 days.



**c. Claim 3 - Failure to conduct quarterly visual and benchmark monitoring**

Respondent failed to conduct quarterly visual and benchmark monitoring according to the procedures and the documentation required in Parts 4.2 and 5.1.5.2 of the 2008 MSGP. Respondent did not perform visual inspections in 3 Quarters of Year 2009, 2 Quarters in Year 2010, 4 Quarters in Year 2011 and 3 Quarters in Year 2012. Respondent also failed to conduct the benchmark monitoring as required by Part 6.2.1 and Part 8.L.10 of the 2008 MSGP in 3 Quarters of Year 2009, 2 Quarters of Year 2010, 4 Quarters of Year 2011, and 3 Quarters of Year 2012. Respondent failed to conduct quarterly visual inspections of discharges on ten occasions. Respondent failed to conduct benchmark monitoring on twelve occasions.

**d. Claim 4 - Failure to conduct and document comprehensive site evaluations**

Respondent failed to conduct and document the comprehensive site inspections as required in Part 4.3 of the 2008 MSGP from year 2009 through year 2012. Respondent also failed to conduct and document routine inspections from year 2009 through year 2012 as required by Part 4.3 of the 2008 MSGP. Respondent failed to conduct and document the Comprehensive Site Inspections on 4 occasions. Respondent failed to conduct and document the Comprehensive Site Inspections on 48 occasions.

46. The EPA will notify the Commonwealth of Puerto Rico regarding this proposed action by mailing a copy of this Complaint and Notice and offering an opportunity for the Commonwealth to confer with EPA on the proposed penalty assessment.

**IV. Notice of Proposed Order Assessing a Civil Penalty**

Based on the foregoing Findings of Violation, and pursuant to the authority of Section 309(g) of the Act, 33 U.S.C. § 1319(g), EPA, Region 2 hereby proposes to issue a Final Order Assessing Administrative Penalties (Final Order) to Respondent assessing a penalty of **\$123,418**. The proposed penalty has been determined in accordance with the applicable factors under Section 309(g)(3) of the Act, 33 U.S.C. § 1319(g)(3). EPA is required to take in consideration the nature, circumstances, extent and gravity of the violation (or violations), and Respondent's prior compliance history, degree of culpability, economic benefit or savings accruing to Respondent by virtue of the violations, and Respondent's ability to pay the proposed penalty. EPA has also taken in consideration the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, which requires EPA to adjust penalties for inflation on a periodic basis.



Based on the Findings set forth above, Respondent has been found to have violated in numerous occasions the NPDES regulations and the Act. Respondent failed to comply with the requirements of the 2008 MSGP. Respondent is culpable for the violations. EPA took into account Respondent's knowledge of the NPDES regulations, the 2008 MSGP, and the risks to human health and the environment posed by the uncontrolled discharges of storm water runoff from the Facility into the Chiquito River, Fajardo River and the Caribbean Sea, all water of the United States.

The violations discussed in this Complaint are serious since Respondent's failure to update and implement a SWPPP at the Facility caused a potential amount of pollutants to reach surface water that could cause direct and indirect negative effects on human health and the environment. Respondent knew of their obligations under the NPDES regulations, 2008 MSGP and the Act. Respondent does not have a prior history of violations under the NPDES program. EPA may issue a final Order Assessing Administrative Penalties thirty (30) days after Respondent's receipt of this Notice, unless Respondent, within that time files an answer to the Complaint and, requests a hearing on this Notice pursuant to the following section.

## **V. Procedures Governing This Administrative Litigation**

The rules of procedure governing this civil administrative litigation have been set forth in the CROP, which have been codified at 40 C.F.R. Part 22. A copy of these rules accompanies this Complaint.

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

Where Respondent intend to contest any material fact upon which the Complaint is based, to contend that the proposed penalty 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). The address of the Regional Hearing Clerk of EPA, Region 2, is:

**Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 2  
290 Broadway, 16<sup>th</sup> 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 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 dispute (and thus intends to place at issue in the proceeding), (3) the basis for opposing the proposed relief, and (4) 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 in the Answer, 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).

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 applicable 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.

Should Respondent request a hearing on this proposed penalty assessment, members of the public, to whom EPA is obligated to give notice of this proposed action, will have a right under Section 309(g)(4)(B) of the Act, to be heard and to present evidence on the appropriateness of the penalty assessment. Should Respondent not request a hearing, EPA will issue a Final Order, and only members of the public who submit timely comment on this proposal will have an additional thirty (30) days to petition EPA to set aside the Final Order and to hold a hearing thereon. EPA will grant the petition and will hold a hearing only if the petitioner's evidence is material and was not considered by EPA in the issuance of the Final Order.

### **C. Failure to Answer**

If Respondent fails in the 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 thirty (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.

## **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 this 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 the EPA attorney named in Section VIII, Paragraph 2, below.

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 do not prevent him 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 shall be embodied in a written Consent Agreement. 40 C.F.R. § 22.18(b)(2). In accepting the Consent Agreement, Respondent waives his right to contest the allegations in the Complaint and waives any right to appeal the Final Order that is to accompany the Consent Agreement. 40 C.F.R. § 22.18(b)(2). In order 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 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.

## **VII. Resolution of this Proceeding Without Hearing or Conference**

Instead of filing an Answer, Respondent may choose to pay the total amount of the proposed penalty within 30 days after receipt of the Complaint, provided that Respondent files with the Regional Hearing Clerk, Region 2 (at the address noted above), a copy of the check or other instrument of payment. 40 C.F.R. § 22.18(a). A copy of the check or other instrument of payment should be provided to the EPA Assistant Regional Counsel identified on Section VIII, paragraph 2. Payment of the penalty assessed should be made by sending a cashier's or certified check payable to the "**Treasurer, United States of America**", in the full amount of the penalty assessed in this complaint to the following addressee:

**Regional Hearing Clerk  
U. S. Environmental Protection Agency, Region 2  
PO Box 360188  
Pittsburgh, Pennsylvania 15251.**

Pursuant to 40 C.F.R. § 22.18(a)(3), if Respondent elects to pay the full amount of the penalty proposed in the Complaint within thirty (30) days of receiving the Complaint, then, upon EPA's receipt of such payment, the Regional Administrator of EPA, Region 2 (or, if designated, the Regional Judicial Officer), shall issue a Final Order in accordance with 40 C.F.R. § 22.18(a)(3). In accordance with 40 C.F.R. § 22.45(c)(3), no Final Order shall issue until at least ten (10) days after the close of the comment period on this Complaint. Issuance of a Final Order terminates this administrative litigation and the

civil proceedings arising out of the allegations made in the Complaint. Further, pursuant to 40 C.F.R. § 22.18(a)(3), the making of such payment by Respondent shall constitute a waiver of Respondent's right both to contest the allegations made in the Complaint and to appeal said Final Order to federal court. Such payment does not extinguish, waive, satisfy or otherwise affect Respondent's obligation and responsibility to comply with all applicable statutory and regulatory requirements, and to maintain such compliance.

**VIII. Filing of Documents**

1. The original and one copy of the Answer and any Hearing Request and all subsequent documents filed in this action should be sent to:

**Regional Hearing Clerk  
U.S. Environmental Protection Agency  
290 Broadway - 16<sup>th</sup> Floor  
New York, New York 10007-1866.**

2. A copy of the Answer, any Hearing Request and all subsequent documents filed in this action shall be sent to:

**Héctor L. Vélez Cruz, Esq.  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 2  
City View Plaza II, Suite 7000  
Guaynabo, Puerto Rico 00968  
Telephone: (787) 977-5850  
Fax: (787) 729-7748.**

**IX. General Provisions**

1. Respondent has a right to be represented by an attorney at any stage of these proceedings.
2. This Complaint does not constitute a waiver, suspension or modification of the requirements of the Act, regulations promulgated thereunder, or any applicable permit.



3. Neither assessment nor payment of an administrative civil penalty pursuant to Section 309(g) of the Act will affect Respondent's continuing obligation to comply with the Act, and with any separate Compliance Order issued under Section 309(a) of the Act, 33 U.S.C. § 1319(a), for the violations alleged herein.

ISSUED THIS 30<sup>th</sup> DAY OF September, 2013.



**Jose C. Font**  
Director,  
Caribbean Environmental Protection Division  
United States Environmental Protection Agency - Region 2

To: **Mr. Rey O. Contreras**  
President  
Landfill Technologies of Fajardo, Corp.  
P.O. Box 1322  
Gurabo, Puerto Rico 00778

cc: **Mrs. Wanda Garcia**  
Director  
Water Quality Area  
PR Environmental Quality Board  
P. O. Box 11488  
San Juan, PR 00910

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2

IN THE MATTER OF:

**Landfill Technologies of Fajardo, Corp.**  
P.O. Box 1322  
Gurabo, Puerto Rico 00778

**Fajardo Municipal Landfill**  
**NPDES MSGP Tracking Number**  
**PRR05BK88**

**DOCKET NUMBER CWA-02-2013-3454**

PROCEEDING PURSUANT TO SECTION  
309(g) OF THE CLEAN WATER ACT, 33  
U.S.C. § 1319(g), TO ASSESS CLASS II  
CIVIL PENALTY

**RESPONDENT**

**CERTIFICATE OF SERVICE**

I certify that, on the date noted below, I caused to be mailed, by certified mail, return receipt requested, a copy of the foregoing "ADMINISTRATIVE COMPLAINT" and a copy of the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits", 40 C.F.R. Part 22, to the following person at the address listed below:

**Mr. Rey O. Contreras**  
President  
Landfill Technologies of Fajardo, Corp.  
P.O. Box 1322  
Gurabo, Puerto Rico 00778

I sent the original and a copy of the foregoing Complaint for filing, to:

**Karen Maples**  
Regional Hearing Clerk  
U.S. Environmental Protection Agency, R 2  
290 Broadway, 16<sup>th</sup> Floor  
New York, NY 10007-1866.

Date: September 30, 2013  
San Juan, Puerto Rico

  
Aileen Sánchez