

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REG.  
2011 OCT -4 P 3:42  
REGIONAL HEARING  
CLERK

**In the Matter of:**

**Municipality of Moca**  
P.O. Box 1571  
Moca, Puerto Rico 00676-1571

**Complaint and Notice of  
Opportunity to Request a  
Hearing**

**Respondent**

**Index No.: CAA-02-2011-1216**

In a proceeding under Section 113(a) of the  
Clean Air Act, 42 U.S.C. § 7413(a)

**Complaint and Notice of Opportunity to Request a Hearing**

**PRELIMINARY STATEMENT**

The United States Environmental Protection Agency (EPA), issues this Complaint and Notice of Opportunity to Request a Hearing (Complaint) to the Municipality of Moca (Moca or Respondent), for violations of the Clean Air Act (CAA or the Act), 42 U.S.C. § 7401 *et seq.*, and proposes the assessment of penalties in accordance with Section 113 of the CAA and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22 (CROP). The authority to issue this Complaint has been delegated to the Director of the Caribbean Environmental Protection Division (CEPD) from the Administrator through the Regional Administrator.

In this Complaint, EPA alleges that Respondent violated the CAA by failing to respond adequately, and in a timely fashion, to a CAA Section 114 information request concerning Respondent's compliance with the CAA and its implementing regulations at the Moca Municipal Solid Waste Landfill (Moca Landfill or the Facility), located at PR

Road 110, km. 16.5, Centro Ward of Moca.

## **STATUTORY AND REGULATORY BACKGROUND**

### **Sections 302, 113 and 114 of the Act**

1. Section 302(e) of the CAA provides that whenever the term “person” is used in the Act, the term includes an individual, corporation, partnership, association, state, municipality, political subdivision of a State, and any agency, department, or instrumentality of the United States and any officer, agent, or employee thereof.
2. Sections 113(a)(3) and (d) of the Act authorize the Administrator of EPA to issue an administrative penalty order against any person that has violated or is in violation of the Act or regulations promulgated or approved pursuant to the Act.
3. Section 114(a) of the Act grants EPA the authority to require submission of information to enable it to assess any person’s compliance with, among other things, any applicable standard of performance promulgated under Section 111 of the Act, and any applicable emission standard promulgated under Section 112 of the Act.
4. Failure to adequately respond to a Section 114 Request for Information is a violation of Section 114, and may result in a finding of violation and an order to comply, an order for administrative penalties or a civil action for penalties and an injunction requiring compliance, under the authority of 42 U.S.C. § 7413(a)(3).

### **Puerto Rico Section 111(d) State Plan**

5. Pursuant to Section 111(d) of the CAA, EPA promulgated Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills, 40 C.F.R. Part 60, Subpart Cc, and the Puerto Rico Environmental Quality Board (EQB) submitted to EPA its “State Plan for implementation of 40 C.F.R. Part 60, Subpart Cc, Emission Guidelines and

Compliance Times for Municipal Solid Waste Landfills” (the Puerto Rico Section 111(d) State Plan).

6. EPA approved the Puerto Rico Section 111(d) State Plan on July 16, 2002, and it became effective and enforceable by EPA on August 15, 2002. 67 Fed. Reg. 46,598.

7. The Puerto Rico Section 111(d) State Plan, which is found in Part VII of the Puerto Rico Regulations for the Control of Atmospheric Pollution (PRRCAP), contains operating, monitoring, reporting and recordkeeping requirements that apply to the owners and operators of municipal sanitary landfill systems, such as the Facility, for which construction, reconstruction or modification was commenced before May 30, 1991.

### **FINDINGS OF FACT**

#### **Description of the Facility**

8. The Moca Landfill, located at PR Road 110, km. 16.5, Centro Ward, in Moca, Puerto Rico, is an existing permanent disposal facility where household waste is placed in or on land.

9. The Moca Landfill was operated by its owner, the Municipality of Moca, from 1984, when it started operations, until February 1<sup>st</sup>, 2011, when Moca Eco-Park Corporation became the Facility’s operator.

#### **EPA’s Section 114 Investigation**

10. On April 1<sup>st</sup>, 2009, an EPA Enforcement Officer conducted a full compliance evaluation inspection of the Moca Landfill (the 2009 Inspection).

11. In May 2009, EPA sent Respondent a “Request of Information under Section 114,” Letter Ref. No. CAA-02-2009-1469 (“114 Letter”), regarding the compliance status

of the Moca Landfill.

12. The 114 Letter, pursuant to the authority of Section 114 of the Act, and subject to the sanctions set out in Section 113 of the Act, required Respondent to submit the information requested by the 114 Letter in its Attachment II.

13. On June 30, 2009, Respondent requested an extension of time to submit the information and the data requested in the 114 Letter.

14. EPA approved an extension of time to answer the 114 Letter until August 7, 2009.

15. On August 7, 2009, Respondent submitted several documents to EPA, but did not adequately respond to several items required in the 114 Letter. Specifically, Respondent failed to provide an appropriate answer to the following questions in the 114 letter:

- a. Identify any permitted landfill design capacity increases and landfill expansions that have occurred since the landfill initially began accepting waste. Documentation may include any construction contracts entered into prior to the modifications or reconstruction taking place. Provide details regarding each such design capacity increase or landfill expansion with specific dates.
- b. State the design capacity of the entire landfill and each individual phase in megagrams or cubic meters. Provide a copy of the most recent operating permit or engineering design plan. Provide a copy of the calculated non-methane organic compound (NMOC) emission rate (Mg/yr) for the previous 5 years. Submit calculations using EPA approved methods to document the NMOC emission rate. If applicable, provide copies of any Tier1, Tier 2, or Tier 3 test(s) performed at the facility.
- c. If the NMOC emission rate is greater than 50 Mg/yr, provide information documenting the year the NMOC emissions first exceeded 50 Mg/yr. If the NMOC emission rate is less than 50 Mg/yr, provide information documenting any period during the life of the landfill when the NMOC emission rate is expected to exceed this threshold.
- d. Provide information documenting the period of time that waste has been

deposited in each waste cell which is or will be connected to the Gas Collection Control System (GCCS). If known, provide the waste acceptance rates for the previous ten years.

- e. Provide the negative pressure of the GCCS and how often it is monitored, if applicable.
- f. What is the interior landfill gas temperature, nitrogen concentration, and oxygen concentration? Submit monitoring or testing reports to support this information.
- g. Provide a copy of the landfill surface monitoring plan. Provide the last date surface monitoring was conducted or the date of initial monitoring. Submit a diagram of the area to be monitored. Document any surface monitoring readings greater than 500ppmv.
- h. Provide documentation of any expansions to the GCCS that have been completed or are planned.
- i. Provide copies of monitoring records for the twelve month period prior to the receipt of this letter pertaining to pressure of the internal wellhead system of the GCCS and internal gas temperature. Indicate how often these parameters are monitored.
- j. Provide the type of temperature monitor that is utilized on the control device and how often the temperature is monitored.
- k. Submit records of gas flow rate to the control device for the twelve month period prior to the receipt of this letter. Provide documentation of any periods when gas was diverted from the control device.
- l. Indicate how the facility monitors for the constant presence of flames in the control device.
- m. Provide a copy of the initial design capacity report submitted either to EPA or the State.
- n. Submit copies of annual NMOC emission rate reports for the previous five years.
- o. Submit copies of reports required under 40 C.F.R. 60.757(f) and/or PRRCAP Rule 707 for the previous five years, if applicable.
- p. Submit copies of any additional applicable reports for the previous five years.

- q. Submit copies of any landfill closure reports submitted to EPA or the State, if applicable.

16. In the months following Moca's August 2009 submission, EPA staff made repeated efforts to obtain the missing documents from Moca. In response to those attempts, Moca representatives consistently represented to EPA that Moca would produce the documents. However, Moca repeatedly failed to produce the documents. Thus, despite EPA's repeated attempts to obtain the documents, and despite Moca's repeated assurances, as of July 2010, Moca had still not produced the missing documents.

### **The Compliance Order**

17. On July 20, 2010, EPA filed a Compliance Order (the Order) against Respondent for its failure to comply with Section 114 of the Act.

18. The Order directed Respondent to produce the information requested by the Section 114 letter and not produced previously, and further directed Respondent to produce additional materials, such as topographic maps of the landfill.

19. In December 2010, Moca sent EPA a series of topographic maps and aerial photographs, but failed to produce the other information covered by the July 2010 compliance order and originally requested in the May 2009 114 letter.

20. Following Moca's December 2010 submission, EPA again requested that Moca produce the missing documents.

21. In March 2011, Moca representatives indicated to EPA that Moca would not be able to produce the missing documents and information. Since it was explained that most of the documents requested had never been prepared, Moca proposed to hire a consultant and submit a new design capacity report. This new design capacity report

would provide the Agency with sufficient information to be able to make an assessment of Respondent's compliance status with standards of performance promulgated under Section 111 of the Act, and any emission standard promulgated under Section 112 of the Act.

### **CONCLUSIONS OF LAW**

22. Respondent is a "person" within the meaning of Section 302(e) of the Act.
23. Respondent is subject to the assessment of administrative penalties, pursuant to Section 113(d) of the Act.
24. Respondent is the owner and was, until recently, the operator of the Moca Landfill.

### **Count 1**

25. Paragraphs 1-24 are repeated and realleged as if set forth fully herein.
26. Respondent violated Section 114 of the CAA by failing to produce all of the information requested by EPA's May 2009 Section 114 information request.

### **Proposed Civil Penalty**

Section 113(d) of the Act provides that the Administrator may assess a civil administrative penalty of up to \$25,000 per day for each violation of the Act. The Debt Collection Improvement Act of 1996 (DCIA) requires EPA to periodically adjust its civil monetary penalties for inflation. On December 31, 1996, February 13, 2004, and January 7, 2009, EPA adopted regulations entitled Civil Monetary Penalties Inflation Adjustment Rule, 40 C.F.R. Part 19 (Part 19). The DCIA provides that the maximum civil penalty per day should be adjusted up to \$27,500 for violations that occurred from January 30, 1997 through March 15, 2004, up to \$32,500 for violations that occurred

after March 15, 2004, through January 12, 2009, and up to \$37,500 for violations that occurred after January 12, 2009. Part 19 provides that the maximum civil penalty should be upwardly adjusted 10% for violations which occurred on or after January 30, 1997, further adjusted an additional 17.23% for violations which occurred March 15, 2004 through January 12, 2009, for a total of 28.95% and further adjusted an additional 9.83% for violations that occurred after January 12, 2009.

In determining the amount of penalty to be assessed, Section 113(e) of the Act requires that the Administrator consider the size of the business, the economic impact of the penalty on the business, the violator's full compliance history and good faith efforts to comply, the duration of the violation as established by any credible evidence, the payment by the violator of penalties previously assessed for the same violation, the economic benefit of noncompliance, the seriousness of the violation, and other factors as justice may require.

Respondent's violation resulted in it being subject to the assessment of administrative penalties pursuant to Section 113(d) of the Act. The proposed penalty has been prepared in accordance with the guidelines set forth in EPA's "Clean Air Act Stationary Source Civil Penalty Policy" (CAA Penalty Policy), which reflects EPA's application of the factors set forth in Section 113(e) of the Act.

EPA proposes a total penalty of \$62,317 for the Count alleged in this Complaint. Below is a brief narrative explaining the reasoning behind the penalty proposed, along with the reasoning behind various general penalty factors and adjustments that were used in the calculation of the total penalty amount.



### **Preliminary Deterrence Component of Proposed Penalty**

The CAA Penalty Policy indicates that the preliminary deterrence amount is determined by combining the gravity component and the economic benefit component of the penalty calculated. The gravity component includes, as applicable, penalties for actual harm, importance to the regulatory scheme, size of violator and adjustments to the gravity component for degree of willfulness or negligence, degree of cooperation, prompt reporting, correction, history of non-compliance and environmental damage. Actual harm is calculated, where applicable, in accordance with the level of the violation, the toxicity of pollutant, the sensitivity of the environment, and the length of time of violation.

### **Gravity Component**

#### **Count 1:            Violation of Section 114 of the Act**

EPA proposes a penalty of \$5,000 for Respondent's incomplete and delayed answer to the 114 Letter. The purpose of the 114 Letter is to provide EPA with enough information to make a complete assessment of Respondent's compliance status with standards of performance promulgated under Section 111 of the Act, and any emission standard promulgated under Section 112 of the Act.

The CAA Penalty Policy directs that a penalty of \$5,000 be proposed for Reporting and Notification Violations when a person fails to submit a complete report. Respondent failed to respond in full to the requests for information, as required by the 114 Letter. Respondent did not offer an adequate or appropriate answer to each inquiry, and many documents requested were not provided to EPA. Respondent's failure to produce the documents significantly hindered and delayed EPA's attempts to

assess the Moca landfill's compliance with applicable CAA requirements.

The CAA Penalty Policy also directs that a penalty be assessed for the length of time of the violation, including a reporting requirement and a testing requirement. Moca received the 114 Letter on June 2, 2009. The information was required within twenty-eight (28) calendar days after the receipt of the 114 Letter. Respondent requested an extension of time until August 10, 2009, which EPA approved. The information submitted was deficient and incomplete and, after a year had elapsed, on July 20, 2010, EPA was forced to initiate an administrative action to request the information. The length of time was calculated from August 10, 2009, to July 20, 2010, or eleven (11) months of violation. The CAA Penalty Policy states that a penalty of \$15,000 should be assigned for a length of time of 11 months. Therefore, EPA proposes a penalty of \$20,000.

The Debt Collection Act and Part 19, direct EPA to adjust the gravity component a total of 28.95% for violations occurring on or after March 15, 2004, but before January 9, 2009, and an adjustment of 41.63% for violations occurring on or after January 9, 2009. The gravity component amount of \$ 20,000 was adjusted by \$8,326, resulting in a total proposed penalty of \$28,326.

### **Size of Violator**

The CAA Penalty Policy directs that a penalty be proposed that takes into account the size of violator, determined by the violator's net worth. Respondent's net worth is estimated at \$12,000,000, based on the 2009 Municipal Budget Report. The CAA Penalty Policy states that the penalty assigned to the size of violator component cannot exceed 50% of the total gravity component. EPA has calculated a penalty of

\$20,000 for the size of violator component of the gravity penalty for violators with the 12 million net worth. The inflation adjustment for the size of violator amount is 41.63% which will corresponds to an amount of \$8,326. Therefore, EPA proposes \$28,326 for the size of violator component of the gravity penalty.

### **Inflation Adjustment**

Pursuant to the Debt Collection Improvement Act (DCIA), 31 U.S.C. §§ 3701 *et seq.*, and 40 C.F.R. Part 19, the regulation promulgated pursuant to the DCIA, the CAA Penalty Policy “preliminary deterrence” amount should be adjusted 28.93% for inflation for all violations occurring after March 15, 2004, but before January 12, 2009, and further adjusted by 41.633% for all violations occurring after January 12, 2009. Respondent’s violations began, as early as, April 2008 and continue to April 2011. Inflation adjustments for violations were done in accordance with the DCIA requirements, which resulted in a total inflation adjustment of \$16,652.

### **Adjustment of Gravity Component**

The gravity component was adjusted to reflect Respondent’s lack of diligence to provide EPA with the information requested in the 114 Letter. The degree of willfulness or negligence was assumed to be 10% due to the delays for submittal of the information requested by EPA. Therefore, EPA is increasing the penalty by \$5,665.

### **Economic Benefit Component**

In this case, EPA determined the economic benefit of Moca’s failure to comply with the Section 114 information request was *de minimis*. Therefore, EPA does not propose an economic benefit component as part of the total penalty.

### **Total Amount**

In summary, EPA proposes a total penalty of \$62,317 for the violations alleged in this Complaint.

### **NOTICE OF OPPORTUNITY TO REQUEST A HEARING**

The hearing in this matter is subject to the Administrative Procedure Act, 5 U.S.C. §§ 552 *et seq.* The procedures for this matter are found in the CROP, a copy of which is enclosed with the transmittal of this Complaint. References to specific procedures in this Complaint are intended to inform you of your right to contest the allegations of the Complaint and the proposed penalty and do not supersede any requirement of the Consolidated Rules of Practice.

You have a right to request a hearing: (1) to contest any material facts set forth in the Complaint; (2) to contend that the amount of the penalty proposed in the Complaint is inappropriate; or (3) to seek a judgment with respect to the law applicable to this matter. In order to request a hearing you must file a written Answer to this Complaint along with the request for a hearing with the EPA Regional Hearing Clerk within thirty (30) days of your receipt of this Complaint. The Answer and request for a hearing must be filed at the following address:

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

A copy of the Answer and the request for a hearing, as well as copies of all other papers filed in this matter, are to be served on EPA to the attention of EPA counsel at the following address:

Carolina Jordán-García  
Assistant Regional Counsel  
Caribbean Environmental Protection Division  
U.S. Environmental Protection Agency - Region 2  
Centro Europa Building, Suite 417  
1492, Ponce de León Ave.  
San Juan, PR 00907

Your Answer should, clearly and directly, admit, deny, or explain each factual allegation contained in this Complaint with regard to which you have any knowledge. If you have no knowledge of a particular factual allegation of the Complaint, you must so state and the allegation will be deemed to be denied. The Answer shall also state: (1) the circumstances or arguments which you allege constitute the grounds of a defense; (2) whether a hearing is requested; and (3) a concise statement of the facts which you intend to place at issue in the hearing.

If you fail to serve and file an Answer to this Complaint within thirty (30) days of its receipt, Complainant may file a motion for default. A finding of default constitutes an admission of the facts alleged in the Complaint and a waiver of your right to a hearing. The total proposed penalty becomes due and payable without further proceedings thirty (30) days after the issue date of a Default Order.

### **SETTLEMENT CONFERENCE**

EPA encourages all parties against whom the assessment of civil penalties is proposed to pursue the possibilities of settlement by informal conferences. However, conferring informally with EPA in pursuit of settlement does not extend the time allowed to answer the Complaint and to request a hearing. Whether or not you intend to request a hearing, you may confer informally with the EPA concerning the alleged violations or the amount of the proposed penalty. If settlement is reached, it will be in the form of a

written Consent Agreement which will be forwarded to the Regional Administrator with a proposed Final Order. You may contact EPA counsel, Carolina Jordán-García at (787) 977-5834, [jordan-garcia.carolina@epa.gov](mailto:jordan-garcia.carolina@epa.gov), or at the address listed above, to discuss settlement. If Respondent is represented by a legal counsel in this matter, Respondent's counsel should contact EPA.

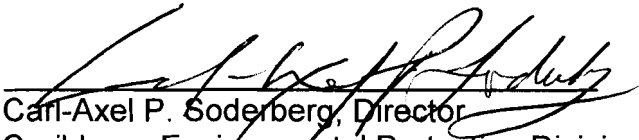
**PAYMENT OF PENALTY IN LIEU OF ANSWER, HEARING AND/OR SETTLEMENT**

Instead of filing an Answer, requesting a hearing, and/or requesting an informal settlement conference, you may choose to pay the full amount of the penalty proposed in the Complaint. Such payment should be made by a cashier's or certified check payable to the Treasurer, United States of America, marked with the docket number and the name of the Respondent(s) which appear on the first page of this Complaint. The check must be mailed to:

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

A copy of your letter transmitting the check and a copy of the check must be sent simultaneously to EPA counsel assigned to this case at the address provided under the section of this Complaint entitled Notice of Opportunity to Request a Hearing. Payment of the proposed penalty in this fashion does not relieve one of responsibility to comply with any and all requirements of the Clean Air Act.

Issued: Sept 30, 2011

  
Carl-Axel P. Soderberg, Director  
Caribbean Environmental Protection Division  
U.S. Environmental Protection Agency - Region 2

To: Hon. José Enrique Avilés Santiago  
Mayor  
Municipality of Moca  
P.O. Box 1571  
Moca, Puerto Rico 00676-1571

IN THE MATTER OF:

**Municipality of Moca**  
P.O. Box 1571  
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**Respondent**

In a Proceeding under Section 113(a) of  
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**Complaint and Notice of Opportunity to  
Request a Hearing**

**Index No. : CAA-02-2011-1216**

**CERTIFICATE OF SERVICE**

I certify that the foregoing Complaint and Notice of Opportunity to Request a Hearing was sent to the following persons, in the manner specified, on the date below:

Original and Copy via UPS Mail to:

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

Copy by Certified Mail Return Receipt:

Hon. José Enrique Avilés Santiago  
Municipality of Moca  
P.O. Box 1571  
Moca, Puerto Rico 00676-1571

Dated:

*September 30, 2011*

*Alia Sany*