

**FIDDLER GONZALEZ & RODRÍGUEZ, PSC
ATTORNEYS AND COUNSELORS AT LAW
PO BOX 363507
SAN JUAN, PR 00936-3507**

**Eduardo M. Negrón Navas
Direct Dial No. (787) 759-3106
Direct Fax No. (787) 759-3108
E-mail address: enegrón@fgrlaw.com**

**Banco Bilbao Vizcaya Building
254 Muñoz Rivera Avenue
6th Floor
Hato Rey, PR 00918**

October 13, 2011

UNITED PARCEL SERVICES

Ms. Karen Maples
Regional Hearing Clerk
U.S. Environmental Protection Agency
1290 Broadway, 16th Floor
New York, NY 10007-1866

**U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG.II
2011 OCT 14 A 11:47
REGIONAL HEARING
CLERK**

**RE: Allied Waste of Ponce, Inc.
Docket No. CWA-02-2011-3355**

Dear Ms. Maples:

Enclosed please find original and two (2) copies of Answer to Complaint, Request for Hearing and Informal Settlement Conference in the case of reference. Please file the original and return stamped copy to undersigned in the enclosed addressed envelope.

Cordially,


Eduardo Negrón Navas

Enclosure

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2**

IN THE MATTER OF:

Allied Waste of Ponce, Inc.
P.O. Box 7104
Ponce, Puerto Rico 00723

Municipality of Salinas Sanitary Landfill
NPDES MSGP Number PRR05BK74

Respondent

Docket No. CWA-02-2011-3355

Proceeding Pursuant to Section 309
of the Clean Water Act, 33 U.S.C. §1329
to Assess Class I Civil Penalty

2011 OCT 14 A 11:46
REGIONAL HEARING
CLERK

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II

**ANSWER TO COMPLAINT, REQUEST FOR HEARING
AND INFORMAL SETTLEMENT CONFERENCE**

TO THE ENVIRONMENTAL PROTECTION AGENCY:

COMES NOW, Allied Waste of Ponce, Inc. ("Respondent") through its undersigned attorney, and respectfully alleges, states, and prays as follows:

I. Statutory and Regulatory Authorities

1. Respondent acknowledges the authority of the Director of the Caribbean Environmental Protection Division (the "Director") of the United States Environmental Protection Agency (the "EPA") to issue administrative complaints, as alleged in paragraph 1 of the Administrative Complaint, Findings of Violation, Notice of Proposed Assessment of a Civil Penalty, and Notice of Opportunity to Request a Hearing dated September 16, 2010 (the "Complaint").
2. Respondent explains the allegation in paragraph 2 that it failed to comply with certain requirements of the National Pollutant Discharge Elimination System (NPDES) permit of reference in the section titled Grounds for Defense below.
3. The allegation in paragraph 3 does not require an answer; it is a conclusion of law.
4. The allegation in paragraph 4 does not require an answer; it is a conclusion of law.

5. The allegation in paragraph 5 does not require an answer; it is a conclusion of law.
6. The allegation in paragraph 6 does not require an answer; it is a conclusion of law.
7. The allegation in paragraph 7 does not require an answer; it is a conclusion of law.
8. The allegation in paragraph 8 does not require an answer; it is a conclusion of law.
9. The allegation in paragraph 9 does not require an answer; it is a conclusion of law.
10. The allegation in paragraph 10 does not require an answer; it is a conclusion of law.
11. The allegation in paragraph 11 does not require an answer; it is a conclusion of law.
12. The allegation in paragraph 12 does not require an answer; it is a conclusion of law.

II. Jurisdictional Findings

13. The allegation in paragraph 13 is admitted.
14. The allegation in paragraph 14 is admitted.
15. The allegation in paragraph 15 is admitted.
16. The allegation in paragraph 16 is admitted.
17. The allegation in paragraph 17 is admitted.
18. The allegation in paragraph 18 is admitted.
19. The allegation in paragraph 19 is admitted.
20. The allegation in paragraph 20 is explained. Storm water runoff from the Facility discharges into a ditch along the south part of the Facility and the flows into a creek and may eventually reach the Caribbean Sea.

III. Findings of Violations and Grounds for Defense

21. Respondent re-alleges paragraphs 11-20 above.
22. The allegation in paragraph 22 is explained. Respondent admits the part that EPA conducted a Compliance Evaluation Inspection on September 17, 2010, and explains the part of the EPA findings. The EPA findings were notified as part of a December 20, 2010 Administrative Compliance Order. The September 17, 2010 inspection report lists what the inspector construed to be findings of violations. On December 29, 2010, Respondent answered and explained the alleged violations. On January 20, 2011, EPA conducted a follow-up inspection. On June 7, 2011, EPA replied to Respondent's letter of December 29, 2010, and notified copy of the follow-up inspection report. Respondent submitted a response letter to EPA dated June 30, 2011. The documents above confirm most, if not all, of Respondent's answers including, but not limited to, that permit benchmark monitoring is not required for facilities that discharge subject to effluent limitations in 40 C.F.R. Part 445.
23. The allegation in paragraph 23 is explained. Respondent admits the part that EPA issued Administrative Order CWA-02-2011-3104 dated December 20, 2010, and explains the part of the findings of violations in paragraph 22 above.
24. The allegation in paragraph 24 is admitted.
25. The allegation in paragraph 25 is explained. Respondent admits the part that on June 7, 2011, EPA sent a letter to Respondent describing the alleged findings, and explains the part of the findings below:
 - a. The inspection report (No. 6 (a) and (b)) acknowledges that the Storm Water Pollution Prevention Plan ("SWPPP") was revised in December 2009. Respondent promptly revised the SWPPP to further update the SWPPP.
 - b. The inspection report (No. 6 (c)) concludes that comprehensive site evaluations were not conducted as required by Part 4.3 of the permit in 2009 and 2010. Respondent performed and documented the comprehensive site inspection for year 2 of the permit. Respondent performed and documented multiple inspections of the landfill facility for years 1 and 2 of the permit. The documentation on the multiple inspections of the facility performed for year 1 of the permit essentially address most, if not all, the requirements of the comprehensive site inspection requirements.
 - c. The EPA letter dated June 7, 2011 (Finding 14C) acknowledges that permit benchmark monitoring is not required for facilities that discharge subject to effluent limitations in 40 C.F.R. Part 445.

- d. Respondent performed visual inspections whenever there was a reportable storm water discharge.
 - e. The inspection report (No. 6) concludes that Respondent implemented effective sediment controls necessary to minimize sedimentation, and the resulting discharge of pollutants as required by Part 2.1.1.5 and Part 2.1.2.6 of the permit. The inspection report (No. 7 (b)(1)) concludes that Respondent has implemented the minimum requirements for erosion and sediment control and runoff management according to Part 2.1.1.5 and Part 2.1.2.6 of the permit. The sediment basin for the old cells is considered a Best Management Practice (BMP) since it collects sediment prior to it reaching the actual sediment/retention pond. This sediment basin was an added measure of protection against sediment collecting in the large retention pond and potentially discharging off-site. The inspection report (No. 7 (b)(2)) concludes that Respondent has selected, installed, and maintained BMPs as required by Part 2.1.1.
 - f. Respondent took all necessary actions to insure that only permitted storm water was actually discharged.
26. The allegation in paragraph 26 is admitted.
27. The allegation in paragraph 27 is explained below:
- a. Claim 1 - The SWPPP was revised in January 2009, December 2009, December 2010, May 2011 and in September 2011 and is compliant with regulatory requirements.
 - b. Claim 2 - Adequate erosion control measures were in place before the January 20, 2011 follow-up EPA inspection. The inspection report concludes that: 1) Respondent implemented effective sediment controls necessary to minimize sedimentation, and the resulting discharge of pollutants as required by Part 2.1.1.5 and Part 2.1.2.6 of the permit; 2) Respondent implemented the minimum requirements for erosion and sediment control and runoff management according to Part 2.1.1.5 and Part 2.1.2.6 of the permit; and 3) Respondent selected, installed and maintained BMPs as required by Part 2.1.1. Should there be a violation it would have been from the date of the first inspection (September 17, 2010) and the date of the follow-up inspection (January 20, 2011), and not for 287 days.
 - c. Claim 3 - Respondent performed visual inspections whenever there was a reportable storm water discharge. Permit benchmark monitoring is not required for facilities which discharge subject to effluent limitations in 40 C.F.R. Part 445.

- d. Claim 4 - Respondent performed and documented the comprehensive site inspection for year 2 of the permit. Respondent performed and documented multiple inspections of the landfill facility for years 1 and 2 of the permit. The documentation on the multiple inspections of the facility performed for year 1 of the permit essentially address most, if not all, the requirements of the comprehensive site inspection requirements.

IV. Proposed Civil Penalty

28. The proposed civil penalty of \$35,870.00 is unwarranted. Respondent is a good corporate citizen, not an unwilling party who needs enforcement to compel compliance.
29. The amount of the proposed penalty is unfairly inappropriate because of the material facts and grounds for defense stated in Part III above and Part V below.

V. Additional Grounds for Defense

30. Respondent promptly addressed all findings in the September 17, 2010 inspection report. Respondent did not obtain an economic benefit as a result of delaying, or completely avoiding, pollution control expenditures during the period of alleged noncompliance.
31. The storm water discharge had no negative impact on human health or in the aquatic environment.
32. Respondent did not incur non-effluent violations that would have the result of defeating the storm water regulatory program.
33. Respondent has implemented the SWPPP and currently is in compliance with its NPDES permit. Respondent's employees are trained on the components of the SWPPP and management personnel are in charge of ensuring that all components of the SWPPP are completed. Inspections are conducted on monthly, quarterly and annual frequencies. In addition, Respondent's operational controls include daily and weekly inspections which include storm water. All inspection reports are maintained on site.

VI. Facts at Issue

All factual allegations of violation are denied and/or explained, as well as the appropriateness of the proposed penalty are at issue.

VII. Hearing and Informal Conference

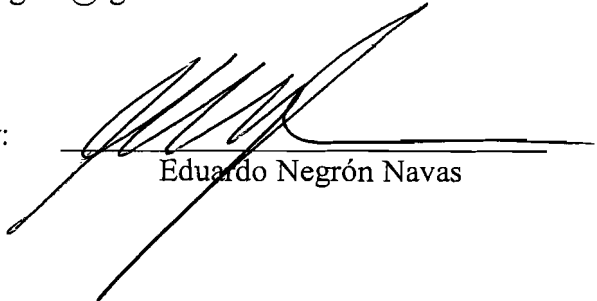
Respondent requests a formal hearing to contest the appropriateness of the findings of violation, as well as, the appropriateness of the penalty assessed. Respondent also requests an informal conference in order to discuss the facts of this case and the possibility of a settlement.

In San Juan, Puerto Rico, this 13th day of October 2011.

WE HEREBY CERTIFY that on this same date a copy of this Answer to the Complaint and Request for Hearing and Informal Settlement Conference has been mailed by certified mail to Lourdes del Carmen Rodriguez, Esq., Office of Regional Counsel, U.S. Environmental Protection Agency, Region 2, 1492 Ponce de León Avenue, Suite 207, San Juan, Puerto Rico 00907-4127.

Allied Waste of Ponce, Inc.
Fiddler González & Rodríguez, P.S.C.
Eduardo Negrón Navas
P.O. Box 363507
San Juan, Puerto Rico 00936-3507
Tel. (787) 759-3106
Fax (787) 759-3108
enegron@fgrlaw.com

By:



Eduardo Negrón Navas