

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

In the Matter of: LANDFILL TECHNOLOGIES OF FAJARDO, INC. FAJARDO MUNICIPAL LANDFILL NPDES MSGP Number PRR05BK88 RESPONDENT	DOCKET NUMBER CWA-02-2013-3454 Proceeding pursuant to Section 113(d) of the Clean Air Act, 42 USC § 7413(d)
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U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II
2013 NOV - 1 A 11: 34
REGIONAL HEARING
CLERK

ANSWER TO THE COMPLAINT AND REQUEST FOR HEARING

TO THE HONORABLE ADMINISTRATIVE LAW JUDGE:

NOW COMES Respondent, landfill Technologies of Fajardo, Inc. ("LTF"), through its undersigned attorneys, and for its Answer to the Administrative Complaint, Findings of Violation, Notice of Proposed Assessment of a Civil Penalty, and Notice of Opportunity to Request a Hearing issued by the U. S. Environmental Protection Agency, Region II ("EPA") by letter dated September 30, 2013, and received on October 2, 2013, (hereinafter, the "Complaint"), admits, denies and alleges as follows:

1. The averments contained in paragraphs 1 through 18 require no responsive pleadings insofar as they recite provisions of law or regulation. To the extent that they might be deemed allegations of fact, such allegations are denied.
2. The averments contained in paragraphs 19 through 30 are admitted subject to the defenses and mitigating factors later described in this responsible pleading.
3. The averments contained in paragraph 31 do not require a separate responsive pleading.

4. The averments contained in paragraphs 32, 33 and 35 are denied as drafted for lack of knowledge of the EPA Inspector's file review and findings.

5. The averments contained in paragraph 34 are admitted subject to the defenses and mitigating factors later described in this responsible pleading.

6. The averments contained in paragraph 36 through 44 are admitted.

7. The averments contained in paragraph 45 are denied as drafted insofar as these contain conclusions of law for which no responsive pleadings are required.

8. The averments contained in paragraph 46 are denied as these relate to facts unknown to Respondent LTF.

9. Respondent denies any and all allegations not specifically admitted herein.

Affirmative Defenses

1. At the time when EPA issued the Administrative Compliance Order CWA-02-2012-3105 (AOC) Respondent LTF had addressed all recommendations and suggestions given by the EPA inspector during his June 6, 2011 inspection.

2. EPA's inspection occurred during the rainy morning of June 6, 2011, while LTF was in the middle of implementing and improving some of the facility's Stormwater Pollution Prevention Plan ("SWPPP") control measures.

3. At the time of the inspection, LTF advised the EPA inspector that SWPPP measures were being constructed and that his observations were not necessarily reflective of representative conditions of the landfill.

4. LTF alerted EPA that it had negotiated with the Puerto Rico Environmental Quality Board ("EQB") a Compliance Order in April 2011 addressing, *inter alia*, certain control measures relative to its stormwater discharges. Under the Compliance Order with EQB, LTF

agreed to implement a number of activities, in the nature of a Supplemental Environmental Project, that went beyond compliance as an enforcement compensatory tool. This case may present a matter of partial parallel federal and state enforcement proceedings covering similar matters that were already adjudged and settled by the state regulatory agency.

5. The proposed civil penalty is excessive, unreasonable and is not supported by the individual facts and circumstances present in this matter, including but not limited to the existence of mitigating factors which must be taken into consideration.

6. Complainant's allegations constitute agency action that is arbitrary and capricious, and an abuse of discretion under the Administrative Procedure Act, 5 U.S.C. §§553 and 706.

7. LTF obtained no economic benefit from any of the alleged non-compliance with the applicable regulatory requirements.

8. LTF has shown EPA its good faith and commitment to maintain its operations in compliance with the applicable regulations.

9. Respondent expressly reserves the right to raise additional affirmative defenses which may arise during discovery or under other procedures associated with the present Complaint.

Informal Settlement Conference

Respondent respectfully informs that the parties have scheduled an informal settlement conference for November 19, 2013, at 2:00pm.

Request for Hearing

Respondent hereby requests a hearing upon the issues raised by the Complaint and its Answer as included herein, pursuant to 5 U.S.C. §§ 552 et seq. and the Consolidated Rules of Practice, 40 CFR §22.15.

WHEREFORE, Respondent respectfully requests that Respondent be granted a hearing on this matter; that Respondent be granted any other remedy deemed fit and proper; that after an objective assessment of the pertinent facts involved, that the present Complaint be dismissed and/or that the proposed civil penalty amount assessed be significantly reduced and adjusted to reflect all the mitigating factors involved.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 31 day of October, 2013.

TORRES & GARCIA, P.S.C.
Attorneys for:
Landfill Technologies of Fajardo, Inc.
PO Box 19539
San Juan, Puerto Rico 00910-1539
Tel. 787-721-8220
Fax 787-721-8223



Francis Torres-Fernández
E-mail: ftorres@envirolawpr.com