

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region 2

In the matter of:

Carlos Rosaly Molina, doing business as
"Bechara Junkyard and/or Taller & Piezas
Rosaly"

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-02-2013-7103

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. 2
2013 MAY -2 A 8:15
REGIONAL HEARING
CLERK

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 United States Code (U.S.C.) §§ 6901-6991 (together hereafter the "Act" or "RCRA"), for injunctive relief and the assessment of civil penalties.

This COMPLAINT, COMPLIANCE ORDER AND NOTICE OF OPPORTUNITY FOR HEARING ("Complaint") serves notice of the United States Environmental Protection Agency's ("EPA") preliminary determination that Carlos Rosaly Medina, doing business as "Bechara Junkyard and/or Taller & Piezas Rosaly" ("Respondent") has violated provisions of RCRA and federal regulations concerning the management of hazardous waste.

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" or "the Commonwealth") is a "State" within the meaning of this provision. Puerto Rico has not received authorization to operate a hazardous waste program pursuant to this provision. As a result, federal hazardous waste regulations remain in effect.

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. For all times relevant to this Complaint, Complainant hereby alleges:

GENERAL ALLEGATIONS

Jurisdiction

1. This administrative Tribunal has jurisdiction over the subject matter of this action pursuant to Section 3008(a) of RCRA, and 40 C.F.R. § 22.1(a) (4).

Notice

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

Respondent's Background

3. Respondent is Carlos Rosaly Molina, d/b/a "Bechara Junkyard and/or Taller & Piezas Rosaly" ("Bechara Junkyard").
4. Since 2008, Respondent has been, at all relevant times to the allegations of this complaint, the owner and/or operator of a scrap recycling business located at Barriada Bechara 10-B, Sector Bechara, along the Kennedy Avenue in San Juan, Puerto Rico, 00934.
5. The Respondent also operates at the Bechara Junkyard an auto body paint and mechanic shop, and prior to 2009; the Respondent also operated a commercial auto crushing business at the site.
6. In the course of doing business, Respondent receives decommissioned or "junked" vehicles at its Facility. Vehicles contain numerous materials, including gasoline; diesel fuel; fuel filters; mercury switches; lead wheel weights; battery cable ends and terminals; air bags; batteries; high intensity lights; instrument panels; antifreeze oil filters; and oil.
7. Respondent stores and then dismantles junked vehicles at its Facility. Respondent sells the dismantled vehicles, which are valued for their metal, to shredders and/or foundries.
8. Since at least from 2008, Respondent has crushed and sold junked vehicles at its Facility.
9. Prior to crushing or dismantling operations, Respondent systematically removes the batteries; tires; wheels; and catalytic convertors from vehicles. However, Respondent does not remove the vehicles' engines; transmissions; airbags or airbag components; mercury switches; oil filters; fuel filters; or air conditioners, nor does he drain fuel tanks, air conditioner fluids, or any other auto fluids, from the junked vehicles prior to storing or selling the vehicles.

10. Respondent is a “person” as that term is defined in Section 1004(15) of the Act, and 40 C.F.R. § 260.10.

Notification of Hazardous Waste Generation

11. Pursuant to Sections 3002(a) and 3004(a) of RCRA, the Administrator of EPA has promulgated regulations for the management of hazardous waste including standards to be applicable to generators, and treatment, storage and disposal (TSD) facilities. These regulations are set forth in 40 C.F.R. Parts 260 through 266 and Parts 268, 270 and 273.
12. Pursuant to Section 3014 of RCRA, the Administrator of EPA has promulgated regulations governing the management of used oil. These regulations are set forth in 40 C.F.R. Part 279.
13. Section 3008(a) of RCRA, 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, which includes the regulations referenced above.
14. 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. The maximum civil penalty under Section 3008(a) (3) of RCRA, 42 U.S.C. § 6928(a) (3), is \$37,500 per day of each violation occurring after January 12, 2009. 40 C.F.R. Part 19.
15. The Bechara Junkyard property , where Respondent conducts its scrap recycling business, constitutes a “new Facility” and a “Facility” as those terms are defined in 40 C.F.R. § 260.10 (hereinafter the “Facility”).
16. Respondent is and/or has been the "owner" of the Facility as that term is defined in 40 C.F.R. § 260.10.
17. Respondent is and/or has been the "operator" of the Facility as that term is defined in 40 C.F.R. § 260.10.
18. Respondent has never submitted a RCRA Section 3010 Notification of Regulated Waste Activity to EPA. However, EPA assigned Respondent the Identification Number PRN008020737 after it conducted an inspection of the Facility in 2008.
19. 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.

20. Respondent never submitted to EPA a RCRA Part A or a Part B Permit Application, pursuant to Section 3005 of RCRA and 40 C.F.R. Parts 270 and 124 for its Facility and never received “interim status” or a hazardous waste permit to treat, store or dispose of hazardous waste at its Facility.
21. On or about October 22, 2008; September 16, 2010; and, April 13, 2012, EPA inspected Respondent’s Facility to determine its compliance with RCRA and its implementing regulations (hereafter “the 2008 Inspection,” “the 2010 Inspection,” and the “2012 Inspection,” or if referred to jointly, “the Inspections”).
22. On June 12, 2012, a RCRA Sections 3007 and 3008 Request for Information and Notice of Violation Letter (“Request for Information and Notice of Violation”) was issued to the Respondent. The Request for Information and Notice of Violation letter was hand-delivered on June 28, 2012. The letter addressed the issues related to the findings of the 2012 Inspection regarding the management of hazardous waste, universal waste and used oil disposal requirements. Respondent failed to respond to EPA’s first request letter.
23. On August 21, 2012, a second Request for Information and Notice of Violation was issued to the Respondent. Respondent failed to respond to EPA’s second request letter.

Count 1 - Failure to Make Hazardous Waste Determination

24. Complainant re-alleges each allegation above, as if fully set forth herein.
25. 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.
26. Pursuant to 40 C.F.R. § 261.2(b)(3) materials are solid wastes if they are “abandoned by being disposed of ... or accumulated, stored, or treated (but not recycled) before or in lieu of being abandoned by being disposed of....”
27. In the course of its operations, Respondent receives at its Facility vehicles and other discarded goods for recycling. Many if not most of the vehicles received at the Facility contain fluids and/or parts that may constitute and/or contain hazardous waste. These fluids and parts include gasoline; diesel fuel; fuel filters; coolant; used oil; lead wheel weights; automobile components that may contain mercury (including light switches, anti-lock brake systems, ride leveling sensors, headlights and taillights, and virtual image instrument panels); and/or airbag cartridges that may contain sodium azide .

28. At a minimum, since the date of the 2008 Inspection and up to the date of the 2012 Inspection, Respondent has stored, dismantled and crushed junked vehicles without first removing or draining all of the fluids and parts from the vehicles, referenced in Paragraph 27 above.
29. At a minimum, since the date of the 2008 Inspection and up to the date of the 2012 Inspection, Respondent has stored, dismantled and crushed vehicles directly on top of earthen ground (soil) at its Facility. While some fluid was captured in concrete pads during the dismantling and previous crushing processes, the storage and dismantling and previous crushing of the vehicles resulted in the release, leaking, spilling or placing (hereafter the “disposal”) of the fluids and parts referenced in Paragraph 27 above, directly onto the soil and into Rio Puerto Nuevo, which flows into the Atlantic Ocean, a water of the United States.
30. At a minimum, since the time of the Inspections, fluorescent lights and mercury lamps were discarded in the trash or were not properly managed at the Facility.
31. Each material identified in Paragraph 27 was “abandoned by being disposed of” at Respondent’s Facility, within the meaning of 40 C.F.R. § 261.2(b) and each material therefore constitutes a “solid waste,” as defined in 40 C.F.R. § 261.2.
32. Respondent did not make the required determinations as to whether any of the solid wastes referenced in Paragraph 27 constituted hazardous wastes.
33. Each failure by Respondent to determine if the solid wastes referenced in Paragraphs 27 constitute a hazardous waste is a violation of 40 C.F.R. § 262.11.
34. Pursuant to Sections 3008(a) of RCRA, Respondent is subject to injunctive relief and liable for civil penalties for its violation of 40 C.F.R. § 262.11.

Count 2 - Disposal of Hazardous Waste without a Permit

35. Complainant re-alleges each allegation above, as if fully set forth herein.
36. Pursuant to Section 3005 of RCRA and 40 C.F.R. § 270.1(c), an owner or operator cannot dispose of hazardous wastes at its Facility without having obtained a permit or interim status authorizing such disposal.
37. “Disposal” is defined in 40 C.F.R. § 260.10 as the “discharge, deposit, injection, dumping, spilling, leaking or placing of any solid waste or hazardous waste into or onto any land so that such solid waste or hazardous waste or constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters.”

38. At a minimum, from the date of the 2008 Inspection and up to the date of the 2012 Inspection, Respondent, in the course, or as a result of, dismantling and previously crushing vehicles, has deposited, disposed of, dumped, spilled and/or leaked (hereafter referred to as “released”) gasoline directly onto the soil at its Facility.
39. The gasoline released onto the soil at Respondent’s Facility constitutes a “solid waste,” as that term is defined 40 C.F.R. § 261.2.
40. Pursuant to 40 C.F.R. § 261.3, any solid waste which exhibits any characteristic identified in Subpart C of 40 C.F.R. Part 261, such as ignitability or toxicity, constitutes a hazardous waste.
41. Gasoline is ignitable, and toxic for benzene, as those characteristics are defined in 40 C.F.R. § 261.21 and 40 C.F.R. § 261.24, respectively.
42. The gasoline disposed of at Respondent’s Facility constitutes a “hazardous waste” as defined in 40 C.F.R. §§ 261.21 and 261.24.
43. Each release of gasoline onto the soil at Respondent’s Facility constitutes a “disposal” of “hazardous waste” as defined in 40 C.F.R. § 260.10 and 40 C.F.R. § 261.3, respectively.
44. Respondent’s disposal of hazardous waste at its Facility, which does not have interim status or a permit authorizing such disposal, is a violation of Section 3005 of RCRA and 40 C.F.R. § 270.1.
45. Pursuant to Section 3008(a) of RCRA, Respondent is subject to injunctive relief and liable for civil penalties for each violation of Section 3005 of RCRA and 40 C.F.R. § 270.1.

Count 3 - Failure to Minimize the Possibility of Releases

46. Complainant re-alleges each allegation above, as if fully set forth herein.
47. Pursuant to 40 C.F.R. § 264.1(b), owners and operators of all facilities which treat, store or dispose of hazardous waste must, unless subject to certain exceptions which are inapplicable here, comply with the requirements set forth in 40 C.F.R. Part 264.
48. Pursuant to 40 C.F.R. § 264.31, owners and operators must maintain their facilities to “minimize the possibility of a fire, explosion or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water which could threaten human health or the environment.”

49. During the operations and maintenance of its Facility, from the date of the 2008 Inspection and up to the date of the 2012 Inspection:
- a. Respondent failed to have procedures in place, to remove all fluids (such as gasoline and diesel fuel) and parts (such as mercury containing light switches, high intensity discharge systems -e.g., headlights and tail lamps-), and mercury containing G-force sensors in anti-lock brake systems from junked vehicles prior to receiving and storing such vehicles, potentially permitting the release of hazardous waste and/or hazardous waste constituents into the environment from such fluids and parts;
 - b. Respondent stored, dismantled and previously crushed vehicles directly on the soil rather than on a non-porous surface pad, thereby allowing fluids that may contain hazardous waste or hazardous waste constituents to be released directly onto the soil and into a channel which flows into Rio Puerto Nuevo, which flows into the Atlantic Ocean, a water of the United States;
 - c. Respondent dismantled and previously crushed vehicles containing volatile hazardous waste constituents, including benzene, thereby allowing fluids that may contain hazardous waste or hazardous waste constituents to volatilize into the air;
 - d. Respondent failed to have an adequate storm water runoff collection system to minimize or eliminate runoff or percolation of storm water and fluids released from vehicles before, during, or after, dismantling and crushing, thereby allowing storm water, which may be contaminated with hazardous wastes and/or hazardous waste constituents from the vehicles, to spread to and contaminate additional areas at the Facility;
 - e. Respondent stored lead-based battery cable ends and wheel weights uncovered in the open air on bare soil permitting the release of hazardous waste or hazardous waste constituents into the environment; and
 - f. Respondent stored fluids collected in the dismantling process and in the mechanic shop repairs in drip pans (which were not capped, enclosed or otherwise contained), and in open containers and drums, risking the release of an amalgamation of hazardous wastes and/or hazardous waste constituents into the environment.
50. Respondent's Facility is bordered at the North and the East by mangrove forests and scrublands and at the South and the West side by the Puerto Nuevo River, which flows into the Atlantic Ocean, a water of the United States.
51. Each action or inaction set forth in Paragraph 49 constitutes a failure by Respondent to maintain or operate its Facility in a manner that minimizes the possibility of a fire,

explosion or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water which could threaten human health or the environment in violation of 40 C.F.R. § 264.31.

52. Pursuant to Section 3008(a) of RCRA Respondent is subject to injunctive relief and subject to civil penalties for each violation of 40 C.F.R. § 264.31.

Count 4 – Improper Disposal of Used Oil

53. Complainant re-alleges each allegation above, as if fully set forth herein.
54. “Used oil” is “any oil that has been refined from crude oil, or any synthetic oil, that has been used and as a result of such use is contaminated by physical or chemical impurities.” 40 C.F.R. § 279.1.
55. Subpart I of 40 C.F.R. Part 279 sets forth the standards for the disposal of used oil that is not being recycled and is being disposed of. Pursuant to 40 C.F.R. § 279.81, used oils that are not recycled and are identified as hazardous waste must be managed and/or disposed of in accordance with hazardous waste requirements set forth in 40 C.F.R. Parts 260-266, 268 and 270. Pursuant to 40 C.F.R. § 279.81(b), used oils that do not constitute hazardous waste must be disposed of under the requirements of 40 C.F.R. Parts 257 and 258.
56. At a minimum, from the 2008 Inspection through the 2012 Inspection, Respondent received junked vehicles which contained “used oil” as defined in 40 C.F.R. § 279.1.
57. During the period of time mentioned in paragraph 56 above, Respondent dismantled and crushed vehicles directly on the soil without first removing all of the used oil from the vehicles. In addition, Respondent conducted vehicle repairs without controlling the releases of used oil from the vehicles. Used oil was released or otherwise disposed of onto the soil at Respondent’s Facility and into a channel which flows into Puerto Nuevo River, during the dismantling and crushing processes.
58. At the time of the 2012 Inspection, EPA observed that Respondent had installed an above ground tank that was properly labeled, and it disposed of most of the used oil generated at the Facility with an approved used oil transporter.
59. Respondent’s disposal of used oil at its Facility without complying with hazardous waste requirements (if the used oil was a hazardous waste) or without complying with 40 C.F.R. Parts 257 and 258 (if the used oil was not a hazardous waste) constitutes violations of 40 C.F.R. § 279.81.
60. Pursuant to Section 3008(a) of RCRA Respondent is subject to injunctive relief and liable for civil penalties for each violation of 40 C.F.R. § 279.81.

Count 5 – Failure to Label Used Oil Storage Containers

61. Complainant re-alleges each allegation above, as if fully set forth herein.
62. A “used oil generator” is defined at 40 C.F.R. § 279.20 as any person, by site, whose act or process produces used oil or whose act first causes used oil to become subject to regulation.”
63. Respondent removes and accumulates “used oil” as that term is defined in 40 C.F.R. § 279.1 from its service and support vehicles, as well as from heavy equipment used and/or maintained on site. Respondent is a “used oil generator” as that term is defined in 40 C.F.R. § 279.20.
64. Subpart C of 40 C.F.R. Part 279 (“Standards for Used Oil Generators”) sets forth the requirements for used oil generators.
65. 40 C.F.R. § 279.22(c) requires that containers used to store used oil at generator facilities must be labeled or marked with the words “used oil.”
66. At a minimum, from the time of the 2008 Inspection through the 2012 Inspection, Respondent stored used oil in numerous containers and drums that were not labeled or marked with the words “used oil.”
67. During the 2012 Inspection, EPA observed that Respondent was implementing measures to comply with some of the used oil disposal requirements. Respondent obtained a used oil permit from the Puerto Rico Environmental Quality Board, Respondent had installed an above ground tank that was properly labeled, and was disposing the used oil with an approved used oil transporter.
68. Respondent violated 40 C.F.R. § 279.22 by failing to properly label containers used to store used oil.
69. Pursuant to Section 3008(a) of RCRA Respondent is subject to injunctive relief and liable for civil penalties for its violation of 40 C.F.R. § 279.22.

II. PROPOSED CIVIL PENALTY

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

Count 1: \$28,330.00
Count 2: \$28,330.00
Count 3: \$28,330.00
Count 4: \$ 430.00
Count 5: \$ 430.00

Total Proposed Penalty for Counts 1-5 is \$85,850.00

The proposed civil penalty has been determined in accordance with Section 3008(a) (3) of the Act. 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, a copy of which is available upon request or can be found on the Internet at the following address:

<http://www.epa.gov/compliance/resources/policies/civil/rcra/rcpp2003-fnl.pdf>

This 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 (with a further revision not relevant to this action on April 6, 2010).

The maximum civil penalty under Section 3008(a) (3) of RCRA, for violations after January 12, 2009 is \$37,500 per day of violation.

The Complainant proposes, subject to receipt and evaluation of further relevant information from the Respondent, that the Respondent be assessed the civil penalty as set out above for the violations alleged in this Complaint. A penalty calculation worksheet and narrative explanation

to support the penalty figure for each violation cited in this Complaint are included in Attachment I, below. Matrices employed in the determination of individual and multi-day penalties are included as Attachments II, and III, below.

III. COMPLIANCE ORDER

Based upon the foregoing and pursuant to the authority of Section 3008 of the Act, 42 U.S.C. § 6928, Complainant herewith issues the following Compliance Order to Respondent:

1. Within twenty (20) calendar days of the effective date of this Compliance Order, Respondent shall:
 - a. make hazardous waste determinations for each solid waste generated at its Facility pursuant to 40 C.F.R. § 262.11;
 - b. maintain and operate the Facility in a manner that minimizes the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil or surface water which could threaten human health or the environment pursuant to 40 C.F.R. § 264.31;
 - c. cease the disposal of hazardous waste at its Facility unless or until it receives a hazardous waste permit from EPA authorizing such disposal pursuant to Section 3005 of RCRA and 40 C.F.R. § 270.1;
 - d. cease the disposal of used oil at its Facility unless or until receiving permits authorizing such disposal, or otherwise in accordance with 40 C.F.R. Parts 257, 258, 260 - 266, 268, and 270; and
 - e. Comply with all applicable requirements for used oil generators set forth in 40 C.F.R. Part 279 including labeling containers used to store used oil.
2. Respondent shall submit to EPA within thirty (30) calendar days of the effective date of this Compliance Order written notice of its compliance (accompanied by a copy of all appropriate supporting documentation) or noncompliance for each of the requirements cited in paragraph "1" of this Compliance Order. 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(s).
3. All responses, documentation, and evidence submitted in response to this Compliance Order should be sent to:

Eduardo R. Gonzalez, P.E.
U.S. Environmental Protection Agency, Region 2
Caribbean Environmental Protection Division
Response & Remediation Branch
City View Plaza II, Suite 7000
Road PR-165, Km 1.2, #48
Guaynabo, PR 00968

4. This Compliance Order shall take effect 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).
5. 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 and/or commonwealth) provisions, nor does such compliance release Respondent from liability for any RCRA violations occurring or existing at the Bechara Junkyard Facility. In addition, nothing herein waives, prejudices or otherwise affects EPA's right to enforce against Respondent 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 Bechara Junkyard 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 regarding hazardous waste violations is liable for a civil penalty of up to \$37,500 for each day of continued noncompliance (73 Fed. Reg. 75340, December 11, 2008).

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 COMPLIANCE ORDERS, AND THE REVOCATION, TERMINATION OR SUSPENSION OF PERMITS." These rules are codified at 40 C.F.R. Part 22. A copy of these rules accompanies this Complaint.

A. 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 are 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 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
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 the 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 affirmatively to 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, a hearing upon the issues raised by the Complaint and Answer may be held. 40 C.F.R. § 22.15(c). If, however, Respondent requests 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 either Respondent requests a hearing pursuant to 40 C.F.R. § 22.15 within 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.

C. Failure to Answer

If Respondent fails in their 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). 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). 40 C.F.R. § 22.17(d).

D. Exhaustion of Administrative Remedies

Where Respondent fails to appeal an adverse initial decision to the Environmental Appeals Board 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 the right to judicial review. 40 C.F.R. § 22.27(d).

To appeal an initial decision to the Agency's Environmental Appeals Board ("EAB"), Respondent must do so "[w]ithin 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 affected 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 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 they believe is relevant to the disposition of this matter, including: (1) actions Respondent has taken to correct any or all of the violations herein alleged, and/or (2) 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:

Lourdes del Carmen Rodríguez, Esq.
Assistant Regional Counsel
U.S. Environmental Protection Agency, Region 2
City View Plaza II, Suite 7000
Road PR-165, Km 1.2, #48
Guaynabo, PR 00968
Telephone: (787) 977-5819
Email: rodriguez.lourdes@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 request for 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 shall be embodied in a written consent agreement. 40 C.F.R. § 22.18(b)(2). In accepting the consent agreement, Respondent waives the right to contest the allegations in the Complaint and waives the 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 entering into a settlement through the signing of such Consent Agreement and its complying with the terms and conditions set forth in the such Consent Agreement terminate this administrative litigation and the civil proceedings arising out of the allegations made in the Complaint. Respondent entering into a settlement does not extinguish, waive, satisfy or otherwise affect their 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 30 days after receipt of the Complaint, Respondent should promptly contact the Assistant Regional Counsel identified on the previous page.

Dated: April 29, 2013

COMPLAINANT:



José C. Font, Director
 Caribbean Environmental Protection Division
 U.S. Environmental Protection Agency, Region 2
 City View Plaza II, Suite 7000
 Road PR-165, Km 1.2, #48
 Guaynabo, PR 00968

To: Mr. Carlos Rosaly Molina, Owner
 Bechara Junkyard & Taller de Piezas Rosaly
 P.O. Box 40761
 San Juan, PR 00940

cc: Maria Victoria Rodriguez Muñoz, Director
 Land Pollution Control Division
 Environmental Quality Board
 P.O. Box 11488
 Santurce, Puerto Rico 00910

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region 2

In the matter of:

Carlos Rosaly Molina, doing business as
 "Bechara Junkyard and/or Taller & Piezas
 Rosaly"

Respondent.

Proceeding Under Section 3008 of the Solid
 Waste Disposal Act, as amended,

**COMPLAINT, COMPLIANCE ORDER
 AND NOTICE OF OPPORTUNITY
 FOR HEARING**

Docket No. RCRA-02-2013-7103

CERTIFICATE OF SERVICE

This is to certify that on this date I caused to be mailed a true and correct copy of the foregoing "COMPLAINT, COMPLIANCE ORDER AND NOTICE OF OPPORTUNITY FOR HEARING," bearing Docket Number RCRA-02-2013-7103, together with Attachments I and II (collectively henceforth referred to as the "Complaint"), and with a copy of the "CONSOLIDATED RULES OF PRACTICE GOVERNING THE ADMINISTRATIVE ASSESSMENTS OF CIVIL PENALTIES, ISSUANCE OF COMPLIANCE OR CORRECTIVE ACTION COMPLIANCE ORDERS, AND THE REVOCATION, TERMINATION OR SUSPENSION OF PERMITS," 40 C.F.R. Part 22, by the following manner:

A copy by CERTIFIED MAIL/RETURN RECEIPT REQUESTED:

Mr. Carlos Rosaly Molina, Owner
 Bechara Junkyard and Taller & Piezas Rosaly
 P.O. Box 40761
 San Juan, PR 00940

The original and a copy for filing by UPS OVERNIGHT MAIL:

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

Dated: 4/30/2013

By: 
 Office of Regional Counsel, CT, Guaynabo, PR

ATTACHMENT I

**PENALTY CALCULATION WORKSHEET
WITH NARRATIVE EXPLANATION**

Bechara Junkyard

BECHARA JUNKYARD, SAN JUAN, PR:
NARRATIVE EXPLANATION TO SUPPORT COMPLAINT AMOUNT
Penalty Computation Worksheet (Count 1)

Respondent: Bechara Junkyard

Facility Address: Sector Bechara, Kennedy Avenue, San Juan, Puerto Rico 00934

Requirement Violated: 40 C.F.R. § 262.11

- Respondent failed to make hazardous waste determinations for solid waste streams at its Facility.

PENALTY AMOUNT FOR COMPLAINT

1. Gravity based penalty from matrix		\$28,330
(a) Potential for harm		MAJOR
(b) Extent of Deviation		MAJOR
2. Select an amount from the appropriate multiple matrix cell		\$0
3. Multiply line 2 by number of number of days minus 1 (180 days - 1):		\$0
4. Add line 1 and line 3		\$28,330
5. Percent increase/decrease for good faith		0%
6. Percent increase for willfulness/negligence		0%
7. Percent increase for history of noncompliance		0%
8. Total lines 5 through 7		0%
9. Multiply line 4 by line 8		\$0
10. Calculate economic benefit -- de minimis		\$0
11. Add lines 4, 9 and 10 for penalty amount to be inserted into the complaint		\$28,330

BECHARA JUNKYARD, SAN JUAN, PR:
NARRATIVE EXPLANATION TO SUPPORT COMPLAINT AMOUNT
Penalty Computation Worksheet (Count 1)

1) Gravity Based Penalty

- a) Potential for Harm - The potential for harm for a failure to conduct hazardous waste determinations is deemed to be MAJOR. The RCRA Civil Penalty Policy provides that the potential for harm should be based on two factors: the risk of human or environmental exposure; and the adverse impact of the noncompliance on the regulatory scheme. The RCRA regulatory program is undermined when an owner/operator of a Facility generating solid waste fails to determine whether each of the waste streams generated is hazardous. By failing to determine whether each solid waste stream constitutes a hazardous waste, an owner/operator increases the likelihood that a hazardous waste it generated will not be treated as such. In this instance, Respondent failed to determine if waste streams generated at its Facility constituted hazardous waste. Consequently, Respondent was unaware that its waste was subject to regulation and mismanaged hazardous waste. Soil, surface water and air can be contaminated during vehicle disassembly and fluid drainage operations. Contamination can also result from improper handling and storage of hazardous materials (batteries, captured refrigerants, fluids, etc). Soil, surface water and air were contaminated during vehicle disassembly and fluid drainage operations. Contamination resulted from improper handling and storage of hazardous materials (batteries, captured refrigerants, fluids, etc).
- b) Extent of Deviation - The extent of deviation present in this violation was determined to be MAJOR. Respondent failed to make hazardous waste determinations for numerous waste streams, all of which Respondent generated regularly over an extended period of time during its dismantling, and crushing operations. The main environmental concern in vehicle crushing and disassembly operations is when the vehicles still have fluids that have not been removed and the fuels begin to leach into the ground, entering the environment by coming in contact with the soil or evaporating into the air. These contaminants can then migrate due to storm water runoff, etc. and contamination and liability will spread far beyond the immediate area of the salvage yard. The main environmental concern in vehicle crushing and disassembly operations was letting any fluids still in the vehicle get out of control and enter the environment by spilling on the ground or evaporating into the air. These contaminants migrated due to storm water runoff, etc. and contamination and liability spread far beyond the immediate area of the salvage yard.

The applicable cell ranges from \$28,330 to \$37,500. The lower point of the cell matrix was selected (\$28,330) since most of junked vehicles were removed from the Facility.

- c) Multiple/Multi-day – Hazardous waste identifications must be made at the point of waste generation. Because each waste stream referenced in Count 1 was simultaneously generated during a single process (or point of generation) — the dismantling and crushing of a junked vehicle — EPA has not included a penalty component for each of the separate waste streams generated.

2) Adjustment Factors

- a) Good Faith - Based upon Facility specific factors and available information, no adjustment has been made at this time.
- b) Willfulness/Negligence - Not applicable.
- c) History of Compliance - Based upon Facility specific factors and available information, no adjustment has been made at this time.
- d) Ability to Pay - Not applicable at this time.
- e) Environmental Project - Not applicable.
- f) Other Unique Factors - Not applicable

- 3) Economic Benefit - No penalty is being sought to recoup Respondent's economic benefit for this violation since Respondent and/or its employees should have been able to make such determinations with no or low additional cost to Respondent.

**BECHARA JUNKYARD, SAN JUAN, PR:
NARRATIVE EXPLANATION TO SUPPORT COMPLAINT AMOUNT
Penalty Computation Worksheet (Count 2)**

Respondent: Bechara Junkyard

Facility Address: Sector Bechara, Kennedy Avenue, San Juan, Puerto Rico 00934

Requirements Violated: Section 3005 of RCRA, 42 U.S.C. § 6925 and 40 C.F.R. § 270.1

- Respondent disposed of hazardous waste at its Facility without having obtained a permit or qualifying for interim status authorizing such disposal.

PENALTY AMOUNT FOR COMPLAINT

1. Gravity based penalty from matrix	\$28,330
(a) Potential for harm	MAJOR
(b) Extent of Deviation	MAJOR
2. Select an amount from the appropriate multiple matrix cell	\$0
3. Multiply line 2 by number of number of days minus 1 (180 days -1):	\$0
4. Add line 1 and line 3	\$28,330
5. Percent increase/decrease for good faith	0%
6. Percent increase for willfulness/negligence	0%
7. Percent increase for history of noncompliance	0%
8. Total lines 5 through 7	0%
9. Multiply line 4 by line 8	\$0
10. Calculate economic benefit -- de minimis	\$0
11. Add lines 4, 9 and 10 for penalty amount to be inserted into the complaint	\$28,330

BECHARA JUNKYARD, SAN JUAN, PR:
NARRATIVE EXPLANATION TO SUPPORT COMPLAINT AMOUNT
Penalty Computation Worksheet (Count 2)

1) Gravity Based Penalty

- a) Potential for Harm - The potential for harm in this violation was determined to be MAJOR. Operating a treatment, storage, or disposal Facility without interim status or a permit (and compliance therewith) is a serious violation with the potential to result in harm to human health and the environment. Potential for harm was determined to be Major because Respondent released hazardous waste directly on soil, rather than disposing of the waste in accordance with regulatory requirements. Moreover, Respondent's Facility is bordered at the North and the East by mangrove forests and scrublands and at the South and the West side by the Puerto Nuevo River, which flows into the Atlantic Ocean, a water of the United States,
- b) Extent of Deviation - The extent of deviation present in this violation was determined to be MAJOR. Hazardous waste was disposed of at the Facility without a permit or interim status.

The applicable cell ranges from \$28,330 to \$37,500. The lower point of the range was selected (\$28,330) since most junked vehicles were removed from the Facility.

- c) Multiple/Multi-day - The operating conditions and actions that resulted in this violation existed for a significant period of time. However, because the conditions and actions are similar to those referenced in Count 1, EPA has not included a penalty component for each of the separate waste streams that was not managed in accordance with regulatory requirements, but has addressed them as a whole.

2) Adjustment Factors

- a) Good Faith - Based upon Facility specific factors and available information, no adjustment has been made at this time.
- b) Willfulness/Negligence - Not applicable.
- c) History of Compliance - Based upon Facility specific factors and available information, no adjustment has been made at this time.
- d) Ability to Pay - Not applicable at this time.
- e) Environmental Project - Not applicable.
- f) Other Unique Factors - Not applicable.

- 3) Economic Benefit – Respondent could have avoided the need for a permit by removing all fluids and parts which may contain or constitute hazardous waste from the junked vehicles prior to dismantling or crushing the vehicles. The cost of such removal may be significant, but EPA does not presently have enough information to make that determination. This information will be obtained during the course of litigation and/or settlement discussions with Respondent and evaluated at that time.

**BECHARA JUNKYARD, SAN JUAN, PR:
NARRATIVE EXPLANATION TO SUPPORT COMPLAINT AMOUNT
Penalty Computation Worksheet (Count 3)**

Respondent: Bechara Junkyard

Facility Address: Sector Bechara, Kennedy Avenue, San Juan, Puerto Rico 00934

Requirement Violated: 40 C.F.R. § 264.31

- Respondent failed to operate its Facility to minimize the possibility of a fire, explosion or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water which could threaten human health or the environment.

PENALTY AMOUNT FOR COMPLAINT

1. Gravity based penalty from matrix		\$28,330
(a) Potential for harm		MAJOR
(b) Extent of Deviation		MAJOR
2. Select an amount from the appropriate multiple matrix cell		\$0
3. Multiply line 2 by number of number of days minus 1:		\$0
4. Add line 1 and line 3		\$28,330
5. Percent increase/decrease for good faith		0%
6. Percent increase for willfulness/negligence		0%
7. Percent increase for history of noncompliance		0%
8. Total lines 5 through 7		0%
9. Multiply line 4 by line 8		\$0
10. Calculate economic benefit -- de minimis		\$0
11. Add lines 4, 9 and 10 for penalty amount to be inserted into the complaint		\$28,330

BECHARA JUNKYARD, SAN JUAN, PR:
NARRATIVE EXPLANATION TO SUPPORT COMPLAINT AMOUNT
Penalty Computation Worksheet (Count 3)

1) Gravity Based Penalty

- a) Potential for Harm - The potential for harm present in this violation was determined to be MAJOR. Respondent conducted numerous activities that increased the likelihood that hazardous waste and hazardous constituents would be released to the environment. These activities included dismantling, and crushing vehicles containing automobile fluids and other parts directly on the soil without an adequate storm water run-off system in place, and into a channel part of the Margarita Creek. The practices detailed in the Count increased the risk of fire, explosions, gaseous emissions, leaching, spillage, or other discharge of hazardous waste or constituents.
- b) Extent of Deviation - The extent of deviation present in this violation was determined to be MAJOR. The Respondent failed to take numerous steps to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents into the environment.

The applicable cell ranges from \$28,330 to \$37,500. The lower point was selected (\$28,330), since most of junked vehicles were removed from the Facility.

- c) Multiple/Multi-day - The operating practices and conditions that resulted in this violation existed since at least the 2008 Inspection through the 2012 Inspection. Nonetheless, in accordance with the RCRA Civil Penalty Policy, EPA is using its discretion to consider this activity as a single event (or point of generation) — EPA has not included a penalty component for each of the separate waste streams generated at its Facility.

2) Adjustment Factors

- a) Good Faith - Based upon Facility specific factors and available information, no adjustment has been made at this time.
- b) Willfulness/Negligence - Not applicable.
- c) History of Compliance - Based upon Facility specific factors and available information, no adjustment has been made at this time.
- d) Ability to Pay - Not applicable at this time.
- e) Environmental Project - Not applicable.
- f) Other Unique Factors - Not applicable.

- 3) Economic Benefit - EPA does not presently have sufficient information to assess the amount of avoided or delayed costs incurred by Respondent for the actions or inactions identified in this Count. This information will be obtained during the course of litigation and/or settlement discussions with Respondent and evaluated at that time.

**BECHARA JUNKYARD, SAN JUAN, PR:
NARRATIVE EXPLANATION TO SUPPORT COMPLAINT AMOUNT
Penalty Computation Worksheet (Count 4)**

Respondent: Bechara Junkyard

Facility Address: Sector Bechara, Kennedy Avenue, San Juan, Puerto Rico 00934

Requirements Violated: 40 C.F.R. § 279.81

- Respondent failed to dispose of used oil in accordance with the requirements of Subpart I of Part 279 (Standards for ...Disposal of Used Oil).

PENALTY AMOUNT FOR COMPLAINT

1. Gravity based penalty from matrix	\$430
(a) Potential for harm	MODERATE
(b) Extent of Deviation	MODERATE
2. Select an amount from the appropriate multiple matrix cell	\$0
3. Multiply line 2 by number of number of days minus 1:	\$0
4. Add line 1 and line 3	\$430
5. Percent increase/decrease for good faith	0%
6. Percent increase for willfulness/negligence	0%
7. Percent increase for history of noncompliance	0%
8. Total lines 5 through 7	0%
9. Multiply line 4 by line 8	\$0
10. Calculate economic benefit -- de minimis	\$0
11. Add lines 4, 9 and 10 for penalty amount to be inserted into the complaint	\$430

BECHARA JUNKYARD, SAN JUAN, PR:
NARRATIVE EXPLANATION TO SUPPORT COMPLAINT AMOUNT
Penalty Computation Worksheet (Count 4)

1) Gravity Based Penalty

- a) Potential for Harm - The potential for harm in this violation was determined to be MINOR. (While Respondent released used oil directly onto the soil, to the extent the used oil constituted hazardous waste, the potential for harm for this Count has been largely captured in the potential for harm component of the penalty assessed for Count 2).
- b) Extent of Deviation - The extent of deviation present in this violation was determined to be MINOR. Respondent failed to comply with all relevant used oil disposal requirements. However, in the 2012 Inspection, EPA observed that Respondent had begun to comply with some of the used oil disposal requirements, Respondent obtained a used oil permit from the Commonwealth regulatory agency, respondent had installed an above ground tank properly labeled, and was using an approved used oil transporter.

The applicable cell ranges from \$150 to \$709. The midpoint of the range was selected (\$430), since Respondent significantly reduced the amount of used oil generated at its Facility that needed to comply with regulatory requirements.

- c) Multiple/Multi-day - The operating procedures that resulted in this violation existed since at least during the time period between the 2008 Inspection through the 2012 Inspection. However, in the 2012 Inspection, Respondent obtained used oil permit from the Commonwealth regulatory agency and disposed of with an approved used oil transporter.

2) Adjustment Factors

- a) Good Faith - Based upon Facility specific factors and available information, no adjustment has been made at this time.
- b) Willfulness/Negligence - Not applicable.
- c) History of Compliance - Based upon Facility specific factors and available information, no adjustment has been made at this time.
- d) Ability to Pay - Not applicable at this time.
- e) Environmental Project - Not applicable.
- f) Other Unique Factors - Not applicable.

- 3) Economic Benefit - Respondent could have avoided this violation by removing oil from the junked vehicles prior to dismantling or previously crushing the vehicles, or by only accepting vehicles from which the oil was previously drained. The cost of such practices are likely insignificant, but EPA does not presently have enough information to make that determination. This information will be obtained and during the course of litigation and/or settlement discussions with Respondent and evaluated at that time.

**BECHARA JUNKYARD, SAN JUAN, PR:
 NARRATIVE EXPLANATION TO SUPPORT COMPLAINT AMOUNT
 Penalty Computation Worksheet (Count 5)**

Respondent: Bechara Junkyard

Facility Address: Sector Bechara, Kennedy Avenue, San Juan, Puerto Rico 00934

Requirement Violated: 40 C.F.R. § 279.22

- Respondent failed to properly label used oil containers.

PENALTY AMOUNT FOR COMPLAINT

1. Gravity based penalty from matrix	\$430
(a) Potential for harm	MODERATE
(b) Extent of Deviation	MINOR
2. Select an amount from the appropriate multiple matrix cell	0
3. Multiply line 2 by number of number of days minus 1:	\$0
4. Add line 1 and line 3	\$430
5. Percent increase/decrease for good faith	0%
6. Percent increase for willfulness/negligence	0%
7. Percent increase for history of noncompliance	0%
8. Total lines 5 through 7	0%
9. Multiply line 4 by line 8	\$0
10. Calculate economic benefit -- de minimis	\$0
11. Add lines 4, 9 and 10 for penalty amount to be inserted into the complaint	\$430

BECHARA JUNKYARD, SAN JUAN, PR:
NARRATIVE EXPLANATION TO SUPPORT COMPLAINT AMOUNT
Penalty Computation Worksheet (Count 5)

1) Gravity Based Penalty

- a) Potential for Harm - The potential for harm present in this violation was determined to be MINOR. Failing to properly label containers can result in the improper management and/or disposal of the used oil.
- b) Extent of Deviation - The extent of deviation present in this violation was determined to be MINOR. While some of the containers observed by EPA were not labeled, the containers were stored together in an area designated for used oil storage. At least, during the 2012 Inspection, Respondent installed an above ground tank properly labeled, and disposed of most of the used oil generated at the Facility with an approved used oil transporter.

The applicable cell ranges from \$150 to \$709. The midpoint of the range was selected (\$430), since responded properly labeled an above ground tank to collect the used oil generated at its facility.

- c) Multiple/Multi-day - Based on information presently available to EPA, multi-day penalties are not being sought at this time.

2) Adjustment Factors

- a) Good Faith - Based upon Facility specific factors and available information, no adjustment has been made at this time.
- b) Willfulness/Negligence - Not applicable.
- c) History of Compliance - Based upon Facility specific factors and available information, no adjustment has been made at this time.
- d) Ability to Pay - Not applicable at this time.
- e) Environmental Project - Not applicable.
- f) Other Unique Factors - Not applicable.

- 3) Economic Benefit - Based on presently available information, EPA has determined that the economic benefit for this count is *de minimis*. There are virtually no costs associated with properly labeling containers.

ATTACHMENT II

**GRAVITY-BASED PENALTY MATRIX
TO SUPPLEMENT THE RCRA CIVIL PENALTY POLICY
FOR VIOLATIONS THAT OCCUR AFTER JANUARY 12, 2009***

GRAVITY MATRIX

		EXTENT OF DEVIATION FROM REQUIREMENT		
P O T E N T I A L F O R H A R M		MAJOR	MODERATE	MINOR
	MAJOR	\$37,500 to \$28,330	\$28,329 to \$21,250	\$21,249 to \$15,580
	MODERATE	\$15,580 to \$11,330	\$11,329 to \$7,090	\$7089 to \$4,250
	MINOR	\$4,250 to \$2,130	\$2,129 to \$710	\$709 to \$150

ATTACHMENT III

MULTIPLE/MULTI-DAY MATRIX

EXTENT OF DEVIATION FROM REQUIREMENT				
P O T E N T I A L F O R H A R M		MAJOR	MODERATE	MINOR
	MAJOR	\$7,090 to \$1,420	\$5,670 to \$1,070	\$4,250 to \$780
	MODERATE	\$3,120 to \$570	\$2,230 to \$360	\$1,420 to \$220
	MINOR	\$850 to \$150	\$430 to \$150	\$150