U.S. ENVIRONMENTAL PROTECTION AGENCY-REG. II
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REGIONAL HEARING CLERK

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region 2

IN THE MATTER OF Municipality of Toa Baja Respondent Department of Transportation and Public Works Campanilla Bypass (Rd. 865 and 867), Campanilla Ward, Toa Baja, Puerto Rico 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-02-2009-7111

I. STATUTORY AUTHORITY

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 U.S.C. §§ 6901 et seq. (referred to collectively as the "Act" or "RCRA"). The United States Environmental Protection Agency ("EPA") has promulgated regulations governing the handling and management of hazardous waste and used oil at 40 C.F.R. Parts 260 through 279.

This COMPLAINT, COMPLIANCE ORDER AND NOTICE OF OPPORTUNITY FOR HEARING ("Complaint") serves as notice of EPA's preliminary determination that the Municipality of Toa Baja (hereinafter "Respondent" or "Toa Baja") has violated requirements of RCRA and regulations implementing RCRA, concerning the management of hazardous waste at a municipal facility, where its Department of Transportation and Public Works ("DTPW") is located, in Toa Baja, Puerto Rico.

Pursuant to 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 is not authorized by EPA to conduct a hazardous waste management program under Section 3006 of RCRA, 42 U.S.C. § 6926. Therefore, EPA retains primary responsibility for requirements promulgated pursuant to RCRA. As a result, all requirements in 40 C.F.R. Parts 260 through 268, and 270 through 279 relating to hazardous waste are in effect in the Commonwealth of Puerto Rico and EPA has the authority to implement and enforce these regulations.

Section 3008(a)(1) of RCRA, 42 U.S.C. § 6928(a)(1), provides, in part, that "whenever on the basis of any information the Administrator (of EPA) determines that any person has violated or is in violation of any requirement of this subchapter [Subtitle C of RCRA], the Administrator may issue an order assessing a civil penalty for any past or current violation."

Pursuant to Section 3008(a)(3) of RCRA, 42 U.S.C. §6928(a)(3), "[a]ny penalty assessed in the order [issued under authority of Section 3008(a) of RCRA, 42 U.S.C. § 6928(a)] shall not exceed $25,000 per day of noncompliance for each violation of a requirement of [Subtitle C of RCRA]." Under authority of the Federal Civil Penalties Inflation Adjustment Act of 1990, 104 Stat. 890, Public Law 101-410 (codified at 28 U.S.C. § 2461 note), as amended by the Debt Collection Improvement Act of 1996, 110 Stat. 1321, Public Law 104-134 (codified at 31 U.S.C. § 3701 note), EPA has promulgated regulations, codified at 40 C.F.R. Part 19, that, inter alia, increased to $27,500 the maximum penalty EPA might obtain pursuant to Section 3008(a)(3) of RCRA, 42 U.S.C. §6928(a)(3) for violations occurring between January 31, 1997 and March 15, 2004, and the maximum penalty to $32,500 for violations occurring after March 15, 2004. 69 Fed. Reg. 7121 (February 13, 2004).

The Complainant in this proceeding, the Director of the Caribbean Environmental Protection Division, EPA, Region 2, who has been duly delegated the authority to institute this action, hereby alleges:

II. GENERAL ALLEGATIONS

Jurisdiction

1) This Tribunal has jurisdiction over the subject matter of this action pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), and 40 C.F.R. § 22.1(a)(4).

Respondent's background

2) Respondent is the Municipality of Toa Baja, a municipal government with a Municipal Assembly, governed under the "Ley de Municipios Autónomos", Public Law, No. 81, of August 30, 1991, as amended. The Municipality of Toa Baja was founded in 1745 and is on the northern coast of Puerto Rico.

3) Respondent is a "person" as that term is defined in Section 1004(15) of the Act, 42 U.S.C. § 6903(15), and 40 C.F.R. § 260.101.

4) Respondent operates its Department of Transportation and Public Works from a property located at Campanilla Bypass (Rd. 865 and 867), Campanilla Ward, Toa Baja, Puerto Rico ("the Facility").

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[1] All words or phrases that have been defined in reference to statutory and/or regulatory provisions are used throughout the Complaint as so defined.

5) The DTPW is divided into various offices or divisions: Public Works (in Spanish known as "Obras Públicas"), Environmental Sanitation (in Spanish known as "Saneamiento"), Upkeep and Beautification (in Spanish known as "Ornato"), Education, and Transportation. The Public Works office is in charge of the maintenance of municipal roads and sidewalks, including painting upkeep, tree trimming and removal of branches, and supporting municipal school cultural activities with tasks such as building performing stages and kiosks, improving structure aesthetics (e.g. painting), among other things. The Environmental Sanitation office is in charge of the collection, segregation, and final disposition of the solid waste generated by the residents of the Municipality of Toa Baja. The Transportation office is in charge of providing preventive maintenance and mechanic services to the official vehicles of Toa Baja.

6) The Facility includes, at a minimum, the following areas:

   a) Administrative Buildings;
   b) Public Works Areas:
      i) Wood Shop;
      ii) Welding Shop; and,
      iii) Painting Warehouse;
   c) Environmental Sanitation Area;
   d) Department of Transportation and Maintenance Area:
      i) Tire and Battery Warehouse;
      ii) Used Oil and Filter Change Area; and,
      iii) Vehicle Preventive & Mechanic Shop;
   e) Employee's Parking Lot.

7) Since at least 1992, Respondent has conducted, and continues to conduct, building maintenance operations; maintenance of municipal roads and sidewalks; tree trimming and removal of branches; paint related work; solid waste collection, segregation and disposal; and preventive maintenance and mechanic services to Toa Baja's motor vehicles in the course of conducting normal operations at the Facility.

8) The Toa Baja DTPW Facility is a "facility," within the meaning of 40 C.F.R. § 260.10.

9) Respondent is the owner and operator of the Facility as those terms are defined in 40 C.F.R. § 260.10.

Respondent's Generation of Waste

10) Respondent, in carrying out its preventive maintenance and mechanic services, and in conducting normal building maintenance operations, has been generating "solid waste," as that term is defined in 40 C.F.R.§ 261.2, in various maintenance areas, mechanic shop, warehouses and other areas of the Facility at all times relevant to this Complaint.

11) As part of the above activities and maintenance operations, Respondent has generated, in various maintenance areas, mechanic shop, warehouses, and other areas of the Facility,

"hazardous waste," as defined in 40 C.F.R. § 261.3, at all times relevant to this Complaint. At all times mentioned in this Complaint and subsequent thereto, Respondent has been a hazardous waste "generator," as that term is defined in 40 C.F.R. § 260.10.

12) The Toa Baja DTPW Facility constitutes an "existing hazardous waste management facility" (or "existing facility") within the meaning of 40 C.F.R. § 260.10.

13) The Toa Baja DTPW Facility is and has been a "storage" facility for "hazardous waste," as those terms are defined in 40 C.F.R. § 260.10.

14) The Facility never received a "permit" to treat, store or dispose of hazardous waste as that term is defined in 40 C.F.R. § 270.2, and never qualified for interim status as a treatment, storage or disposal facility pursuant to 40 C.F.R. § 270.70.

15) A generator may accumulate, for a limited period of time, specified small or large quantities of hazardous waste generated on site without requiring a permit or interim status provided it complies with all applicable conditions set forth in 40 C.F.R. § 262.34. For this exemption to apply, a generator must comply with all of these conditions. A generator may accumulate, for a limited period of time, specified small or large quantities of hazardous waste generated on site without complying with all the requirements set forth in 40 C.F.R. Part 265, provided it complies with all applicable conditions set forth or cross referenced in 40 C.F.R. § 262.34. For this exemption to apply, a generator must comply with all of these conditions.

16) Respondent did not comply with all applicable conditions set forth in 40 C.F.R. § 262.34.

Notification of Hazardous Waste Generation

17) Pursuant to Section 3010 of RCRA, 42 U.S.C. § 6930, Respondent is required to notify EPA, through a Notification of Regulated Waste Activity Form (EPA Form 8700-12) prior to treat, store, dispose of, transport, or offer for transportation, hazardous waste. The Respondent must not engage in any hazardous waste activities without having received an EPA identification number from the Administrator. This is a mandatory reporting requirement by the Respondent.

18) The Facility under the name "Toa Baja Department of Transportation and Public Works" and in the course of carrying out its activities had generated hazardous waste at the Facility.

19) The Respondent did not notify EPA nor did it receive an EPA identification number from the Administrator prior to its generation, transportation, recycling and/or disposal activities of regulated wastes. The Respondent did not notify EPA of its activities, including the location and general description of the regulated wastes handled at its DTPW Facility.

EPA Investigative Activities

20) On or about June 27, 2007, duly designated representatives of EPA conducted an inspection of the Facility, pursuant to Section 3007 of RCRA, 42 U.S.C. § 6927 (the "Inspection").

21) The purpose of the Inspection was to perform a hazardous waste compliance evaluation, and to determine Respondent's compliance at the Facility with applicable requirements of RCRA and its implementing regulations.

22) During the Inspection, EPA also evaluated its compliance with the applicable federal regulations for the management of used oil throughout the Facility.

23) On or about June 27, 2007, duly designated representatives of EPA held an inspection closing conference with Respondent's representatives at the Facility.

24) During the closing conference, EPA discussed the preliminary findings of the Inspection with Respondent's representatives. EPA informed Respondent's representatives EPA's findings of improper handling, storage, and management of hazardous wastes generated at the Facility and its failure to formally notify EPA, according to the regulations. Furthermore, EPA made emphasis on the numerous spill incidents from abandoned drums and the inadequate management of used oil spills that were not immediately controlled or cleaned-up throughout the Facility. Additionally, EPA informed Respondent's representatives about the improper handling, storage, and management of Universal Wastes generated at the Facility.

25) On or about September 30, 2008, pursuant to Sections 3007 and 3008 of RCRA, 42 U.S.C. §§ 6927 and 6928, EPA issued to Respondent a Notice of Violation (the "NOV") and Information Request Letter (the "NOV Request Letter") citing RCRA violations discovered during the Inspection and requiring the submission of certain information.

26) The NOV Request Letter required that Respondent take immediate action to correct the RCRA violations identified during the Inspection and to submit, within thirty (30) days of receipt of such correspondence, a response including: (1) a description of the actions that Respondent had taken to correct the violations; (2) documentation certifying that the violations had been corrected; and (3) a description of the procedures that would be put into place in order to prevent the occurrence of such violations in the future.

27) On or about November 17, 2008, Respondent submitted its response (the "Response") to the NOV Request Letter.

28) The Response was prepared by an employee or agent of Respondent in the course of carrying out his/her employment or duties.

29) Based on information provided by the Respondent, it did not conduct corrective actions at the Facility in order to address the RCRA violations identified by EPA during the Inspection

COUNT 1 - Failure to Make Hazardous Waste Determinations

30) Complainant realleges each applicable allegation contained in paragraphs "1" through "29," inclusive, as if fully set forth herein.

31) 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 procedures specified in that provision.

32) Pursuant to 40 C.F.R. § 261.2, subject to certain applicable exclusions, a "solid waste" is any "discarded material" that includes "abandoned," "recycled" or "inherently waste-like materials," as those terms are further defined therein.

33) Pursuant to 40 C.F.R. § 261.2(b), materials are solid wastes if they are "abandoned" by being "disposed of," "burned or incinerated" or "accumulated, stored, or treated before or in lieu of being abandoned by being disposed of, burned or incinerated."

34) At the time of the Inspection, the Respondent was storing various containers of used solvents, paints, fuels, and chemical materials throughout its Facility without determining whether the spent materials were hazardous waste. At the time of the Inspection, the Respondent was not conducting hazardous waste determinations for waste streams generated at the Toa Baja DTPW Facility.

35) Prior to at least June 27, 2007, the Respondent generated at its Facility at least the following materials:

a) In the Department of Transportation and Maintenance Shop Areas:
   i) One (1) 55-gallon drum with unknown waste substance, labeled as "ATF" (ESSO brand), laying down horizontally on the ground. This drum was leaking directly on to the ground and evidence of previous spills on soils was noticed nearby the vicinity of the shop;
   ii) One (1) 55-gallon "open" drum with an unknown waste substance;
   iii) One (1) 5-gallon container with unknown oily waste content;
   iv) Several aerosol cans of lubricants (WD-40) and other discarded solvents laying on the ground nearby;
   v) Three (3) 55-gallon open drums with solid waste heavily impacted with paint waste located near the access road;
   vi) Spent diesel used for cleaning parts and tools, discarded on site; and,
   vii) Spent diesel being collected on a 40-gallon container located underneath the parts washer tray. Once the spent diesel container is full it is transferred to the "Used Oil" 500 gallon tank, which is collected by

different companies for alleged recycling. Based on the documentation and information provided by Respondent, the Facility has never analyzed the "spent diesel" for hazardous characteristics;

b) Two (2) 55-gallon open drums with solid waste heavily impacted with paint waste located in the Public Works Area;

c) One (1) 55-gallon drum with asphalt emulsion was lying vertically on the ground and leaking on to the yard;

d) Three (3) 5-gallon containers with unknown oily waste and discarded asphalt emulsions located in the Environmental Sanitation Area; and,

e) Approximately thirty (30) 5-gallon containers with paint waste and paint containing materials (e.g. containers with residue, brushes, rolls impacted with paint residuals, spent solvents) accumulated throughout the Facility for its eventual disposal into a local municipal landfill.

36) According to the information provided by the Respondent during EPA's Inspection, prior to at least June 27, 2007, Respondent discarded or disposed of the wastes identified in paragraph "35" by either placing them in the municipal trash, or accumulating or storing the material before or in lieu of it being disposed of without making a hazardous waste determination.

37) Respondent's failure to determine if each solid waste generated at its Facility constituted a hazardous waste is a violation of 40 C.F.R. § 262.11.

COUNT 2 - Failure to Minimize Risk of a Fire, Explosion, or Release

38) Complainant realleges each allegation contained in paragraphs "1" through "29," inclusive, as if fully set forth herein.

39) Pursuant to 40 C.F.R. § 262.34(a)(4), a generator must comply with the requirements for owners or operators in Subparts C, 40 C.F.R Part 265.

40) Pursuant to 40 C.F.R. § 265.31 (of Subpart C), a facility must be maintained and operated 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.

41) During at least the period from the time of the day of the Inspection, June 27, 2007 until the time EPA received Respondent's Response, November 17, 2008, Respondent failed 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 through numerous actions or inactions including but not limited to the following incidents:

a) Public Works Area

i) One (1) 55 gallon drum of asphalt emulsion was lying vertically on the ground leaking its content in the yard area.

b) Environmental Sanitation Area
   i) Several 55-gallon drums with unknown contents were observed next to an aboveground storage tank (i.e., AST-6,000 gallon volume capacity) identified as flammable. Some of the drums were lying down on the ground and leaking its contents. Evidence of previous spills was noticed around the area; and,
   ii) The abovementioned 6,000-gallon AST, was placed over a concrete structure without any secondary containment and its dispensing uncapped hose was laying on the ground, and leaking.

c) Transportation Department - Maintenance Shop
   i) Used oil impacted soils was observed by EPA representatives throughout the yard of the Maintenance Shop;
   ii) One (1) 55-gallon drum labeled ATF (ESSO brand) was leaking directly on to the ground; and,
   iii) One (1) 55-gallon of motor oil was found leaking and evidence of previous spills was noticed at the storage area.

42) Respondent's failure to properly manage the contents of the containers, which contained hazardous waste, to protect the containers from deterioration, and to properly manage the spills as described in paragraph "41" above, indicates that Respondent did not maintain or 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. This failure constitutes a violation of 40 C.F.R. § 265.31 as referenced by § 262.34(d)(4).

COUNT 3 - Failure to Comply with Universal Waste Regulations

43) Complainant realleges each allegation contained in paragraphs "1" through "29," inclusive, as if fully set forth herein.

44) A small quantity handler of universal waste is a universal waste handler who does not accumulate 5,000 kilograms or more of universal waste at any time (40 C.F.R. § 273.9).

45) At the time of the Inspection, Respondent was storing universal waste throughout the Facility.

Universal Waste Handling

46) Pursuant to 40 C.F.R. § 273.13 (d)(1), small handlers of universal waste must contain used lamps in containers or packages that are structurally sound, adequate to prevent breakage, and compatible with the contents of the lamps. Such containers and packages must remain closed.

47) At the time of the Inspection, Respondent was storing universal waste lamps in the vicinity of the Public Works Area, where there were several spent fluorescent lamps broken on the ground. Also, various spent fluorescent lamps were observed by EPA representatives, abandoned on the ground without being placed inside any package to prevent breakage and without any label.

48) Pursuant to 40 C.F.R. § 273.13(d)(ii), a small quantity handler of universal waste must immediately clean up and place in a container any lamp that is broken and must place in a container any lamp that shows evidence of breakage, leakage, or damage that could cause the release of mercury or other hazardous constituents to the environment.

49) Respondent's November 17, 2008 Response, indicated that it was still in the process of evaluating proposals from various vendors for the proper management and disposal of the universal waste generated at the Facility.

50) Respondent's failure to store the lamps in a container and to clean up and place in a container any broken lamp constitutes a violation of 40 C.F.R. § 273.13(d).

Universal Waste Labeling

51) Pursuant to 40 C.F.R. § 273.14(e), a small quantity handler of universal lamps must label or mark each lamp or a container or package in which such lamps are contained with one of the following phrases: "Universal Waste – Lamp(s)," or "Waste Lamp(s)," or "Used Lamp(s)".

52) At the time of the Inspection, containers with waste lamps were not labeled with the words "Universal Waste – Lamp(s)," or "Waste Lamp(s)," or "Used Lamp(s)".

53) Respondent's failure to label waste lamps with the words "Universal Waste – Lamp(s)," or "Waste Lamp(s)," or "Used Lamp(s)" constitutes a violation of 40 C.F.R. § 273.14(e).

Universal Waste Accumulation Time Limits

54) Pursuant to 40 C.F.R. § 275.15(a), a small quantity handler of universal waste may accumulate universal waste for no longer than one year from the date the universal waste is generated, or received from another handler.

55) Pursuant to 40 C.F.R. § 275.15(c), the universal waste handler must be able to demonstrate the length of time that the universal waste has been accumulated from the date it becomes a waste or is received by:

   a) Placing the universal waste in a container and marking or labeling the container with the earliest date that the universal waste became a waste or was received;
   b) Marking or labeling each individual item of universal waste (e.g. each battery or thermostat) with the date it became a waste or was received;

c) Maintaining an inventory system on-site that identifies the earliest date that any universal waste in a group of universal waste items or a group of containers of universal waste became a waste or was received;

d) Placing the waste in a specific accumulation area and identifying the earliest date that any waste in the area became a waste or was received; or

e) Any other method which clearly demonstrates the length of time that the universal waste has been accumulated from the date it becomes a waste or is received.

56) At the time of the Inspection, containers and lamps were not labeled or marked with the date the lamps were accumulated at the Toa Baja DTPW Facility.

57) At the time of the Inspection, Respondent failed to demonstrate to EPA representatives that it had complied with at least one of the requirements mentioned under 40 C.F.R § 275.15(c) to demonstrate the length of time it had been accumulating universal waste.

58) As a small quantity handler of universal waste, Respondent failed to comply with the regulations under 40 C.F.R. Part 273 Subpart B for management of universal waste.

COUNT 4 - Failure to Comply with the Used Oil Generator Standards

59) Complainant realleges each allegation contained in paragraphs "1" through "29," inclusive, as if fully set forth herein.

60) Pursuant to 40 C.F.R. § 279.22(c)(1), containers used to store used oil at generator facilities must be labeled or marked clearly with the words "Used Oil."

61) At the time of the Inspection, Respondent was storing used oil in a 500-gallon above ground tank, in thirty six (36) 55-gallon steel drums throughout the Facility; and in four (4) 5-gallon plastic containers inside the Maintenance Shop. Respondent had failed to label or mark the used oil tank, drums and containers with the words "Used Oil."

62) Respondent's failure to have the containers described above, labeled with the words "Used Oil", constitutes a violation of 40 C.F.R. § 279.22(c)(1).

63) Pursuant to 40 C.F.R. § 279.81, used oil that is not recycled, but will be disposed of, is subject to the hazardous waste regulations, if applicable. Therefore, any material soaked with used oil that is disposed of, is a solid waste, and may be a hazardous waste.

64) At the time of the Inspection, Respondent was storing two (2) 55-gallon steel drums holding solid waste mixed with rags soaked with used oil at the Mechanic Shop.

65) Respondent's failure to make a hazardous waste determination on the used oil soaked rags that were destined to be disposed of as described above, constitutes a violation of 40 C.F.R. § 279.81.

66) Pursuant to 40 C.F.R. §§ 261.2(a) and (b) and 261.4(b)(13), used oil filters which have been disposed and any used oil container, both constitute solid wastes.

67) As stated above, a person who generates a solid waste must determine if that waste is a hazardous waste. However, non-terne (non-lead) plated used oil filters, that are punctured or crushed and allowed to "hot gravity drain" for at least 12 hours before they are disposed of will not be regulated as hazardous waste but still must be disposed of in accordance with municipal solid waste landfill requirements.

68) At the time of the Inspection, Respondent managed used oil filters that were not being drained for at least 12 hours, nor punctured or crushed before final disposal in the Mechanic Shop area.

69) Prior to disposing of used oil filters, Respondent should have made a determination if the filters were a hazardous waste. If the filters were non-terne plated used oil filters, the Respondent should have punctured and allowed to "hot gravity drain" the filters for at least 12 hours before disposal or recycling.

70) Respondent's failure to manage used oil filters as described above, constitutes a violation of 40 C.F.R. §§ 261.2(a) and (b) and 261.4(b)(13), respectively.

III. PROPOSED CIVIL PENALTY

The proposed civil penalty has been determined in accordance with Section 3008(a)(3) of the Act, 42 U.S.C. § 6928(a)(3). 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/rcpp2003fnl.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. The penalty amounts were amended for violations occurring between January 31, 1997 and March 14, 2004. The maximum civil penalty under Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), for those violations is $27,500 per day of violation. For violations after March 15, 2004, the maximum penalty is $32,500 per day of violations.

The Complainant proposes, subject to receipt and evaluation of further relevant information from the Respondent, that the Respondent be assessed the following civil penalty 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 is included in Attachment I, below. Matrices employed in the determination of individual and multi-day penalties are included as Attachments II.

In view of the above-cited violations, and pursuant to the authority of Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), and the RCRA Civil Penalty Policy, including the seriousness of the violations and any good faith efforts by the Respondent to comply with applicable requirements, the Complainant herewith proposes the assessment of a civil penalty in the total amount of Ninety Four Thousand and Three Hundred Nineteen Dollars ($94,319.00) as follows:

Count 1:	$35,595.00
Count 2:	$34,225.00
Count 3:	$14,184.00
Count 4:	$10,315.00
Total Proposed Penalty:	$94,319.00

IV. COMPLIANCE ORDER

Based upon the foregoing, and pursuant to the authority of Section 3008 of the Act, Complainant herewith issues the following Compliance Order to the Respondent, which shall take effect (i.e., the effective date) 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):

1) On the effective date of this Compliance Order, Respondent shall notify EPA, through a Notification of Regulated Waste Activity Form (EPA Form 8700-12), its generation, transportation, recycling and/or disposal activities of regulated hazardous wastes at the Facility, including the location and general description of the regulated wastes it handles. Respondent shall comply with 40 C.F.R. § 262.12 for any hazardous waste generated at the Facility.

2) Within thirty (30) calendar days of the effective date of this Compliance Order, Respondent shall, to the extent it has not already done so, and to the extent still possible, make the required determinations whether solid wastes previously generated at the Facility are hazardous wastes. Respondent shall comply with 40 C.F.R. § 262.11 for any newly generated solid waste.

3) Respondent shall not store hazardous waste at the Facility for more than 180 days (or more than 90 days if such waste is generated during a calendar month in which the Facility generates in excess of 1,000 kilograms of hazardous wastes or one kilogram of acute hazardous waste or otherwise qualifies as a large quantity generator).

4) Within thirty (30) days of the effective date of this Compliance Order, Respondent shall, to the extent it has not already done so, take sufficient measures as to insure that the

Facility is maintained and operated 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. At a minimum, these measures must include:

a) Ensuring that hazardous materials are managed and stored in a manner designed and operated to minimize the possibility of a fire, explosion, and/or release including minimizing the potential for releases of used solvents, paints, fuels, and chemical materials to the environment; and,

b) Ensuring that all otherwise unusable chemical materials and hazardous waste are properly managed and disposed of in a timely manner consistent with the hazardous waste management requirements.

5) Within ten (10) calendar days of the effective date of this Compliance Order, Respondent shall only utilize containers that are closed to accumulate and/or store hazardous wastes at the Facility.

6) Within ten (10) calendar days of the effective date of this Compliance Order, if containers holding hazardous waste are not in good condition or begin to leak, Respondent shall, to the extent it has not done so, transfer the hazardous waste to a container that is in good condition or manage the waste in some other way that complies with the applicable requirements.

7) Within thirty (30) calendar days of the effective date of this Compliance Order, to the extent it has not done so, Respondent shall comply with applicable federal regulations, including packaging and labeling of hazardous waste.

8) Within thirty (30) calendar days of the effective date of this Compliance Order, to the extent it has not done so, Respondent shall comply with applicable federal regulations, including packaging and labeling of fluorescent light bulbs (lamps) that may be managed and disposed of as Universal Waste. Respondent shall comply with 40 C.F.R. Part 273 of the Universal Waste Rule, for the proper handling and managing of such universal waste.

9) Within ten (10) calendar days of the effective date of this Compliance Order, Respondent shall label with the words "Used Oil" all containers and tanks accumulating Used Oil. Respondent shall comply with applicable federal regulations of 40 C.F.R. Part 279, "Used Oil Regulations," for the proper handling and managing of such used oil at the Facility.

10) Within thirty (30) calendar days of the effective date of this Compliance Order, Respondent shall comply with all other applicable federal and state regulatory requirements for hazardous waste generators.

11) Respondent shall submit to EPA within forty (45) 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 Paragraphs 1 through 10 of this Compliance Order, above. 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.

12) All responses, documentation, and evidence submitted in response to this Compliance Order should be sent to:

Eduardo R. González
Response & Remediation Branch
Caribbean Environmental Protection Division
U.S. Environmental Protection Agency, Region 2
Centro Europa Building, Suite 417
1492 Ponce de Leon Avenue
San Juan, Puerto Rico 00907

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 violations at the Facility. In addition, nothing herein waives, prejudices or otherwise affects EPA's right to enforce 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 Facility.

V. 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, as amended, a violator failing to take corrective action within the time specified in a compliance order is liable for a civil penalty of up to $32,500 for each day of continued noncompliance. Such continued noncompliance may also result in suspension or revocation of any permits issued to the violator whether issued by EPA.

VI. 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 Orders, and the Revocation, Termination or Suspension of Permits," ("CROP") and which are codified at 40 C.F.R. Part 22. A copy of these rules accompanies this "Complaint, Compliance Order and Notice of Opportunity for Hearing."

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 is 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 - Room 1631
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 its 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 to affirmatively raise in the Answer facts that constitute or that might constitute the grounds of their 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 does not request 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 Respondent requests a hearing pursuant to 40 C.F.R. § 22.15 within thirty (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. §§ 551-559, and the procedures set forth in Subpart D of 40 C.F.R. Part 22.

C) Failure To Answer

If Respondent fails in its 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 Agency's Environmental Appeals Board ["EAB"; see 40 C.F.R. § 1.25(e)] 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 its right to judicial review. 40 C.F.R. § 22.27(d).

To appeal an initial decision to the EAB, Respondent must do so "[w]ithin thirty (30) days after the initial decision is served." 40 C.F.R. § 22.30(a). Pursuant to 40 C.F.R. § 22.7(c), where service is effected 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.

VII. 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 it believes is relevant to the disposition of this matter, including: (1) actions Respondent has taken to correct any or all of the violations herein alleged, (2) any information relevant to Complainant's calculation of the proposed penalty, (3) the effect the

proposed penalty would have on Respondent's ability to continue in business, and/or (4) 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
Assistant Regional Counsel
U.S. Environmental Protection Agency, Region 2
Centro Europa Building, Suite 417
1492 Ponce de León Avenue
San Juan, PR 00907

Telephone: (787) 977-5819
Facsimile: (787) 729-7748

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 requesting 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 will be embodied in a written consent agreement. 40 C.F.R. § 22.18(b)(2). In accepting the consent agreement, Respondent waives its right to contest the allegations in the Complaint and waive its 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's entering into a settlement through the signing of such Consent Agreement and its complying with the terms and conditions set forth in such Consent Agreement terminate this administrative litigation and the civil proceedings arising out of the allegations made in the complaint. Respondent's entering into a settlement does not extinguish, waive, satisfy or

otherwise affect its obligation and responsibility to comply with all applicable statutory and regulatory requirements, and to maintain such compliance.

VIII. 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 thirty (30) days after receipt of the Complaint, Respondent should promptly contact the Assistant Regional Counsel identified in Section VII.

IX. FILING OF DOCUMENTS

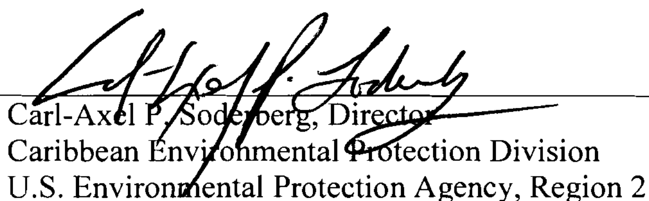
The Answer and any Hearing Request and all subsequent documents filed in this action shall be sent to:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th floor - Room 1631,
New York, New York 10007-1866

A copy of the Answer, any Hearing Request and all subsequent documents filed in this action shall be sent to:

Lourdes del Carmen Rodríguez
Assistant Regional Counsel
U.S. Environmental Protection Agency, Region 2
Centro Europa Building, Suite 417
1492 Ponce de León Avenue
San Juan, PR 00907
Telephone: (787) 977-5819
Facsimile: (787) 729-7748

COMPLAINANT:



Date: 09-30-09

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

To: Honorable Aníbal Vega Borges
Mayor of Toa Baja Municipality
P.O. Box 2359
Toa Baja, PR 00951

cc: Ms. María V. Rodriguez, Director
Land Pollution Regulation Program
Puerto Rico Environmental Quality Board
P.O. Box 11488
Santurce, PR 00910

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region 2

IN THE MATTER OF Municipality of Toa Baja Respondent, Department of Transportation and Public Works Campanilla Bypass (Rd. 865 and 867), Campanilla Ward, Toa Baja, Puerto Rico 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-02-2009-7111

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-02-2009-7111, 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 Orders, and the Revocation, Termination or Suspension of Permits," 40 C.F.R. Part 22, by:

Certified Mail/Return Receipt Requested, to:

Honorable Aníbal Vega Borges
Mayor
Municipality of Toa Baja
P.O. Box 2359
Toa Baja, PR 00951

The Original and a copy for filing by Federal Express to:

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

Dated: October 1, 2009

San Juan, Puerto Rico