



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2  
290 BROADWAY  
NEW YORK, NY 10007-1866

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REG. II  
2007 JUL 10 AM 12:17  
REGIONAL HEARING  
CLERK

JUN 29 2007

**CERTIFIED MAIL- RETURN RECEIPT REQUESTED**

Jorge A. Santini  
Mayor, San Juan, PR  
Municipio de San Juan (Municipality of San Juan)  
P.O. Box 70179  
San Juan, PR 00936-8179

Re: **In the Matter of Municipality of San Juan, Puerto Rico**  
**Docket No. RCRA-02-2007-7110**

Dear Honorable Santini:

Enclosed is the Complaint, Compliance Order and Opportunity for Hearing in the above-referenced proceeding. The Complaint alleges violations of the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901 *et seq.*

You have the right to a formal hearing to contest any of the allegations in the Complaint and/or to contest the penalty proposed in the Complaint. If you wish to contest the allegations and/or the penalty proposed in the Complaint, you must file an Answer within ***thirty (30)*** days of your receipt of the enclosed Complaint with the Regional Hearing Clerk of the Environmental Protection Agency ("EPA"), Region 2, 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

If you do not file an Answer within thirty (30) days of receipt of this Complaint and have not obtained a formal extension for filing an Answer from the Regional Judicial Officer of Region 2, a default order may be entered against you and the entire proposed penalty may be assessed.

Whether or not you request a formal hearing, you may request an informal conference with EPA to discuss any issue relating to the alleged violations and the amount of the proposed penalty. EPA encourages all parties against whom it files a Complaint to

pursue the possibility of settlement and to have an informal conference with EPA. However, a request for an informal conference *does not* substitute for a written Answer, affect what you may choose to say in an Answer, or extend the thirty (30) days by which you must file an Answer requesting a hearing.

You will find enclosed a copy of the "Consolidated Rules of Practice," which govern this proceeding. (A brief discussion of some of these rules appears in the later part of the Complaint.) For your general information and use, I also enclose an "Information Sheet for U.S. EPA Small Business Resources." This document offers some useful information and resources.

EPA encourages the use of Supplemental Environmental Projects, where appropriate, as part of any settlement. I am enclosing a brochure on "EPA's Supplemental Environmental Projects Policy." Please note that these are only available as part of a negotiated settlement and are not available if this case has to be resolved by a formal adjudication.

If you have any questions or wish to schedule an informal conference, please contact the attorney whose name is listed in the Complaint.

Sincerely,



Dore LaPosta, Director  
Division of Enforcement and Compliance Assistance

Enclosures

cc: Karen Maples, Regional Hearing Clerk (without enclosures)

Mr. Heriberto Sauri Santiago  
Director  
Urban Development and Housing Programmatic Area  
San Juan Obras Publicas y Ambiente  
P.O. Box 70179  
San Juan, PR 00936-8179

Mr. Jorge R. Quintana Lajara  
Legal Counsel  
Municipality of San Juan  
P.O. Box 70179  
San Juan, PR 00936-8179

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
Region 2

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REG. II  
2007 JUL 10 AM 12:18  
REGIONAL HEARING  
CLERK

IN THE MATTER OF:

**Municipality of San Juan, Puerto Rico**

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-02-2007-7110

**COMPLAINT**

**I. STATUTORY AUTHORITY**

This is a civil administrative proceeding instituted pursuant to Section 3008 of the Solid Waste Disposal Act ("SWDA") 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 at 40 C.F.R. Parts 260 through 279.

This COMPLAINT, COMPLIANCE ORDER AND NOTICE OF OPPORTUNITY FOR HEARING ("Complaint") serves notice of EPA's preliminary determination that the Municipality of San Juan, through its Department of Public Works and the Environment (hereinafter "Respondent" and/or "DPWE") has violated requirements of RCRA at its facility at K.M. 1.2 John F. Kennedy Expressway, at the Marginal Street in San Juan, Puerto Rico (the "facility" or "site").

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 management 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 a "State" within the meaning of this provision. 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 by EPA pursuant to RCRA. As a result, all requirements in 40 C.F.R. Parts 260 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 Division of Enforcement and Compliance Assistance, EPA, Region 2, has been duly delegated the authority to institute this action. For all times relevant to this Complaint, Complainant hereby alleges, upon information and belief:

## **II. GENERAL ALLEGATIONS**

### **Jurisdiction**

1. This administrative 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, the Municipality of San Juan, Puerto Rico, is an entity that was organized pursuant to, and has existed under, the laws of the Commonwealth 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. § 260.10.
4. The Department of Public Works and the Environment (“DPWE”) is a department of the Respondent.
5. Respondent’s DPWE facility is located at KM 1.2 John F. Kennedy Expressway, at the Marginal Street, in San Juan, Puerto Rico.

6. Respondent's DPWE facility provides preventive maintenance and mechanic services for the San Juan Municipality vehicle fleet (including motor oil changes). Respondent also provides maintenance service to the buildings located throughout the Municipality.
7. The DPWE facility at which Respondent provides preventive maintenance and mechanic services for the Municipality of San Juan, Puerto Rico, vehicle fleet is a "facility", as that term is defined in 40 C.F.R. § 260.10. The facility includes, among other areas, a large truck motor pool area and a preventive maintenance area for cars.
8. Respondent has been the owner and operator of the DPWE facility as those terms are defined in 40 C.F.R. § 260.10.

#### **Respondent is a Used Oil Generator**

9. "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 as that term is defined in 40 C.F.R. § 279.1.
10. A "used oil generator" is any person, by site, whose act or process produces used oil or whose act first causes used oil to become subject to regulation, as that term is defined in 40 C.F.R. § 279.20(a).
11. The used oil generated and stored at Respondent's DPWE facility is subject to the requirements of 40 C.F.R. Part 279, Subpart C.
12. By reason of its activities at the DPWE facility, Respondent is a "used oil generator."

#### **Respondent's generation of waste**

13. Respondent, in carrying out its preventive maintenance and mechanic services for the San Juan vehicle fleet (including motor oil changes), and in the course of conducting normal building maintenance operations at the facility, has been generating "solid waste," as defined in 40 C.F.R. § 261.2, in various maintenance areas and other areas of the facility.

#### **EPA investigative activity**

14. On or about February 14, 2006, a duly designated representative of EPA conducted an inspection of the DPWE facility pursuant to Section 3007 of RCRA, 42 U.S.C. § 6927 (the "Inspection").
15. The purpose of the Inspection was to determine Respondent's compliance with Subtitle C of RCRA and its implementing regulations.

16. On or about April 20, 2006, EPA issued Respondent an Information Request Letter (“IRL”) pursuant to Section 3007 of the Act, 42 U.S.C. § 6927, regarding its management of hazardous waste
17. As part of the aforementioned (see paragraph 16, above) letter, EPA issued to Respondent a Notice of Violation (“NOV”) citing RCRA violations discovered during the Inspection.
18. In a letter dated May 17, 2006, Respondent submitted a preliminary response to EPA’s NOV, which included information and photographs showing corrective action performed by Respondent in response to EPA’s NOV.
19. In a letter dated September 30, 2006, Respondent submitted its response to EPA’s IRL (hereafter known as the “Response”) and EPA’s NOV.
20. The Response was prepared by an employee or agent of the municipality of San Juan DPWE in the course of carrying out his employment or agency duties.
21. In the Response, Respondent stated that it had disposed of fluorescent light bulbs, which contain mercury, in the regular trash.
22. In the Response, Respondent stated that it had disposed of used oil filters from cars and trucks in the regular trash.
23. In the Response, Respondent stated that it recently instituted new procedures for management of used fluorescent lamps and mercury lamps and bulbs.
24. In the Response, Respondent stated that it recently instituted new procedures for management of used oil filters.
25. In the Response, Respondent stated that it adopted new Used Oil Handling and Operating Procedures for the handling, collection and disposal of used oils in the large truck motor pool area.
26. In the Response, Respondent stated that it needed more time to send additional information regarding several questions. However, Respondent has not to date provided EPA with any additional information.

**COUNT 1 - Failure to Make Hazardous Waste Determinations**

Complainant realleges each allegation contained in paragraphs "1" to "26", inclusive, as if fully set forth herein.

27. 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.
28. Pursuant to 40 C.F.R. § 261.2(a)(1) & (2), subject to certain inapplicable exclusions, a “solid waste” is any “discarded material” that includes “abandoned,” “recycled” or “inherently waste-like materials,” as those terms are further defined therein.
29. 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.”
30. As of at least February 14, 2006, Respondent had been using fluorescent light bulbs in the Electrical Department at the DPWE facility.
31. As of at least February 14, 2006, Respondent from time to time removed from service those of the aforementioned (paragraph 30, above) fluorescent light bulbs that were spent (ie., whose useful life had ended).
32. As of at least February 14, 2006, Respondent had been regularly disposing of the aforementioned (paragraph 31, above) spent fluorescent light bulbs into dumpsters used for regular trash (ie., non-hazardous waste).
33. Because the aforementioned (paragraph 32, above) spent fluorescent light bulbs had been disposed of, they had been abandoned.
34. As a consequence of having been abandoned, the aforementioned (paragraph 31, above) spent fluorescent light bulbs constituted a discarded material, and thus a solid waste.
35. Respondent was a generator of the aforementioned (paragraph 34, above) solid waste.
36. Fluorescent light bulbs contain mercury and many of the aforementioned (paragraph 31, above) spent fluorescent light bulbs contained sufficient quantities of mercury such that they would likely have exhibited characteristics of toxicity set forth in 40 C.F.R. Section 261.24 (and thus be classified thereunder as hazardous waste).
37. As of at least February 14, 2006, Respondent failed to determine (or have a third party determine on its behalf) whether the aforementioned (paragraph 31 through 36, above) spent fluorescent light bulbs constituted a hazardous waste in accordance with the procedures set out in 40 C.F.R. Section 262.11.

38. Respondent's aforementioned (paragraph 37, above) failure to have made a hazardous waste determination (or have a third party make such a determination on its behalf) constitutes a violation of 40 C.F.R. Section 262.11.
39. As of at least February 14, 2006, Respondent generated other waste materials, including the following:
- Six (6) used oil filters left on top of used oil containers (55-gallon drums) along the wall in the large truck motor pool area;
  - contents of the 5-gallon bucket along the wall in the large truck motor pool area that held two (2) large oil filters;
  - contents of the 5-gallon red bucket located in front of the first bin of the large truck motor pool area that contained what looked like oily rags, trash and clean-up material;
  - Two (2) 55-gallon drums in the large truck motor pool area that were collecting used oil, rain water and trash;
  - Contents of the concrete lined pit in the ground located in the preventive maintenance area for cars that was collecting used oil, anti-freeze and other waste material from the maintenance and washing of municipality cars; and
  - Spent diesel fuel mixed with used oil that were stored in 5-gallon buckets, located throughout the facility.
40. As of at least February 14, 2006, the Respondent discarded or disposed of the waste material identified in paragraph 39 by either placing the waste material in the municipal trash or letting the waste material drain onto the concrete floor and into an open grate storm drain, which was connected to the public sewer system, in the large truck motor pool area of the facility.
41. As of at least February 14, 2006, the Respondent accumulated or stored the waste material identified in paragraph 39 before or in lieu of being disposed.
42. Each of the materials identified in paragraph "39" above was a "discarded material" and "solid waste", as defined in 40 C.F.R. § 261.2.
43. As of at least February 14, 2006, Respondent had not determined if the materials identified in paragraph "39" constituted hazardous wastes.
44. The requirement to make a hazardous waste determination set forth at 40 C.F.R. Section 262.11 constitutes a requirement of subchapter III of RCRA, 42 U.S.C. Sections 6921-6939e.
45. 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 Mark Used Oil Containers**

Complainant realleges each allegation contained in paragraphs "1" to "45", inclusive, as if fully set forth herein.

46. 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".
47. Prior to at least February 14, 2006, Respondent had failed to label or mark the following used oil containers with the words "Used Oil":
  - a) eleven (11) 55-gallon drums located along the wall in the first bay of the large truck motor pool area;
  - b) three (3) 5-gallon buckets located throughout the large truck motor pool area that had an used-oil and diesel fuel mix that was treated as used oil;
  - c) two (2) 55-gallon drums (1/3 full) that collected used oil, rain water and trash, located in the large truck motor pool area; and
  - d) one (1) 2-gallon plastic Wisk detergent container holding used oil (full), and a portable metal black used oil box holding used oil (full) that were both placed in the first bay of the large truck motor pool area.
48. As of at least February 14, 2006, Respondent had failed to label or mark the used oil containers identified in paragraph "47" with the words "Used Oil".
49. Respondent's failure to label used oil containers with the words "Used Oil", constituted a violation of 40 C.F.R. § 279.22(c)(1).

### **COUNT 3 - Failure to stop, contain, clean up and manage properly used oil releases**

Complainant realleges each allegation contained in paragraphs "1" to "49", inclusive, as if fully set forth herein.

50. Pursuant to 40 C.F.R. § 279.22(b), containers and above ground tanks used to store used oil must be in good condition (no severe rusting, apparent structural defects, deterioration) and not leaking (no visible leaks).
51. Pursuant to 40 C.F.R. § 279.22 (d), upon detection of a release of used oil to the environment, a used oil generator must stop the release, contain the released used oil, clean up and manage properly the released used oil and other materials and, if necessary to prevent future releases, repair or replace any leaking used oil storage containers or tanks prior to returning them to service.

52. At the time of the Inspection, the large truck motor pool area of the Facility consisted of six or seven open bays in a horseshoe configuration.
53. An open grate storm drain was located near the back center of the horseshoe configuration of the large truck motor pool area. The drain connected to the public sewer system.
54. During the Inspection, several 55-gallon drums in the large truck motor pool area were severely rusted, had apparent structural defects and/or were deteriorated.
55. During the Inspection, several 55-gallon drums in the large truck motor pool area were visibly leaking.
56. During the Inspection, there was standing used oil and old stains on the concrete floor beside the aforementioned (see paragraph 55 above) drums in the large truck motor pool area.
57. During the Inspection, standing used oil and old stains were on the concrete floor next to and around the eleven (11) 55-gallon used oil containers and/or drums located along the wall in the first bay of the large truck motor pool area.
58. During the Inspection, standing used oil and old stains were on the concrete floor under several trucks in the large truck motor pool area.
59. During the Inspection of the large truck motor pool area, there was used oil flowing underneath and away from the bottom of one truck (in the midst of an oil change) toward the center of the horseshoe, toward the open grate storm drain.
60. There was no spill containment material in use to contain any spill that was occurring in the large truck motor pool area at the time of the inspection.
61. During the inspection of the large truck motor pool area, Respondent was aware of the leaking drums, standing oil, and spills from the underneath the truck.
62. At the end of the Inspection, approximately two hours after the initial inspection of the large truck motor pool area, no apparent efforts had been undertaken to stop, contain, clean up and manage the released used oil in that area.
63. The preventive maintenance area for cars at the facility consisted of two bays where a car could drive through and have preventive maintenance performed. This maintenance included oil changes and car maintenance.

64. The bays in the preventive maintenance area for cars had open grate drains in the concrete floor in the middle of where the cars would drive.
65. The open grate drains in the bays of the preventive maintenance area for cars were connected to a concrete pit with an open grate drain on top, located in the back of the building.
66. Oil changes in the preventive maintenance area for cars were conducted with cars positioned over open grate drains that were connected to the outside pit behind the building.
67. During the Inspection, used oil was also in the open grate drains in the preventive maintenance area for cars.
68. During the Inspection, used oil was in the outside pit behind the building where the preventive maintenance area for cars was located.
69. There was no spill containment material in use in the preventive maintenance area for cars.
70. There were no used oil containers and/or drums in the preventive maintenance area for cars.
71. The release of used oil in and around the large truck motor pool area and preventive maintenance area for cars appeared to have been ongoing and endemic to the daily operation of the facility.
72. As of at least February 14, 2006, Respondent had failed to stop, contain, clean up and manage properly used oil releases mentioned in paragraphs 54 through 71, above.
73. Each of the oil spills, described in paragraphs 54 through 71 above, constituted a release of used oil to the environment.
74. The releases of used oil described in paragraphs 54 through 71, were not from an underground storage tank ("UST") system, as that term is defined in 40 C.F.R. § 280.12.
75. Prior to the Inspection on February 14, 2006, Respondent was aware of releases of used oil to the environment described in paragraphs 54 through 71.
76. As of the time of the Inspection on February 14, 2006, Respondent had failed to stop, contain, clean up and manage the releases of used oil properly.

77. As of the time of the Inspection on February 14, 2006, Respondent had failed to repair or replace leaking used oil storage containers prior to returning them to service.
78. Respondent's failure to store used oil in containers in good condition (no severe rusting, apparent structural defects, deterioration) and in containers that were not leaking (no visible leaks) is a violation of 40 C.F.R. § 279.22(b).
79. Respondent's failure to stop, contain, clean up and manage properly the released used oil is a violation of 40 C.F.R. § 279.22(d)(1)(2) & (3).
80. Respondent's failure to repair or replace leaking used oil storage containers prior to returning them to service is a violation of 40 C.F.R. § 279.22(d)(4).

#### **COUNT 4 - Failure to Store Used Oil Properly**

Complainant realleges each allegation contained in paragraphs "1" to "80", inclusive, as if fully set forth herein.

81. Pursuant to 40 C.F.R. § 279.22(a), used oil generators shall not store used oil in units other than tanks, containers, or units subject to regulation under Parts 264 or 265 of this chapter.
82. Storage of used oil in a pit is prohibited under federal used oil regulations.
83. There were no used oil containers and/or drums in the preventive maintenance area for cars.
84. Used oil from oil changes, anti-freeze, car wash water (degreaser/soaps) and other preventive maintenance waste was being collected in the pit located behind the preventive maintenance area for cars.
85. Used oil from the preventive maintenance area was stored in the outside pit behind the building.
86. The dimensions of the pit were approximately as follows: Length 13 feet, Width 6 feet, and Height 9 feet.
87. In its September 30, 2006 response to EPA's Information Request Letter, Respondent states: "The Pit is made of concrete and its foundation is supported by piles. Further description is not possible at this time, as the design drawings have not been located. When the drawings are found, we will submit a copy to your attention."
88. Respondent has not to date provided EPA with any design drawings or further information about the pit.

89. During the Inspection, used oil was in the outside pit behind the building where the preventive maintenance area for cars was located.
90. Prior to and on February 14, 2006, Respondent stored used oil in an outside concrete pit behind the building where the preventive maintenance area for cars was located at the facility.
91. Respondent's storage of used oil in the pit behind the building where the preventive maintenance area for cars was located at the facility, is a violation of 40 C.F.R. Section 279.22(a).

### III. PROPOSED CIVIL PENALTY

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

Count 1:	\$ 29,146.00
Count 2:	\$ 2,901.00
Count 3:	\$ 29,146.00
Count 4:	\$ 29,146.00
Total Proposed Penalty:	\$ 90,339.00

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.”

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), for violations occurring after March 15, 2004 is \$32,500 per day of violation. 40 C.F.R. Part 19 (2005).

To develop the proposed penalty in this Complaint, the Complainant has taken into account the particular facts and circumstances of this case with specific reference to EPA's 2003 RCRA 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 RCRA Penalty Policy provides a rational, consistent and equitable calculation methodology for applying the statutory penalty factors to particular cases.

A penalty calculation worksheet and narrative explanation to support the penalty figure for each RCRA violation cited in this Complaint is included in Attachment I, below. The matrix employed in the determination of the penalty is included as Attachment II, below. These Attachments are incorporated by reference herein.

#### **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) calendar 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):

To the extent that Respondent has not already complied with the following requirements, Respondent shall, within thirty (30) calendar days of the effective date of this Compliance Order:

- Respondent shall provide information as to the status of the solid waste generated and identified in paragraphs 31 and 39 above. For each solid waste that remains at the Facility, Respondent shall determine if the waste is a hazardous waste. Respondent shall also comply with 40 C.F.R. § 262.11 for any newly generated solid waste;
- label or mark used oil containers identified in paragraph 47, if still present at the facility, with the words "Used Oil", and label or mark all other containers used to store used oil as well;
- stop, contain, clean up and manage properly all used oil releases at the facility, including any remaining releases described in paragraphs 54 through 71 above, in compliance with 40 C.F.R. § 279.22 (d)(1)(2) & (3);
- repair or replace any leaking used oil storage containers prior to returning them to service, in compliance with 40 C.F.R. § 279.22(d)(4).
- Store used oil in containers in good condition (no severe rusting, apparent structural defects, deterioration) and in containers that are not leaking (no visible leaks), in compliance with 40 C.F.R. § 279.22(b);
- remove any used oil and other waste material remaining in the outside concrete pit behind the building where the preventive maintenance area for cars is located, and instead store used oil (from oil changes from the preventive maintenance area for cars) in tanks, containers or units subject to regulation under 40 C.F.R. Parts 264 or 265; and

- comply with the applicable regulations, and standards governing the handling and management of hazardous waste and used oil as set forth in 40 C.F.R. Parts 260 - 262 and Part 279.

Within forty (40) days of the effective date of this Compliance Order, Respondent shall submit documentation demonstrating compliance with the above-mentioned provisions. All responses, documentation, and evidence submitted in response to this Compliance Order should be sent to:

Edward J. Guster III  
Environmental Scientist  
United States Environmental Protection Agency  
Region 2  
290 Broadway, 22nd Floor DECA RCB  
New York, NY 10007  
212-637-3557

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, 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.

## **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 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 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. §§ 551-59, 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:

Bruce Aber  
Assistant Regional Counsel  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 2  
290 Broadway, 16<sup>th</sup> Floor,  
New York, NY 10007-1866  
(212) 637-3224

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 waives 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).

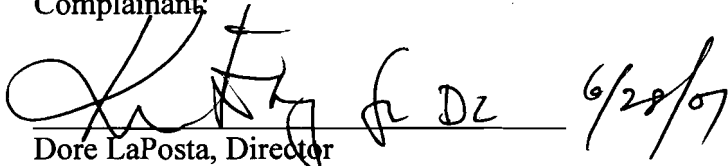
Respondent's entering into a settlement through the signing of such Consent Agreement and its complying with the terms and conditions set forth in such Consent Agreement terminate this

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.

Complainant:



Dore LaPosta, Director  
Division of Enforcement and Compliance Assistance  
U.S. Environmental Protection Agency, Region 2

**To:** Honorable Jorge A. Santini  
Mayor, San Juan, PR  
Municipio de San Juan (Municipality of San Juan)  
P.O. Box 70179  
San Juan, PR 00936-8179

**cc:** Heriberto N. Sauri, MPH (Municipality of San Juan DPWE)  
Israel Torres, Director, Land Pollution Regulation Program, Environmental Quality Board

**CERTIFICATE OF SERVICE**

This is to certify that on the day of JUL - 9, 2007 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-02-2007-7110 together with Attachments I, II, and III (collectively 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 certified mail, return receipt requested, to the Honorable Jorge A. Santini, Mayor, San Juan, Puerto Rico, Municipality of San Juan, P.O. Box 70179, San Juan, Puerto Rico 00936-8179.

I hand carried the original and a copy of the Complaint to the Regional Hearing Clerk of the United States Environmental Protection Agency, Region 2, 290 Broadway, 16<sup>th</sup> floor, New York, New York 10007-1866.

Dated: JUL - 9, 2007  
New York, New York

Michael Bay

**ATTACHMENT I**

**NARRATIVE EXPLANATION TO SUPPORT COMPLAINT AMOUNT  
Penalty Computation Worksheet (Count 1)**

Respondent: San Juan Department of Public Works and the Environment

Address: KM 1.2 John F. Kennedy Expressway, at the Marginal Street,  
San Juan, Puerto Rico 00936

Regulation Violated:  
40 C.F.R. § 262.11 Failure to make hazardous waste determination.

**PENALTY AMOUNT FOR COMPLAINT**

1. Gravity based penalty from matrix	\$29,146
(a) Potential for harm.	MAJOR
(b) Extent of Deviation.	MAJOR
2. Select an amount from the appropriate multi-day matrix cell.	\$0
3. Multiply line 2 by number of days of violation minus 1.	\$0
4. Add line 1 and line 3	\$29,146
5. Percent increase/decrease for good faith.	N/A
6. Percent increase for willfulness/negligence.	N/A
7. Percent increase for history of noncompliance.	N/A
8. Total lines 5 through 7.	
9. Multiply line 4 by line 8.	
10. Calculate economic benefit.	Preliminarily determined to be less than \$5,000.
11. Add lines 4, 9 and 10 for penalty amount to be inserted into the complaint.	\$29,146
* Additional downward adjustments, where substantiated by reliable information, may be accounted for here.	

**NARRATIVE EXPLANATION TO SUPPORT COMPLAINT AMOUNT  
Penalty Computation Worksheet (Count 1)**

**1. Gravity Based Penalty**

- (a) Potential for Harm: Major - The potential for harm for a failure to conduct a hazardous waste determination is deemed major. The RCRA Civil Penalty Policy provides that the potential for harm should be based on two factors: 1) the adverse impact of the noncompliance on the regulatory scheme; and 2) the risk of human or environmental exposure. The RCRA regulatory program is undermined when an owner/operator of a facility generating several streams of solid waste fails to determine whether each of the generated waste streams is hazardous. Failure to make hazardous waste determinations increases the likelihood that the hazardous waste is managed as a non-hazardous waste, outside of the RCRA regulatory universe. This type of violation can result in multiple sequential violations involving each unidentified hazardous waste stream. Further, failure to manage a hazardous waste pursuant to the RCRA regulatory scheme increases the risk of human and environmental exposure. In this instance, failure to make hazardous waste determinations may have resulted in illegal, improper disposal and may have exposed investigators, workers and others to hazardous waste.
- (b) Extent of Deviation: Major - The extent of deviation present in this violation was determined to be MAJOR. Respondent failed to make hazardous waste determinations for numerous waste streams, each of which was regularly generated by Respondent in the course of carrying out its normal preventive maintenance activities and mechanic services. This failure appeared to extend to a variety of areas at the Respondent's facility.

The applicable cell ranges from \$25,791 to \$32,500. In the circumstances of this particular violation, failure to make a hazardous waste determination, the mid-point range of the cell was chosen.

- (c) Multiple/Multi-day Violations: Failure to make a hazardous waste determination is being considered, initially, as an one-time event.

**2. Adjustment Factors**

- a) Good Faith - Based upon facility specific factors and information available indicating that Respondent did not identify the violation and take any corrective action prior to the EPA inspection, no adjustment has been made at this time.
- b) Willfulness/Negligence - N/A
- c) History of Compliance - N/A
- d) Ability to Pay - N/A
- e) Environmental Project - N/A

f) Other Unique Factors - N/A

3. **Economic Benefit** - The economic benefit resulting from this violation was determined to be negligible (i.e., less than \$5,000).

**NARRATIVE EXPLANATION TO SUPPORT COMPLAINT AMOUNT  
Penalty Computation Worksheet (Count 2)**

Respondent: San Juan Department of Public Works and the Environment

Address: KM 1.2 John F. Kennedy Expressway, at the Marginal Street,  
San Juan, Puerto Rico 00936

Regulation Violated:  
40 C.F.R. § 279.22(c)(1) Failure to label used oil containers with the words “Used Oil”.

**PENALTY AMOUNT FOR COMPLAINT**

1. Gravity based penalty from matrix	\$ 2,901
(a) Potential for harm.	MINOR
(b) Extent of Deviation.	MAJOR
2. Select an amount from the appropriate multi-day matrix cell.	\$0
3. Multiply line 2 by number of days of violation minus 1.	\$0
4. Add line 1 and line 3	\$ 2,901
5. Percent increase/decrease for good faith.	N/A
6. Percent increase for willfulness/negligence.	N/A
7. Percent increase for history of noncompliance.	N/A
8. Total lines 5 through 7.	
9. Multiply line 4 by line 8.	
10. Calculate economic benefit.	Preliminarily determined to be less than \$5,000.
11. Add lines 4, 9 and 10 for penalty amount to be inserted into the complaint.	\$ 2,901

\* Additional downward adjustments, where substantiated by reliable information, may be accounted for here.



**NARRATIVE EXPLANATION TO SUPPORT COMPLAINT AMOUNT  
Penalty Computation Worksheet (Count 2)**

Regulation Violated: Failure to label used oil containers with the words "Used Oil".

**1. Gravity Based Penalty**

- (a) Potential for Harm: Minor - The potential for harm in this violation was determined to be minor since Respondent knew that used oil was in the containers and was managing them as used oil. In these circumstances failure to label or mark used oil containers (drums) posed a slight risk of mismanagement.
- (b) Extent of Deviation: Major - The extent of deviation in this violation was determined to be major because Respondent deviated from the requirement to such an extent that there was substantial noncompliance. None of the used oil containers were labeled with the words "Used Oil" during the Inspection. While the wall above the drums may have had signs on it stating "Used Oil" Used Hydraulic Oil" and "Used Diesel Fuel," it was unclear which drums had what used oil in it.

The applicable cell ranges from \$1,934 to \$3,868. The mid-point range of the cell was chosen.

- (c) Multiple/Multi-day Violations: N/A. Failure to label used oil containers with the words "Used Oil" is being considered, initially, as an one-time event.

**2. Adjustment Factors**

- a) Good Faith - Based upon facility specific factors and available information that Respondent did not identify the violation and take corrective action prior to the EPA inspection, no adjustment has been made at this time.
- b) Willfulness/Negligence - N/A
- c) History of Compliance - N/A
- d) Ability to Pay - N/A
- e) Environmental Project - N/A
- f) Other Unique Factors - N/A

- 3. Economic Benefit** - The economic benefit resulting from this violation was determined to be negligible (i.e., less than \$5,000).

**NARRATIVE EXPLANATION TO SUPPORT COMPLAINT AMOUNT  
Penalty Computation Worksheet (Count 3)**

Respondent: San Juan Department of Public Works and the Environment

Address: KM 1.2 John F. Kennedy Expressway, at the Marginal Street,  
San Juan, Puerto Rico 00936

Regulations Violated:

40 C.F.R. § 279.22(d)(1)(2) & (3) Failure to stop, contain, cleanup and manage released used oil.

40 C.F.R. Section 279.22(b) Failure to store used oil in containers in good condition (no severe rusting, apparent structural defects, deterioration) and in containers that were not leaking (no visible leaks).

40 C.F.R. Section 279.22(d)(4) Failure to repair or replace any leaking used oil storage containers prior to returning them to service.

**PENALTY AMOUNT FOR COMPLAINT**

1. Gravity based penalty from matrix	\$29,146
(a) Potential for harm.	MAJOR
(b) Extent of Deviation.	MAJOR
2. Select an amount from the appropriate multi-day matrix cell.	\$0
3. Multiply line 2 by number of days of violation minus 1.	\$0
4. Add line 1 and line 3	\$29,146
5. Percent increase/decrease for good faith.	N/A
6. Percent increase for willfulness/negligence.	N/A
7. Percent increase for history of noncompliance.	N/A
8. Total lines 5 through 7.	
9. Multiply line 4 by line 8.	
10. Calculate economic benefit.	Preliminarily determined to be less than \$5,000.
11. Add lines 4, 9 and 10 for penalty amount to be inserted into the complaint.	\$29,146

- \* Additional downward adjustments, where substantiated by reliable information, may be accounted for here.

**NARRATIVE EXPLANATION TO SUPPORT COMPLAINT AMOUNT  
Penalty Computation Worksheet (Count 3)**

**1. Gravity Based Penalty**

- (a) Potential for Harm: Major - The potential for harm in this violation was determined to be major. At the time of the inspection, 55 gallon drums in the large truck motor pool area were severely rusted, had apparent structural defects and deterioration. Standing used oil and old stains were observed on the concrete floor under several trucks in the large truck motor pool area. Standing used oil and old stains were also observed on the concrete floor in areas beneath used oil containers and/or drums in the large truck motor pool area. Used oil was in some places flowing onto the concrete floor with no effort to contain the spills. In the large truck motor pool area, used oil flowed toward an open grate storm drain that was connected to the public sewer system. In the preventive maintenance area for cars, used oil flowed into several open grate drains which were connected to an outside pit behind the building where the preventive maintenance area for cars was located.
- (b) Extent of Deviation: Major - The extent of deviation in this violation was determined to be major. As of the time of the inspection, Respondent had been aware of the releases of used oil in the large truck motor pool area. Old stains and standing used oil were readily observed in the large truck motor pool area. However, no apparent effort had been made to stop, contain, clean up and/or manage the releases. There was no spill containment material in use to contain any spill in the large truck motor pool area. Additionally, no apparent effort had been made to stop, contain, clean up and/or manage the releases of used oil in the preventive maintenance area for cars. There was no spill containment material in use to contain any spill in the preventive maintenance area for cars. Furthermore, no apparent effort had been made to repair or replace any used oil storage containers that were leaking, severely rusted, structurally defective and/or deteriorated.

The applicable cell ranges from \$25,791 to \$32,500. The mid-point range of the cell was chosen.

- (c) Multiple/Multi-day Violations: N/A. Failure to stop, contain, clean-up and manage released used oil is being considered, initially, as an one-time event.

**2. Adjustment Factors**

- a) Good Faith - Based upon facility specific factors and available information that Respondent did not identify the violation and take corrective action prior to the EPA inspection, no adjustment has been made at this time.

- b) Willfulness/Negligence - N/A
- c) History of Compliance - N/A
- d) Ability to Pay - N/A
- e) Environmental Project - N/A
- f) Other Unique Factors - N/A

3. **Economic Benefit** - The economic benefit resulting from this violation was determined to be negligible (i.e., less than \$5,000).

**NARRATIVE EXPLANATION TO SUPPORT COMPLAINT AMOUNT  
Penalty Computation Worksheet (Count 4)**

Respondent: San Juan Department of Public Works and the Environment

Address: KM 1.2 John F. Kennedy Expressway, at the Marginal Street,  
San Juan, Puerto Rico 00936

Regulation Violated:  
40 C.F.R. § 279.22(a) Failure to store used oil properly.

**PENALTY AMOUNT FOR COMPLAINT**

1. Gravity based penalty from matrix	\$29,146
(a) Potential for harm.	MAJOR
(b) Extent of Deviation.	MAJOR
2. Select an amount from the appropriate multi-day matrix cell.	\$0
3. Multiply line 2 by number of days of violation minus 1.	\$0
4. Add line 1 and line 3	\$29,146
5. Percent increase/decrease for good faith.	N/A
6. Percent increase for willfulness/negligence.	N/A
7. Percent increase for history of noncompliance.	N/A
8. Total lines 5 through 7.	
9. Multiply line 4 by line 8.	
10. Calculate economic benefit.	Preliminarily determined to be less than \$5,000.
11. Add lines 4, 9 and 10 for penalty amount to be inserted into the complaint.	\$29,146

\* Additional downward adjustments, where substantiated by reliable information, may be accounted for here.

**NARRATIVE EXPLANATION TO SUPPORT COMPLAINT AMOUNT  
Penalty Computation Worksheet (Count 4)**

**1. Gravity Based Penalty**

- (a) Potential for Harm: Major - The potential for harm in this violation was determined to be major. At the time of the inspection, the used oil from the preventive maintenance area for cars was drained into an outside concrete pit behind the building where the preventive maintenance area for cars was located. Storage of used oil in concrete pits with an open grate top did not provide adequate protection of human health and the environment against potential releases and damages.
- (b) Extent of Deviation: Major - The extent of deviation in this violation was determined to be major. Generators cannot store used oil in units other than tanks, containers or units subject to regulation under parts 264 or 265 of RCRA. At the time of the Inspection in the preventive maintenance area for cars, there were no used oil tanks, containers, drums or other units subject to regulation under parts 264 or 265 of Title 40 of the Code of Federal Regulations. Instead, used oil from the preventive maintenance area was stored in an outside pit behind the building.

The applicable cell ranges from \$25,791 to \$32,500. The mid-point range of the cell was chosen.

- (c) Multiple/Multi-day Violations: N/A. Failure to store used oil properly is being considered, initially, as an one-time event.

**2. Adjustment Factors**

- a) Good Faith - Based upon facility specific factors and available information that Respondent did not identify the violation and take corrective action prior to the EPA inspection, no adjustment has been made at this time.
- b) Willfulness/Negligence - N/A
- c) History of Compliance - N/A
- d) Ability to Pay - N/A
- e) Environmental Project - N/A
- f) Other Unique Factors - N/A

- 3. Economic Benefit** - The economic benefit resulting from this violation was determined to be negligible (i.e., less than \$5,000).

**ATTACHMENT II**

**PENALTY ASSESSMENT MATRIX**

		<b>EXTENT OF DEVIATION FROM REQUIREMENT</b>		
<b>P O T E N T I A L  F O R  H A R M</b>		<b>MAJOR</b>	<b>MODERATE</b>	<b>MINOR</b>
	<b>MAJOR</b>	\$32,500 to 25,791	\$25,790 to 19,343	\$19,342 to 14,185
	<b>MODERATE</b>	\$14,184 to 10,316	\$10,315 to 6,448	\$6,447 to 3,869
	<b>MINOR</b>	\$3,868 to 1,934	\$1,933 to 645	\$644 to 129



**ATTACHMENT III**

**MULTI-DAY MATRIX**

<b>EXTENT OF DEVIATION FROM REQUIREMENT</b>				
<b>P O T E N T I A L  F O R  H A R M</b>		<b>MAJOR</b>	<b>MODERATE</b>	<b>MINOR</b>
	<b>MAJOR</b>	\$6,448 to \$1,290	\$5,158 to \$967	\$3,869 to \$709
	<b>MODERATE</b>	\$2,837 to \$516	\$2,063 to \$322	\$1,290 to \$193
	<b>MINOR</b>	\$774 to \$129	\$387 to \$129	\$129