

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

CONSENT AGREEMENT
AND FINAL ORDER

Docket No. RCRA-02-2014-7103

REGIONAL HEADQUARTERS
C. B. F. C.

2016 SEP 27 PM 3:28

U.S. Environmental
Protection Agency, Region 2

CONSENT AGREEMENT AND FINAL ORDER

Complainant, the United States Environmental Protection Agency (“EPA”), having issued the Complaint referenced herein on July 27, 2014, against the Municipality of Toa Alta (“Respondent”); and

Complainant and Respondent having agreed that settlement of this matter is in the public interest, and that entry of this Consent Agreement and Final Order (“CA/FO”) without further litigation is the most appropriate means of resolving this matter;

NOW, THEREFORE, before the taking of any testimony, upon the pleadings, without adjudication of any issue of fact or law, and upon consent and agreement of the Parties, it is hereby agreed, and ordered as follows:

PRELIMINARY STATEMENT

1. This civil administrative proceeding was instituted pursuant to Section 3008 of the Solid Waste Disposal Act, as amended by various laws including the Resource Conservation and Recovery Act, and the Hazardous and Solid Waste Amendments of 1984, 42 United States Code (U.S.C.) §§ 6901-6991 (together hereafter the “Act” or “RCRA”).
2. The Complainant in this proceeding, the Director of the Caribbean Environmental Protection Division, Region 2 EPA, has been duly delegated the authority to institute and carry forward this proceeding.
3. The Respondent is the Municipality of Toa Alta (“Respondent”). Respondent owns and operates the Department of Public Works facility located at PR-165 km. 12, Contorno Ward, in Toa Alta, Puerto Rico (the “Facility”).
4. 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”) is a “State” within the meaning of this provision. Puerto Rico is not authorized by EPA to conduct a hazardous waste management program under Section 3006 of RCRA, 42 U.S.C. § 6926. Therefore, EPA retains primary responsibility for requirements promulgated pursuant to RCRA. As a result, all requirements in 40 C.F.R. Parts 260 through 268 and 270 through 279 relating to hazardous waste are in effect in Puerto Rico and EPA has the authority to implement and enforce these regulations.

5. The Complainant issued a Complaint, Compliance Order and Notice of Opportunity for Hearing (the “Complaint”) to Respondent on July 27, 2014. The Complaint alleged that Respondent failed to comply with RCRA and hazardous waste regulations at the Facility. Complainant and Respondent conducted settlement negotiations which led to this agreement.
6. Complainant and Respondent agree, by entering into this CA/FO, that settlement of this matter upon the terms set forth in this CA/FO is an appropriate means of resolving this case without further litigation.
7. This CA/FO shall apply to and be binding upon Respondent, its officers, directors, employees, successors and assigns, including, but not limited to, subsequent purchasers.
8. Respondent stipulates that EPA has jurisdiction over the subject matter alleged in the Complaint and that the Complaint states claims upon which relief can be granted against Respondent. Respondent waives any defenses they might have as to jurisdiction and venue, and, without admitting or denying the factual or legal allegations contained in the Complaint, consent to the terms of this CA/FO.
9. Respondent hereby waives its right to a judicial or administrative hearing or appeal on any issue of law or fact set forth in the Complaint.

EPA’S FINDINGS OF FACT AND CONCLUSIONS OF LAW
RESPONDENT

10. 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.
11. The Toa Alta Municipal Public Works Department, a division within the Municipality, operates the Facility.
12. The Facility consists mostly of open, unpaved gated space. A 250-gallon used oil aboveground tank is located close to the entrance. At the south of the Facility there is a roofed area used as mechanic shop, soldering, and tire repair area. Adjacent to the mechanic shop is the administrative office. A car-wash area is located behind the administrative office. A parking space at the east and north end of the Facility was used to park vehicles scheduled to be decommissioned.

13. 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. The Facility is also a temporary storage area for cars and other equipment scheduled to be decommissioned. The Facility is a storage area for used vehicle batteries.
14. Respondent is and has been the "owner" of the Facility as that term is defined in 40 C.F.R. § 260.10.
15. Respondent is and has been the "operator" of the Facility as that term is defined in 40 C.F.R. § 260.10.
16. Respondent's Facility constitutes a "Facility," within the meaning of 40 C.F.R. § 260.10.
17. In the course of its normal operations at the Facility, Respondent generates "solid waste," as that term is defined in 40 C.F.R. § 261.2.
18. In the course of its normal operations at the Facility, Respondent generates "hazardous waste," as that term is defined in 40 C.F.R. § 261.3.
19. In the course of its normal operations at the Facility, Respondent generates "universal waste," as that term is defined in 40 C.F.R. § 273.9.
20. In the course of its normal operations at the Facility, Respondent generates "used oil," as that term is defined in 40 C.F.R. § 279.1.
21. 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.
22. On January 24, 2014, EPA inspected Respondent's Facility to determine its compliance with RCRA and its implementing regulations (hereafter "the Inspection.")

Count 1 - Failure to Make Hazardous Waste Determination

23. Respondent is a generator of hazardous waste as defined in 40 C.F.R. § 260.10.
24. 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.
25. During the Inspections, EPA found that Respondent generated waste streams at its Facilities. Each "waste stream" was "abandoned" by being disposed of at Respondent's Facility, within the meaning of 40 C.F.R. § 261.2(b) and therefore constitutes a "solid waste," as defined in 40 C.F.R. § 261.2.

26. Respondent did not make the required determinations as to whether the abandoned solid wastes constituted hazardous wastes.
27. Respondent's failure to determine if the solid waste generated at the Facility constitutes a hazardous waste is a violation of 40 C.F.R. § 262.11.

Count 2 - Failure to Comply with Universal Waste Requirements

28. 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.
29. 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.
30. 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)."
31. 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)."
32. 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).
33. 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.
34. At the time of the Inspection, Respondent was not able to demonstrate the length of time that used batteries had been accumulated at the Facility from the date they became a waste.
35. 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.

Count 3 - Failure to Comply with Used Oil Regulations

36. 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."

37. 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.”
38. At the time of the Inspection, Respondent had failed to: (1) label or clearly mark the three (3) 55-gallon drums placed inside the dike with the words “Used Oil;” and (2) 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.
39. Respondent’s failure to label used oil containers with the phrase “Used Oil” and its 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.
40. Respondent’s failure to comply with 40 C.F.R. § 279.22 subjects it to penalties pursuant to Section 3008 of the Act.

CONSENT AGREEMENT

41. For the purpose of this proceeding, Respondent admits the jurisdictional allegations of the Complaint and neither admits nor denies specific factual allegations contained in the Complaint.
42. Respondent shall pay a civil penalty to EPA in the total amount of twenty three thousand three hundred and seventy three dollars (\$23,373). The total civil penalty amount of \$23,373 shall be paid in two individual payments of \$11,686.50 each. Such payments shall be made by cashier’s or certified checks or by Electronic Fund Transfers (EFT). If the payments are made by checks, then the checks shall be made payable to the “Treasurer, United States of America,” and shall be mailed to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000
43. Each check shall be identified with a notation thereon: **In the Matter of: Municipality of Toa Alta** and shall bear thereon the Docket Number: **RCRA-02-2014-7103**. If Respondent chooses to make the payments by EFT, then Respondent shall provide the following information to its remitter bank:

- 1) Amount of Payment
- 2) SWIFT address: FRNYUS33, 33 Liberty Street, New York, NY 10045.
- 3) Account Code for Federal Reserve Bank of New York receiving

payment: 68010727.

- 4) Federal Reserve Bank of New York ABA routing number: 021030004.
- 5) Field Tag 4200 of the Fedwire message should read: "D68010727 Environmental Protection Agency."
- 6) Name of Respondent: **Municipality of Toa Alta**
- 7) Case Number: **RCRA-02-2014-7103**

44. Whether the payments are made by checks or by EFT, the Respondent shall promptly thereafter furnish reasonable proof that such payments have been made to:

Carolina Jordán-García
Office of Regional Counsel-Caribbean Team
U.S. Environmental Protection Agency - Region 2
City View Plaza II - Suite 7000
48 Rd. 165 Km. 1.2
Guaynabo, PR 00968-8069
jordan-garcia.carolina@epa.gov

and

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

45. The first payment of \$11,686.50 must be received on or before thirty (30) calendar days after the date of signature of the Final Order, which is located at the end of this CA/FO. The second and final payment of \$11,686.50 must be received on or before sixty (60) calendar days after the date of signature of the Final Order. The date by which payment must be received shall hereinafter be referred to as the "Due Date."
- a. Failure to pay the civil penalty in full according to the above provisions may result in referral of this matter to the United States Department of Justice or the United States Department of the Treasury for collection.
 - b. Further, if the payment is not received on or before the Due Date, interest will be assessed at the annual rate established by the Secretary of the Treasury pursuant to the Debt Collection Act, 31 U.S.C. § 3717, on the overdue amount from the due date through the date of payment. In addition, a late payment handling charge of fifteen dollars (\$15.00) will be assessed for each thirty (30) day period (or any portion thereof) following the due date in which the balance remains unpaid. A six percent (6%) per annum penalty will also be applied on any principal amount not paid within ninety (90) days of the Due Date.

- c. The civil penalty constitutes a penalty within the meaning of 26 U.S.C. § 162(f). Respondent has read the Consent Agreement, understands its terms, finds it to be reasonable and consents to its terms. Respondent consents to the issuance of the accompanying Final Order. Respondent agrees that all the terms of the settlement are set forth herein.

Supplemental Environmental Project

46. Respondent shall complete the following Supplemental Environmental Project (“SEP”), which the Parties agree is intended to secure significant environmental and public health protection and improvement:

- a. Respondent is required to design, develop and implement the connection of approximately fifty (50) individual residences to the Puerto Rico Aqueduct and Sewer Authority (“PRASA”) sewage collection system. The Respondent has identified that the residences that are the subject of the Project, which are located in the municipality of Toa Alta, Mucarabones Ward, currently collect and process their household sewage into individual septic systems that are potentially not being operated appropriately and causing discharges of this pollutant into waters of the United States. (The technical specifications of the Project are included in the *SEP Proposal*, attached hereto as *Exhibit A* and incorporated herein by reference).

This Project is a pollution reduction project. The goal of the Project is to reduce the potential discharge of pollutants (sewage) that can leak from the residential septic systems and reach the Bucarabones and La Plata rivers. The implementation of the Project will also reduce the nutrient stressors to the Atlantic Ocean due to the hydrological connection between Bucarabones and La Plata rivers and the Atlantic Ocean.

- b. **Within forty five (45) days from the effective date of this CA/FO (as defined in Paragraph 67 of this document)**, Respondent shall submit a Work Plan to accomplish the SEP described in Paragraph 46.a. above, to include, at a minimum:
 - i. a detailed schedule for all activities required to design, develop and implement the connection of the residential septic systems of the subject residences to PRASA’s sewage collection system (as required by paragraph 46.a, above);
 - ii. the Work Plan shall include the obligation to submit Quarterly Progress Reports. Each quarterly period shall consist of ninety-day (90-day) cycles and the quarterly periods shall run consecutively. The first quarterly period shall begin on the effective date of this Order (as defined in Paragraph 67, below). The Respondent shall be required to submit each quarterly progress report no later than fifteen (15) days after the expiration of each ninety (90) day period. Based on this subparagraph, the Respondent has to submit in its Work Plan the estimated submission dates of the Quarterly Progress Reports

required.

Respondent may consult with EPA while developing the Work Plan, to ensure timely submission of an approvable Work Plan, including submittal of drafts of the Work Plan to EPA for EPA's review and comments. EPA will cooperate with Respondent in this consultation process providing input and recommendations to assist Respondent in achieving a Work Plan that is reasonably acceptable to EPA.

- c. If EPA approves the Work Plan required by paragraph 46.b. above, EPA will provide written notice of the Work Plan approval.
 - d. If EPA approves the Work Plan required by paragraph 46.b. above, the EPA approved Work Plan shall be incorporated by reference into this CA/FO and shall be binding and enforceable.
 - e. In the event that EPA disapproves the Work Plan required by paragraph 46.b. above, in whole or in part, within twenty (20) calendar days of receipt of EPA's disapproval, Respondent shall revise and re-submit such work plan for EPA review and approval.
 - f. Upon re-submission of the Work Plan pursuant to paragraph 46.e above, EPA will review it and will inform Respondent, in writing, of EPA's approval, modification and approval, or disapproval of the re-submitted Work Plan, in whole or in part, and the specific grounds for any disapproval.
 - g. If EPA elects to request modifications of the re-submitted Work Plan pursuant to paragraph 46.e above, EPA will permit Respondent the opportunity to object in writing to the notification of deficiency given pursuant to paragraph 46.f within twenty (20) calendar days of receipt of such notification. EPA and Respondent shall have an additional twenty (20) calendar days from the receipt by EPA of the notification of Respondent's objection to reach agreement on changes necessary to the re-submitted Work Plan. If agreement cannot be reached on any such issue within this twenty (20) calendar day period, EPA will provide a written statement of its decision on the adequacy of the requested modifications of the re-submitted Work Plan, which decision shall be final and binding upon Respondent.
 - h. Respondent shall begin implementation of the EPA-approved Work Plan within ten (10) calendar days of receipt of the written approval notification in accordance to paragraph 46.c, 46.f or 46.g above.
 - i. The SEP as described in Paragraph 46.a. above shall be achieved in accordance with this CA/FO and the final Work Plan approved by EPA.
 - j. The SEP shall be completed within three hundred and sixty-five (365) days from the effective date of this CA/FO (see Paragraph 67, below).
47. In the event that either of the parties proposes a change to the SEP and/or final EPA

approved Work Plan, Respondent shall submit for EPA approval, modification and approval, or disapproval, a modified Work Plan incorporating such proposed changes following the procedures in paragraphs 46.c through 46.g. above.

48. **Federal Tax:** For Federal Income Tax purposes Respondent agree that they will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP.
49. **SEP Cost:** The total expenditure for the SEP, at cost to the Respondent, shall be not less than ONE HUNDRED NINETY SIX THOUSAND AND ONE HUNDRED EIGHTY FIVE DOLLARS (\$196,185.00). Respondent shall include documentation of the expenditures made in connection with the SEP as part of the SEP Completion Report.
50. **SEP Certifications:**

With regard to the SEP, Respondent certifies the truth and accuracy of each of the following:

- a. That all cost information provided to the EPA in connection with the EPA's approval of the SEP is complete and accurate and that Respondent in good faith estimates that the cost to implement the SEP is \$196,185.00;
- b. That, as of the date of executing this Consent Agreement, Respondent is not required to perform or develop the SEP by any federal, state, or local law or regulation and is not required to perform or develop the SEP by agreement, grant, or as injunctive relief awarded in any other action in any forum;
- c. That the SEP is not a project that Respondent was planning or intending to construct, perform, or implement other than in settlement of the claims resolved in this Consent Agreement;
- d. That Respondent has not received and will not receive credit for the SEP in any other enforcement action;
- e. That Respondent will not receive reimbursement for any portion of the SEP from another person or entity;
- f. That for federal income tax purposes, Respondent agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP;
- g. That Respondent is not a party to any open federal financial assistance transaction that is funding or could fund the same activity as the SEP described in paragraph 46.

51. **SEP Completion Report:** Respondent shall submit a SEP Completion Report to EPA within sixty (60) calendar days after the completion of all activities that are part of the Work Plan. The SEP Completion Report shall contain the following information:
- a. a detailed description of the SEP as implemented;
 - b. a map of indicating the location of all the residences that were connected to the municipal sewer collection system;
 - c. a description of any operating problems encountered and the solutions thereto;
 - d. itemized costs:
 - i. In itemizing its costs in the SEP Completion Report, Respondent shall clearly identify and provide acceptable documentation for all eligible SEP costs. Where the SEP Completion Report includes costs not eligible for SEP credit, those costs must be clearly identified as such. For purposes of this paragraph, “acceptable documentation” includes invoices, purchase orders, or other documentation that specifically identifies and itemizes the individual costs of the goods and/or services for which payment is being made. Canceled drafts do not constitute acceptable documentation unless such drafts specifically identify and itemize the individual costs of the goods and/or services for which payment is being made;
 - e. certification that the SEP has been fully implemented pursuant to the provisions of this CA/FO and the approved Work Plan; and
 - f. description of the environmental, ecological and public health benefits resulting from implementation of the SEP (with a quantification of the benefits and pollutant reductions, if feasible).
52. In all documents or reports, including, without limitation, any SEP reports, submitted to EPA pursuant to this CA/FO, Respondent shall, by its officers, sign and certify under penalty of law that the information contained in such document or report is true, accurate, and complete by signing the following statement:

I hereby certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

53. Respondent agrees that failure to submit the SEP Completion Report or any Periodic

Report required shall be deemed a violation of this CA/FO and Respondent shall become liable for stipulated penalties pursuant to paragraph 58, below.

54. **Periodic Reports/Submissions:** Respondent shall submit any additional reports or information required by the Work Plan to EPA in accordance with the schedule and requirements recited therein. Respondent shall be required to submit each Quarterly Progress Report no later than fifteen (15) days after the expiration of each ninety (90) day period.
55. Respondent shall maintain legible copies of documentation of the underlying research and data for any and all documents or reports submitted to EPA pursuant to this CA/FO for a term of five (5) years after the implementation of the SEP and shall provide the documentation of any such underlying research and data to EPA not more than ten (10) working days after a request for such information.
56. **Public Statements:** Any public statement, oral or written, in print, film, or other media, made by Respondent making reference to the SEP, as specified in the SEP Proposal documents attached hereto as Exhibit A, shall include the following language:

This project was undertaken in connection with the settlement of an enforcement action taken by the U.S. Environmental Protection Agency for violations of the Resource Conservation and Recovery Act.

The public statement shall also be made in Spanish as follows:

Este proyecto fue realizado como parte de un acuerdo legal con relación a una acción de cumplimiento por violaciones a la Ley Federal de Conservación y Recuperación de Recursos presentada por la Agencia Federal de Protección Ambiental de los Estados Unidos.

57. **EPA's Acceptance of SEP Completion Report:**
 - a. After receipt of the SEP Completion Report described in Paragraph 51 above, EPA will notify Respondent, in writing, regarding: (i) any deficiencies in the SEP Completion Report itself along with a grant of an additional thirty (30) days for Respondent to correct any deficiencies; or, (ii) indicate that EPA concludes that the project has been completed satisfactorily; or, (iii) determine that the project has not been completed satisfactorily and seek stipulated penalties in accordance with Paragraph 58 below.
 - b. If EPA elects to exercise option (i) above, i.e., if the SEP Completion Report is determined to be deficient but EPA has not yet made a final determination about the adequacy of SEP completion itself, EPA will allow Respondent the opportunity to object in writing to the notification of deficiency given pursuant to this Paragraph within twenty (20) days of receipt of such notification. EPA and Respondent shall

have an additional thirty (30) days from the receipt by EPA of the notification of objection to reach agreement on changes necessary to the SEP Completion Report. If agreement cannot be reached on any such issue within this thirty (30) day period, EPA will provide a written statement of its decision on adequacy of the completion of the SEP to Respondent, which decision shall be reasonable and final and binding upon Respondent. Respondent agree to comply with any requirements imposed by EPA as a result of any failure to comply with the terms of this CA/FO. In the event the SEP is not completed as contemplated herein, as determined by EPA, stipulated penalties shall be due and payable by Respondent to EPA in accordance with Paragraph 58 below.

58. **Stipulated Penalties:**

- a. In the event that Respondent fails to comply with any of the terms or provisions of this Agreement relating to the performance of the SEP described in Paragraph 46.a. above and/or to the extent that the actual expenditures for the SEP do not equal or exceed the cost of the SEP described in Paragraph 49, Respondent shall be liable for stipulated penalties according to the provisions set forth below:
 - i. for failure to submit a Work Plan by its due date in accordance with paragraph 46.b above, Respondent shall pay a stipulated penalty in the amount of \$350 for each day after the Work Plan was due until it is submitted;
 - ii. for failure to re-submit an adequate Work Plan in accordance with paragraph 46.e above, beginning on the date that Respondent receive EPA's written notice of disapproval, in whole or in part, Respondent shall pay a stipulated penalty in the amount of \$350 for each day after the Work Plan was due until it is submitted;
 - iii. if Respondent timely submits a Work Plan but the Work Plan fails to satisfy EPA requirements as detailed in Paragraph 46.e, f, and g above, EPA will provide written final notice of the disapproval. The SEP shall not be performed and Respondent shall pay a stipulated penalty in the amount of ONE HUNDRED NINETEEN THOUSAND AND FIVE HUNDRED SEVENTY SIX DOLLARS (\$119,576.00);
 - iv. if the SEP is satisfactorily completed in accordance with Paragraph 46.a above, but Respondent spends less than the agreed ONE HUNDRED NINETY SIX THOUSAND AND ONE HUNDRED EIGHTY FIVE DOLLARS (\$196,185.00) for the SEP project, Respondent shall pay a stipulated penalty equal to the difference between the amount of eligible SEP costs incurred by the Respondent and ONE HUNDRED NINETY SIX THOUSAND AND ONE HUNDRED EIGHTY FIVE DOLLARS (\$196,185.00);

- v. if the SEP is not completed in accordance with Paragraph 46.a but: (a) Respondent certify, with supporting documentation, the amount of eligible costs expended on the SEP, and (b) EPA determines that the Respondent made good faith and timely efforts to complete the project, then, Respondent shall pay a stipulated penalty that is the difference between the eligible SEP costs incurred by Respondent and ONE HUNDRED NINETY SIX THOUSAND AND ONE HUNDRED EIGHTY FIVE DOLLARS (\$196,185.00). If Respondent documents that they, together with the third party (if applicable), did all that they could to ensure timely completion of the SEP but the SEP is not timely completed because of action, or inaction, on the part of the state government or a court, then it shall be deemed that the Respondent made good faith and timely efforts to complete the SEP project;
 - vi. if Respondent halts or abandons work on the SEP as described in Paragraph 46.a. above, and after the Work Plan has been approved by EPA, but prior to its completion, Respondent shall pay a stipulated penalty of \$600 and shall also pay the difference between eligible costs incurred and ONE HUNDRED NINETY SIX THOUSAND AND ONE HUNDRED EIGHTY FIVE DOLLARS (\$196,185.00);
 - vii. for failure to submit the SEP Completion Report required by Paragraph 51 above, Respondent shall pay a stipulated penalty in the amount of \$350 for each day after the report was due until the report is submitted; and
 - viii. for failure to submit any report required by Paragraph 54 above or pursuant to any other paragraph herein, Respondent shall pay a stipulated penalty in the amount of \$350 for each day after the report was originally due until the report is submitted.
- b. The determinations of whether the SEP has been satisfactorily completed and whether the Respondent has made a good faith, timely effort to implement the SEP shall be in the sole discretion of EPA.
 - c. Respondent shall pay stipulated penalties within thirty (30) days after receipt of written demand by EPA for such penalties. Payment of stipulated penalties shall be made payable to the "Treasurer of the United States of America." Such check shall be mailed to:

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

The checks shall be identified with a notation of the name and docket number of this case, set forth in the caption on the first page of this document. A copy of any penalty check and any transmittal letter shall be sent to each of the addresses in paragraph 44, above.

Interest and late charges on stipulated penalties shall be paid as stated in Paragraph 45 above.

General Provisions

59. This CA/FO is being voluntarily and knowingly entered into by the parties to resolve (upon full payment of the civil penalty herein) the civil and administrative claims alleged in the Complaint in this matter. Nothing herein shall be read to preclude EPA or the United States, however, from pursuing appropriate injunctive or other equitable relief or criminal sanctions for any violations of law not resolved herein.
60. This CA/FO and any provision herein shall not be construed as an admission of liability in any criminal or civil action or other administrative proceeding, except in an action, suit or proceeding to enforce this CA/FO or any of its terms and conditions.
61. Respondent waives its right to request a hearing on the Complaint, this Agreement, or the Final Order included herein, including any right to contest any allegations or EPA's Findings of Fact or Conclusions of Law contained within these documents.
62. Respondent waives any right it may have pursuant to 40 C.F.R. § 22.8 to be present during discussions with or to be served with and to reply to any memorandum or communication addressed to the Regional Administrator, the Deputy Regional Administrator or Regional Judicial Officer where the purpose of such discussion, memorandum, or communication is to discuss a proposed settlement of this matter or to recommend that such official accept this Consent Agreement and issue the attached Final Order.
63. This CA/FO does not waive, extinguish, or otherwise affect Respondent's obligation to comply with all applicable provisions of the Act and the regulations implementing it, nor shall it be construed as the issuance of a permit or a ruling on, or determination of, any issues related to any federal, state or local law, regulation or permit.
64. Each party shall bear its own costs and fees in this matter.
65. The representative of Respondent signing this Consent Agreement certifies that he or she is duly and fully authorized to enter into and ratify this Consent Agreement and all the terms and conditions set forth in this Consent Agreement. The provisions of this Consent Agreement shall be binding upon Respondent and its officials including authorized representatives and successors or assigns.
66. Respondent consents to service upon Respondent by a copy of this CA/FO by an EPA

employee other than the Regional Hearing Clerk.

67. The effective date of this CA/FO shall be the date of filing with the Regional Hearing Clerk, U.S. EPA, Region 2, New York, New York.

RESPONDENT:

Municipality of Toa Alta

BY:

NAME:

TITLE:

DATE:



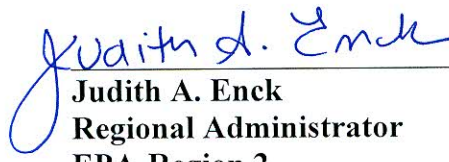
Clemente Agosto Laguarda

Mayor

28 sept. 2016

FINAL ORDER

The Regional Administrator of the U.S. Environmental Protection Agency, Region 2, ratifies the foregoing Consent Agreement. The Agreement entered into by the parties is hereby approved, incorporated herein, and issued as an Order pursuant to Section 3008 of the Act and 40 C.F.R. § 22.18(b)(3). The effective date of this Order shall be the date of filing with the Regional Hearing Clerk, U.S. EPA, Region 2, New York, New York 10007.



Judith A. Enck
Regional Administrator
EPA-Region 2

DATE: 9/29/16

CERTIFICATE OF SERVICE

I hereby certify that on September 29, 2016, I mailed a copy of the Consent Agreement and Final Order entered in In the Matter of: Toa Alta Department of Public Works; Docket No.: RCRA-02-2014-7103 to the following persons in the manner indicated:

By United States First Class Mail:

Eduardo Vera Ramírez, Esq,
Landrón Vera, LLC
1606 Ave. Ponce De León
Suite 501, Edif. Bogoricin
San Juan, PR 00909
787.395.7885; 787.395.7886

By Hand Delivery: - original + copy

Karen Maples
Regional Hearing Clerk
U.S. EPA - Region 2
290 Broadway, 16th Floor
New York, New York 10007

Date: 9/29/16

Laura Khawry

