

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG.II

2010 OCT 18 A 11:32

REGIONAL HEARING
CLERK

IN THE MATTER OF:

BFI of Ponce, Inc.

P.O. Box 7104

Ponce, Puerto Rico 00723

Ponce Municipal Landfill

NPDES Permit No. PR0025844

Respondent

Docket No. CWA-02-2010-3462

Proceeding Pursuant to Section 309(g) of the
Clean Water Act, 33 U.S.C. §1319(g) to
Assess Class II Civil Penalty

**ANSWER TO COMPLAINT, REQUEST FOR HEARING
AND INFORMAL SETTLEMENT CONFERENCE**

TO THE ENVIRONMENTAL PROTECTION AGENCY:

COMES NOW, Allied Waste of Ponce, Inc. ("Respondent")¹ through its undersigned attorney, and respectfully alleges, states, and prays as follows:

I. Statutory Authority

1. Respondent acknowledges the authority of the Director of the Caribbean Environmental Protection Division (the "Director") of the United States Environmental Protection Agency (the "EPA") to issue administrative complaints, as alleged in paragraph 1 of the Complaint, Findings of Violation, Notice of Proposed Assessment of a Civil Penalty, and Notice of Opportunity to Request a Hearing dated September 16, 2010 (the "Complaint").
2. Respondent explains the allegation in paragraph 2 that it failed to meet effluent limitations set forth in the National Pollutant Discharge Elimination System (NPDES) permit of reference in the section titled Grounds for Defense below.

¹ Effective September 10, 2007, Respondent's name changed from "BFI of Ponce, Inc." to "Allied Waste of Ponce, Inc."

3. The allegation in paragraph 3 does not require an answer; it is a conclusion of law.
4. The allegation in paragraph 4 does not require an answer; it is a conclusion of law.

II. Findings of Violation

5. The allegation in paragraph 5 is admitted.
6. The allegation in paragraph 6 is admitted.
7. The allegation in paragraph 7 is explained; Respondent “operates” but does not own the Landfill.
8. The allegation in paragraph 8 is admitted.
9. The allegation in paragraph 9 is admitted.
10. The allegation in paragraph 10 is admitted.
11. The allegation in paragraph 11 is admitted.
12. The allegation in paragraph 12 is admitted.
13. The allegation in paragraph 13 is admitted.
14. The allegation in paragraph 14 is admitted.
15. The allegation in paragraph 15 is admitted.
16. The allegation in paragraph 16 is admitted.
17. The allegation in paragraph 17 is admitted.
18. The allegation in paragraph 18 is explained. Respondent admits the part that EPA conducted a Compliance Evaluation Inspection, and explains the part of the EPA findings in the section titled Grounds for Defense below.
19. The allegation in paragraph 19 does not require an answer; it is a conclusion of law.

III. Conclusions of Law

20. The allegation in paragraph 20 is explained in the section titled Grounds for Defense below.
21. The allegation in paragraph 21 is explained; Respondent admits that the Environmental Quality Board appears copied in the Complaint.

IV. Proposed Civil Penalty

22. The proposed civil penalty of \$100,000 is unwarranted. Respondent is a good corporate citizen and not an unwilling party who needs enforcement to compel compliance.
23. The amount of the proposed penalty is unfairly inappropriate because of the material facts stated in the Grounds for Defense below.

V. Grounds for Defense

24. In 2008, a subsidiary of Republic Services, Inc. merged with Allied Waste Industries, Inc., which was the parent company of BFI of Ponce, Inc.
25. Respondent has continuously improved the process of controlling leachate seeps that could potentially enter the storm water system. Normal operation and maintenance of the landfill slopes consists of identifying seeps after rainfall events and ensuring that they are not allowed to reach the storm water system. This is accomplished by placing low permeability soil on the seeps and forcing the liquid back into the waste mass. Sometimes the seeps will appear again and a longer term solution is required. This involves cutting off the flowing liquid by constructing a horizontal trench into the waste mass. The trench is filled with porous rock and pipe which allows the liquid to be collected and/or enter the waste mass and eventually reach the leachate collection system at the bottom of the landfill. This process requires specific designs and construction equipment to properly construct the "cutoff trenches". Several of these leachate trenches have been installed over time in order to eliminate leachate seeps. .
26. In 2004, a leachate cutoff trench was designed and built to intercept leachate seeps that had formed on the upper slopes in the central valley of the facility. In 2005, a second leachate cutoff trench was designed and built to intercept leachate seeps that had formed in the north slope of the landfill.
27. In 2008, a year with an unusually heavy rainfall, the south slope of the landfill was adversely affected, and resulted in a new seep.
28. In 2009, a third leachate cutoff trench was designed and built to intercept leachate from the new seep in the south slope of the landfill.

29. The leachate from the three leachate cutoff trenches is collected and directed to a dedicated leachate storage tank and then trucked and disposed in a publicly owned treatment plant.
30. When EPA issued Administrative Compliance Order CWA-02-2009-3114 on March 16, 2009, Respondent was already working with its consultant, Golder Associates, Inc., and its contractor, Construcciones Jose Carro S.E., on the design of the third leachate cutoff trench. In addition, Respondent was addressing sediment control issues by following BMPs in the SWPPP.
31. On April 27, 2009, Respondent submitted to EPA the drawings prepared by Golder Associates, Inc. for the design and construction of the south slope MSW leachate cutoff trench. (See Attachment A) Respondent also submitted the storm water collection system drawings prepared by Golder Associates, Inc. for the landfill storm water collection evaluation. (See Attachment B)
32. On June 18, 2009, Respondent submitted to EPA a report informing that the Leachate Collection and Control System (cutoff trench) for the south slope of the landfill had been completed on June 5, 2009 and that no leachate had been observed through the storm water channel. Respondent also informed that it had discovered a small flow of what appeared to be leachate in underground storm water pipe No. 1. A retention dam was immediately built and the discharge was collected with a vacuum truck and delivered to the leachate storage tank for proper disposal. Respondent retained a contractor to assess the integrity of Pipe No. 1.
33. On June 23, 2009, Respondent submitted to EPA a certification from the contractor attesting that the south slope leachate cutoff trench had been constructed in substantial compliance with the approved drawings and CQA plans provided by Golder Associates, Inc. (See Attachment C)
34. On February 16, 2010, Respondent submitted to EPA a report from Geosyntec Consultants on the treatment of the storm water pond with sodium hypochlorite to lower COD. (See Attachment D)
35. Respondent continued to collect leachate from Pipe No. 1 with a vacuum truck for delivery to the leachate storage tank for proper disposal, until the pipe was replaced on April 19, 2010. The integrity assessment of Pipe No. 1 consisted of using a remote controlled video camera lowered into the pipe and recording all the interior of the pipe. The intent was to visually detect any damage or leaks in the pipe. The video showed that there was no damage to the pipe, but several of the pipe joints were leaking even during periods of no rain. Ultimately the pipe joints that were leaking were excavated and replaced with solid HDPE pipe, thus eliminating the potential for leakage in the future.

36. Respondent promptly addressed the seep in the south slope that occurred in 2008. Respondent did not obtain an economic benefit as a result of delaying, or completely avoiding, pollution control expenditures during the period of alleged noncompliance. The pollution control expenditures were promptly implemented and completed within months of the appearance of the seep.
37. The storm water discharge had no negative impact on human health or in the aquatic environment.
38. Respondent reported a small number of permit limit exceedances, a total of four TSS exceedances and six COD exceedances between 2007 and 2009.
39. Some or all of the alleged exceedances were caused by heavy rainfall events, some of which exceeded the 25-year event criteria.
40. The alleged November and December 2009 COD exceedances identified by EPA are in fact only one exceedance, not two. One sample was taken in November and reported in December. No sample was taken in December. EPA is double counting the November exceedance.
41. The reported COD values show a consistent decrease from a high of 2273 mg/l on September 2008 to a low of 137 mg/l on November 2009. The high COD value is consistent with the impact of rainfall in 2008. While the low COD value shows that the aforementioned corrective actions taken by the Respondent are bringing the discharge to compliance. (See Attachment E)
42. Respondent did not incur in non-effluent violations that would have the result of defeating the storm water regulatory program.
43. Respondent has implemented the SWPPP and currently is in substantial compliance with its NPDES permit. Respondent's employees are trained on the components of the SWPPP and management personnel are in charge of ensuring that all components of the SWPPP are completed. Inspections are conducted on daily, weekly, monthly quarterly and annual frequencies. All inspection reports are maintained on site.

VI. Facts at Issue

All factual allegations of violation are denied and/or explained, as well as the appropriateness of the proposed penalty are at issue.

V. Hearing and Informal Conference

Respondent requests a formal hearing to contest the appropriateness of the findings of violation, as well as, the appropriateness of the penalty assessed. Respondent also requests an informal conference in order to discuss the facts of this case and the possibility of a settlement.

In San Juan, Puerto Rico, this ^{18th} day of October 2010.

WE HEREBY CERTIFY that on this same date a copy of this Answer to the Complaint and Request for Hearing and Informal Settlement Conference has been mailed by certified mail to Silvia Carreno, Esq., Assistant Regional Counsel, Office of Regional Counsel, Caribbean Team, U.S. Environmental Protection Agency, Region 2, 1492 Ponce de León Avenue, Suite 207, San Juan, Puerto Rico 00907-1866.

Allied Waste of Ponce, Inc.
Fiddler Gonzalez & Rodriguez, P.S.C.
Eduardo Negrón Navas, enegron@fgrlaw.com
P.O. Box 363507
San Juan, Puerto Rico 00936-3507
Tel. (787) 759-3106
Fax (787) 759-3108

By:



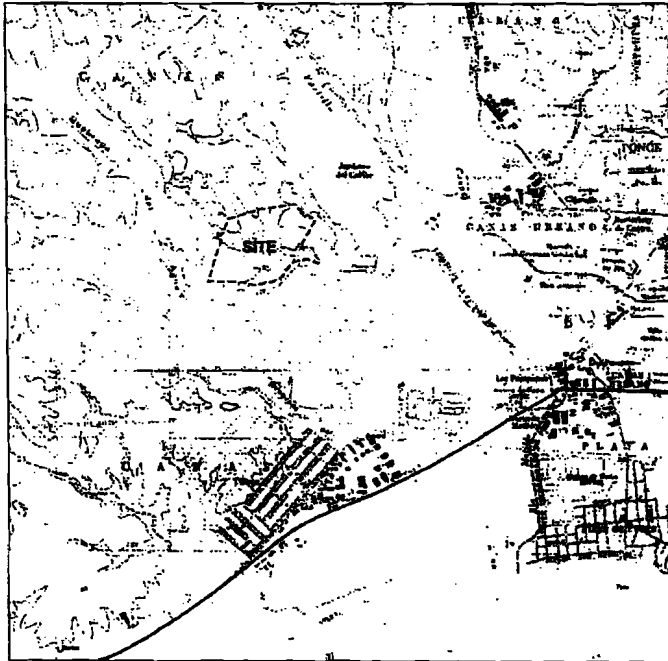
Eduardo Negrón Navas

Attachment A

ALLIED WASTE OF PONCE, INC.

PONCE MUNICIPAL LANDFILL PONCE, PUERTO RICO

SOUTH SLOPE MSW LEACHATE CONTROL SYSTEM



PROPOSED LEACHATE CONTROL SYSTEM
 EXISTING CONDITIONS SITE PLAN
 LEACHATE CONTROL SYSTEM PLAN

SITE LOCATION MAP

LIST OF DRAWINGS

SHEET NO.	TITLE
1.	COVER SHEET
2.	EXISTING CONDITIONS SITE PLAN
3.	LEACHATE CONTROL SYSTEM PLAN

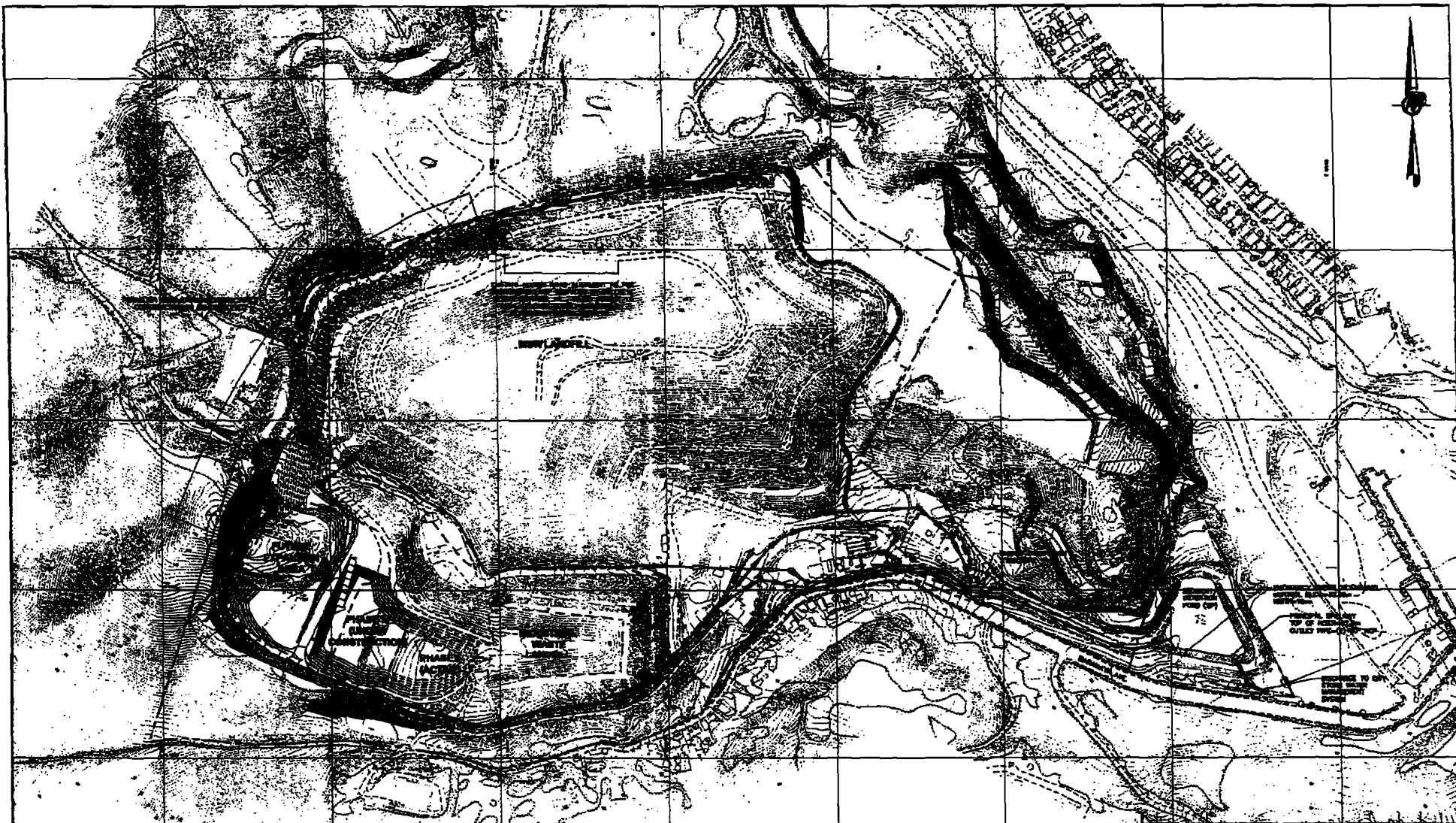
PLANS PREPARED BY:



PLANS PREPARED FOR:



Attachment B



LEGEND

- PROPERTY BOUNDARY
- - - EXISTING CONTOURS
- - - LIMITS OF WORK
- - - SITE FENCE
- DRAINAGE FLOW PATH (EXISTING BLACK STRUCTURE)

NOTES

1. LIMITS OF EXISTING DRAINAGE OBTAINED FROM DRAWING 148 BY COLLIER ASSOCIATES DATED 04/04.
2. LIMIT OF EXISTING OF SUBMITTAL CELL NO. 1 OBTAINED FROM DRAWING 148 BY COLLIER ASSOCIATES DATED 12/03 AND DRAWING 208 BY COLLIER ASSOCIATES DATED 1/04.

REFERENCE

1. AERIAL PHOTOGRAPHY PROVIDED BY GULFSTREAM SURVEY SERVICES, INC. PHONE: 204/661-4704 DATED JANUARY 18, 2004.



DATE	02/06	PROJECT	BROWNING-FERRIS INDUSTRIES PONCE MUNICIPAL LANDFILL
SCALE	AS SHOWN	<p>SITE DRAINAGE PATHWAYS</p> <p>FIGURE 1</p>	
PROJECT NO.	022-2005		
DESIGNER	W.S.	DATE	02/06
CHECKED	W.S.	DATE	02/06
REVIEWED	W.S.	DATE	02/06



SCHEDULE OF SURFACE WATER MANAGEMENT STRUCTURES

Structure No.	Structure Name	Structure Type	Structure Location	Structure Size	Structure Status
1
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ABBREVIATIONS

- 1" = 100' HORIZONTAL SCALE
- 1" = 10' VERTICAL SCALE
- 1" = 10' HORIZONTAL SCALE
- 1" = 10' VERTICAL SCALE



**BROWNING-FERRIS INDUSTRIES
PONCE MUNICIPAL LANDFILL**

**SURFACE WATER MANAGEMENT
SYSTEM PLAN (OCTOBER 2003)**

PROJECT NO. 03-0018 FILE NO. 03-0018
 SHEET NO. 1 OF 1
 DATE 10/10/03

**Golden
A
ENGINEERS**
P.O. Box 1000
Ponce, Georgia

LEGEND

- Proposed Structure
- Existing Structure
- Proposed Road
- Existing Road
- Proposed Fence
- Existing Fence

NOTES:

1. ALL STRUCTURES SHALL BE CONSTRUCTED IN ACCORDANCE WITH THE LATEST EDITION OF THE MDTG SPECIFICATIONS.
2. THE USER OF THIS PLAN SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE APPROPRIATE AGENCIES.
3. THE USER OF THIS PLAN SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE APPROPRIATE AGENCIES.

REFERENCE:

- 1. MDTG SPECIFICATIONS, 2003 EDITION, MDTG, INC., 1000 W. 10TH ST., P.O. BOX 1000, PONCE, GEORGIA 30261.





SCHEDULE OF SURFACE WATER MANAGEMENT STRUCTURES

Structure ID	Downstream		Upstream		Length (m)	Grade (m/m)	No. of Pipes	Diam. (in)	Type	
	Structure	Invert Elev.	Structure	Invert Elev.						
Culvert 1	HW-6	84.25	HW-5	85.10	27	0.031	1	54	RCP	
Culvert 4	HW-3	85.93	HW-2	88.09	25	0.086	1	36	RCP	
Culvert 6	HW-8	50.74	HW-7	52.10	46	0.030	1	24	RCP	
Culvert 20	MH-6	46.24	MH-13	46.47	11.4	0.020	1	48	RCP	
Culvert 21	HW-9	49.00	HW-10	49.32	3	0.107	1	36	RCP	
Pipeline 1	A	JB	38.05	MH-7	40.84	45	0.068	2	54	RCP
	B	MH-7	40.84	MH-6	44.11	64	0.054	2	54	RCP
	C	MH-8	44.11	MH-5	46.81	72	0.038	2	54	RCP
	D	MH-5	46.81	MH-4	47.63	27	0.030	2	54	RCP
	E	MH-4	47.63	MH-11	49.50	22	0.066	2	54	RCP
	F	MH-11	49.50	DI-2	55.00	55.0	0.100	1	54	RCP
	G	DI-2	55.00	HW-1	67.93	129.3	0.100	1	54	RCP
Pipeline 2	A	JB	38.18	MH-10	40.70	44	0.057	1	60	RCP
	B	MH-10	40.70	MH-9	43.50	64	0.044	1	60	RCP
	C	MH-9	43.50	MH-8	47.04	94	0.038	1	60	RCP
	D	MH-8	47.04	MH-12	53.92	55	0.125	1	60	RCP
	E	MH-12	53.92	DI-1	58.50	54	0.085	1	60	RCP
Pipeline 3	A	JB	39.90	MH-3	42.02	22	0.096	2	54	RCP
	B	MH-3	42.02	MH-2	47.78	40	0.144	2	54	RCP
	C	MH-2	47.78	MH-1	50.00	50	0.044	2	54	RCP
	D	MH-1	50.00	HW-4	53.97	80	0.050	2	54	RCP

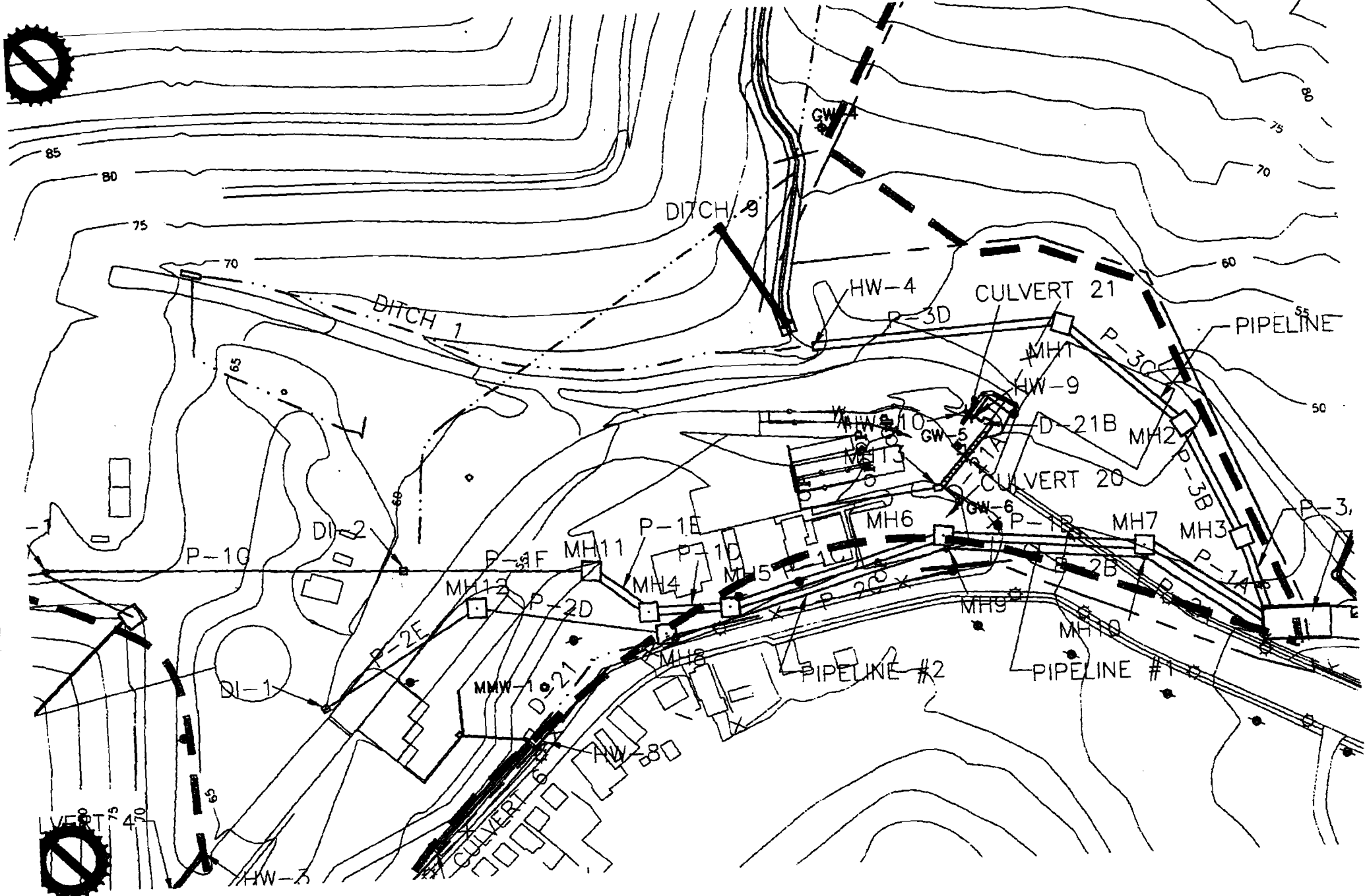
ABBREVIATIONS

DI = DITCH BOTTOM DROP INLET
 MH = MANHOLE
 HW = HEADWALL
 SP = SEDIMENT/DETENTION POND
 JB = JUNCTION BOX

P = PIPELINE
 D = DITCH







Attachment C



OASIS
CONSTRUCTION
SERVICES, INC.

COA AND
MATERIAL TESTING
LANDFILL SPECIALISTS

June 23, 2009
Mr. Efrain Camis
Environmental Manager
RD. 500 Baramaya Final Avenue
Ponce, Puerto Rico 00732

Subject: **Ponce Municipal Landfill
South Slope MSW Leachate Control System
Ponce, Puerto Rico**

Dear Mr. Camis:

On behalf of Allied Waste of Ponce, Inc. Oasis Construction Services, Inc. is writing to provide documentation of the repair and enhancement of South Slope MSW Leachate Control System conducted between May 12, 2009 thru June 9, 2009 at the Ponce Municipal Landfill in Ponce, Puerto Rico.

Based on our review of the as-built survey and visual observation of repair activities, it is our professional opinion that the Leachate Control trenching system was constructed in substantial compliance with the approved drawing and CQA plan used for South Slope MSW Leachate Control System provided by Golder Associate, Inc.

Please contact me at 404-735-1699 or Glenn Wallace at 770-355-4842 with any questions or comments that you may have regarding this documentation.

Sincerely,
Oasis Construction Services, Inc.

Samuel Sin, PE
Sr. Project Manager
Cc: Brian Martz - Allied
Efrain Camis - Allied
Glenn Wallace-Oasis
Claudia Moeller-Golder

Attachment D

Memorandum

Date: 15 February 2010

To: Marcos Elizondo, Scott McCallister and Miguel A. García Campos
Republic Services, Inc.
Glen Wallace, Oasis Construction Services, Inc.

From: Brian Brazil, PhD., PE
Geosyntec Consultants

Subject: Discharge from the Stormwater Retention Pond
Ponce Landfill, Ponce, Puerto Rico

Republic Services, Inc. (Republic) retained Geosyntec Consultants (Geosyntec) to evaluate treatment options to lower concentrations of chemical oxygen demand (COD) in the stormwater retention pond at Republic's municipal solid waste landfill in Ponce, Puerto Rico. Stormwater in the pond has exhibited COD concentrations above the discharge permit limit of 100 mg/L and has occasionally had challenges to be in compliance with the 50 mg/L discharge limit for total suspended solids (TSS) stipulated in the site's current National Pollutant Discharge Elimination System (NPDES) permit (PR0025844 – BFI of Ponce, Inc)..

Samples of the stormwater currently in the pond were collected by Republic and provided to Geosyntec for testing. Biological and chemical oxidation treatment approaches were evaluated to identify the most appropriate strategy for reducing COD concentrations given the site-specific stormwater conditions. Bench-scale testing showed that biological treatment did not achieve any reduction of COD. However, results showed that a chemical oxidation approach using sodium hypochlorite (NaOCl) successfully treated COD levels in site-specific stormwater to below the discharge criteria. Based on these results, Geosyntec designed a straightforward chemical oxidation treatment approach for the stormwater pond. The design called for step-wise dosing of NaOCl with concurrent pond mixing using pumps at two strategic locations that were determined based on fluid dynamics modeling results.

The treatment approach was implemented in the field by Republic site personnel. Following pond treatment with 6,000 gallons of NaOCl, three representative stormwater samples were collected by Republic on 1 February 2010 and sent to Alchem Laboratory (Altol Chemical

Environmental Laboratory, Inc., Ponce, Puerto Rico) for analysis. The sampling locations are depicted on a hand-drawn figure attached to this memorandum. The analytical analysis included COD, TSS, and pH, which are the three parameters for which numerical discharge limits are stipulated in the NPDES permit. The sampling results are summarized in Table 1 below.

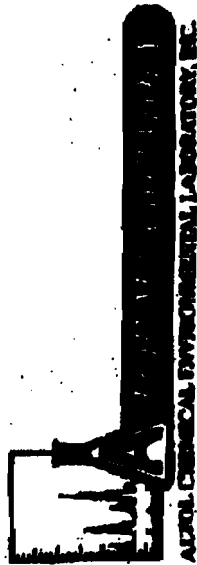
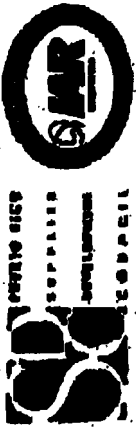
The analytical results were compared to the water quality constituents listed in Table A-1 of the site's current NPDES permit. It is Geosyntec's understanding that Table A-1 is the applicable table with regards to stormwater discharge limitations. The permit states that Table A-1 governs the discharge of stormwater at the site if the site develops and implements an approved Stormwater Pollution Prevention Plan (SWPPP). It is Geosyntec's understanding that the site is currently operating under an approved SWPPP, and that Table A-1 governs stormwater discharge at the site.

Inspection of Table 1 indicates that the treated stormwater currently contained in the pond meets the numeric limits for the three parameters stipulated in Table A-1 of the NPDES permit.

Table 1. Stormwater Analytical Results Summary

Permit Parameter	Units	Location #1	Location #2	Location #3	Average	Permit Limits
COD	mg/L	78	68	80	75.3	100
TSS	mg/L	<4	<4	10	6	50
pH	Standard Units	6.8	6.8	6.8	6.8	6 - 9

* * * * *



February 2, 2010

Allied Waste
P O Box 7104
Ponce, Puerto Rico 08732

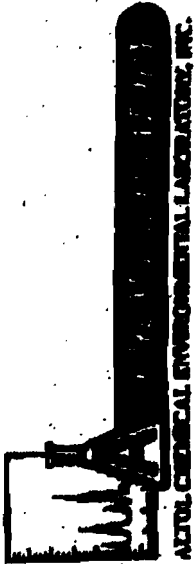
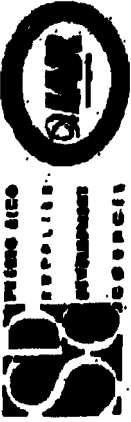
CERTIFICATE OF ANALYSIS

SHARCA No. 1 NORTE	Lab sample No.:	Sample Date & Time:	Custody No.:	Type of sample:
Ponce, Puerto Rico	10-827	February 1, 2010 (0850 hrs.)	47200	Grab
Chemical Oxygen Demand (mg/L)	7.0	February 2, 2010	GMH	EPA Method 410.1
pH 1 S. U.	6.80	February 1, 2010	WGC	EPA Method 180.1
Total Suspended Solids, mg/L	<4.9	February 1, 2010	GMH	EPA Method 180.2

Page 1 of 1



Miss R. Cruz Araya
Miss R. Cruz Araya
Licensed Chemist #5164



PAGE 03/04

F. 3/3

No. 2108

February 2, 2010

Allied Waste
P O Box 7104
Ponce, Puerto Rico 00732

ALLIED WASTE

CERTIFICATE OF ANALYSIS

CHARCA No. 2 NORTE Ponce, Puerto Rico	Lab sample No.: 10-006	Sample Date & Time: February 1, 2010 (0605 hrs.)	Custody No.: 67251	Type of sample: Grab
Chemical Oxygen Demand (mg/L)	5.0	February 2, 2010	CMH	EPA Method 410.1
pH (S.U.)	6.00	February 1, 2010	WG	EPA Method 180.1
Total Suspended Solids, mg/L	0.0	February 1, 2010	CMH	EPA Method 160.2



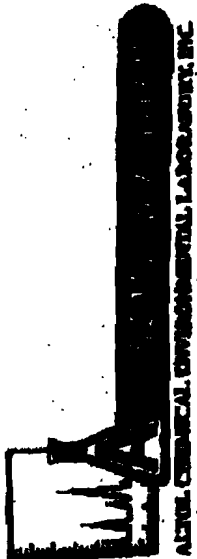
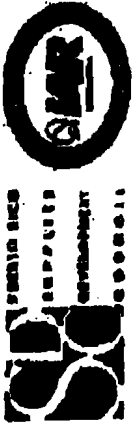
Luis R. Cruz Arroyo
Luis R. Cruz Arroyo
Licensed Chemist #5164

Page 1 of 1

Feb. 2, 2010 5:05PM

02/04/2010 11:31 7878437521

SARANETAS INDUSTRIAL PARK - PONCE - P.O. BOX 159 - MICO, P.R. 00715
TELE: (787) 842-0259 • (787) 842-0265 • (787) 842-0263 • FAX: (787) 842-0259



ALTEL CHEMICAL ENVIRONMENTAL LABORATORY, INC.

February 2, 2010

Allied Waste
P O Box 7104
Ponce, Puerto Rico 00732

CERTIFICATE OF ANALYSIS

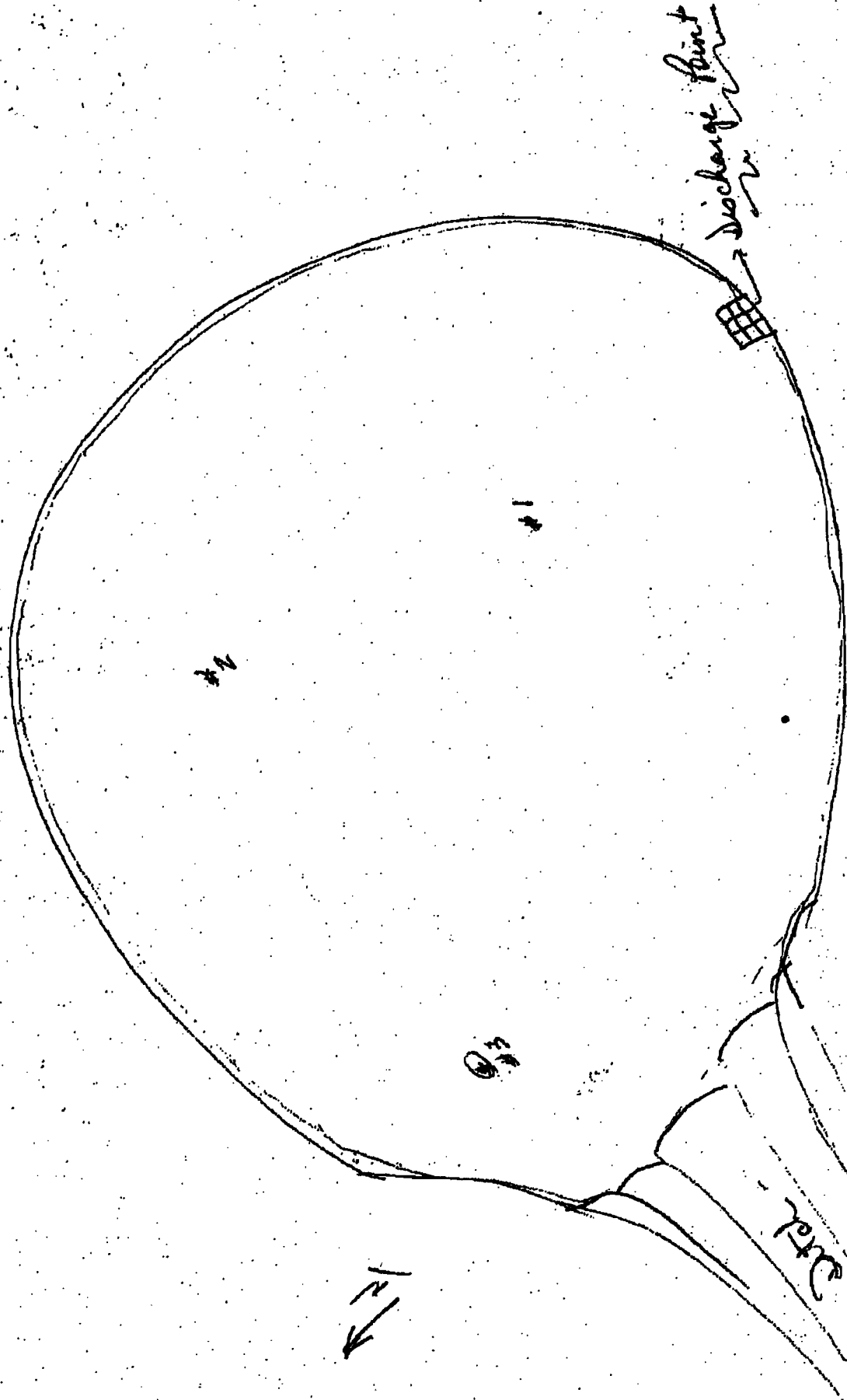
CHARCA SUR	Lab sample No.:	Sample Date & Time:	Custody No.:	Type of sample:
Ponce, Puerto Rico	10-0025	February 1, 2010 (0845 hrs.)	47279	Grab
Chemical Oxygen Demand (mV)	80.0	February 2, 2010	CMH	EPA Method 410.1
pH, S. U.	6.80	February 1, 2010	VMG	EPA Method 180.1
Total Suspended Solids, mg/L	10.0	February 1, 2010	CMH	EPA Method 180.2

Luís R. Cruz Arroyo
Luís R. Cruz Arroyo
Licensed Chemist #61184



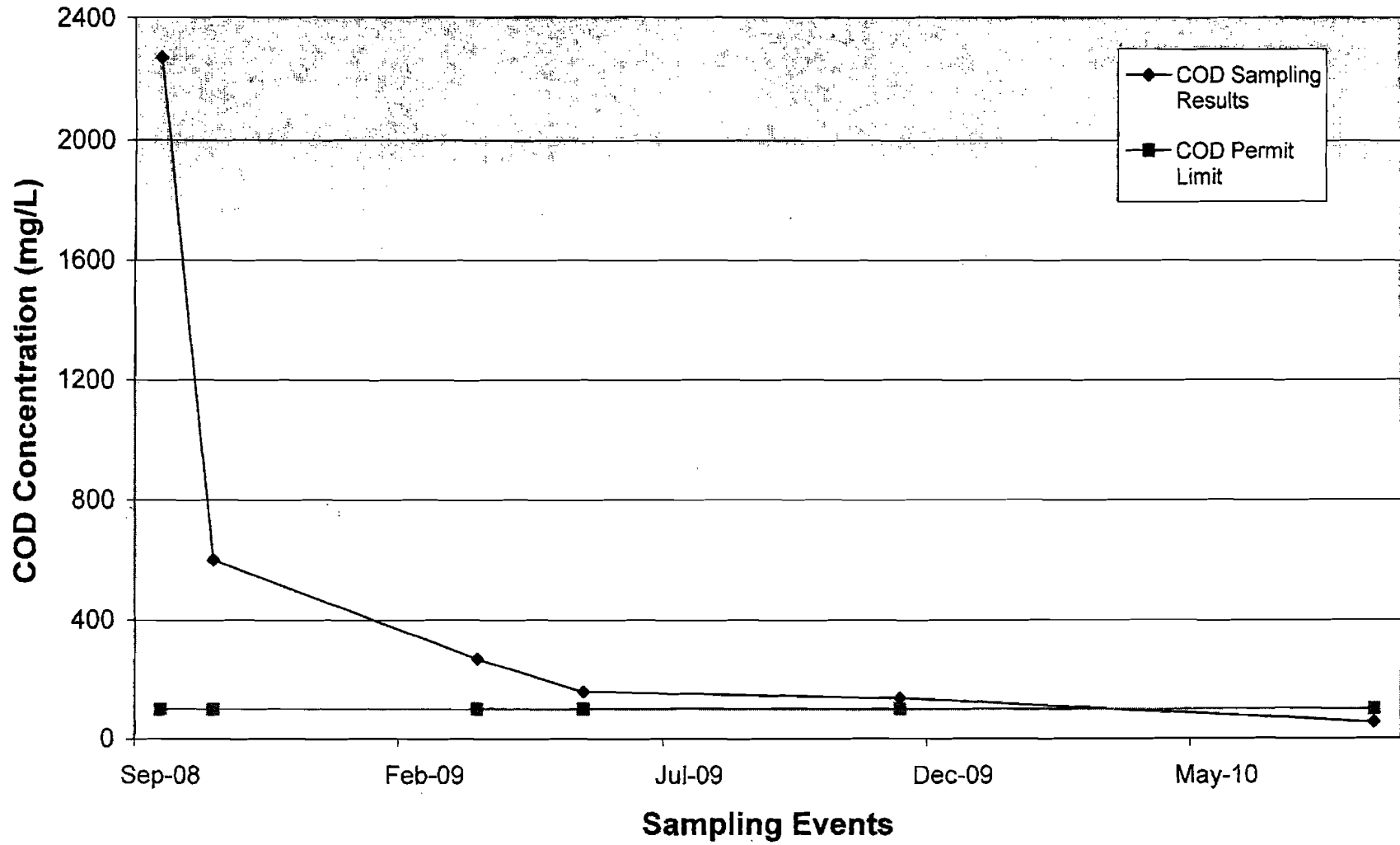
Page 1 of 1

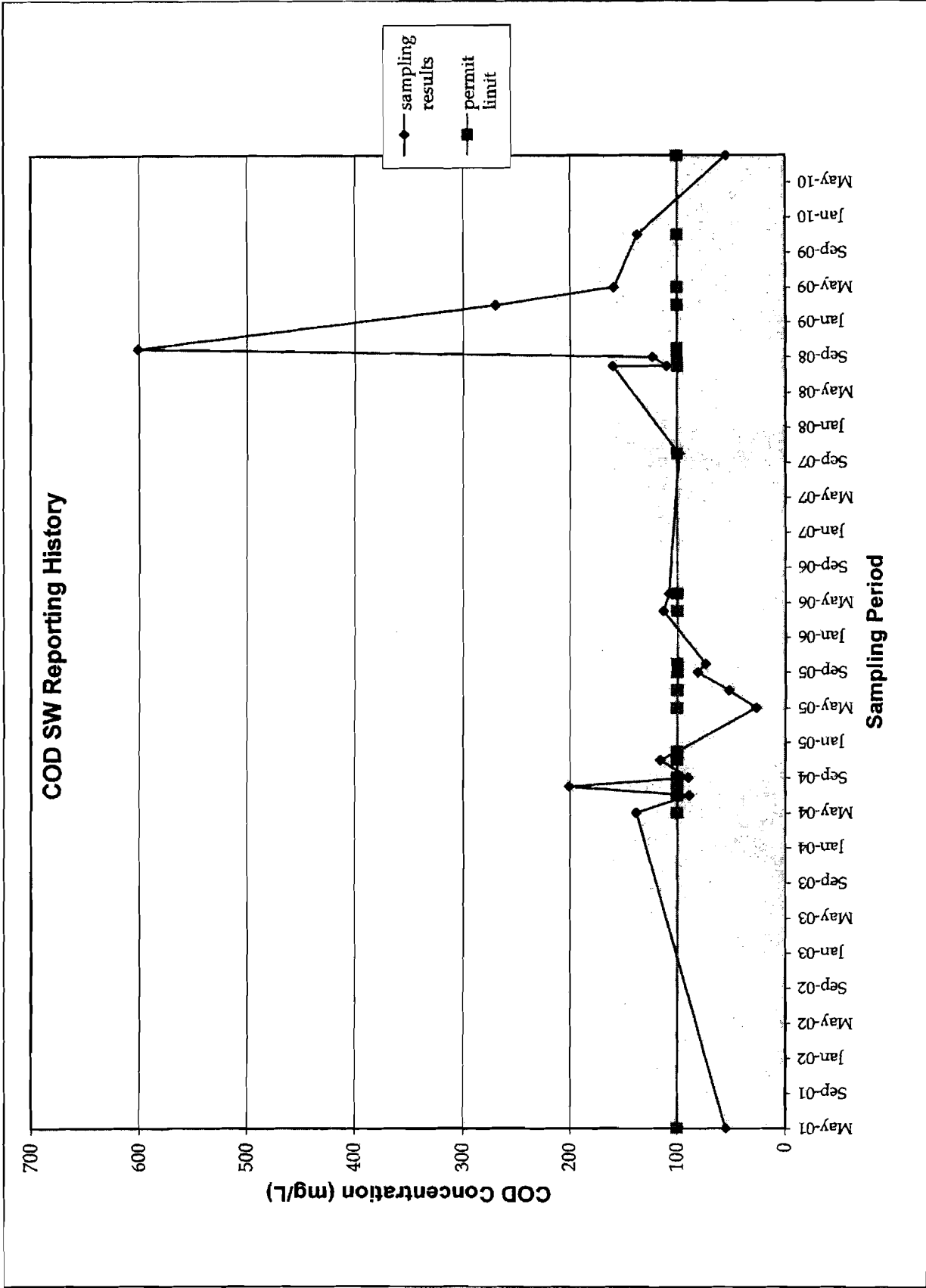
Stone Pond Sample Location



Attachment E

COD Concentration (2008-2010)





Note: This graphic does not include sampling result for September 23, 2008 event which resulted in a reported concentration of 2273 mg/L for COD.