

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

IN THE MATTER OF: *

Municipality of Toa Baja *
Respondent *

Department of Transportation *
And Public Works *

Campanilla Bypass (Road 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,
NOTICE OF OPPORTUNITY FOR
HEARING

Docket No. RCRA-02-2009-7111

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REGION 2
2009 NOV -3 PM 3:05
REGIONAL HEARING
CLERK

ANSWER TO THE COMPLAINT

TO THE HONORABLE REGIONAL JUDICIAL OFFICER:

NOW COMES Respondent, the Municipality of Toa Baja ("MTB"), through its undersigned attorneys, and for its Answer to the Complaint in the instant action, respectfully admits, denies and alleges as follows:

General Allegations

1. The averments contained in paragraphs 1, 2, 3, 4, 5, 6 and 7 of the Complaint are admitted.
2. The averment contained in paragraph 8 identifying the MTB as a "facility" is denied. It is affirmatively alleged that the MTB is a "generator" as the term is defined at 40 C.F.R. §260.10.

3. The reference to the term “facility” in paragraph 9 is denied. Respondent admits being the “owner and operator” of the Toa Baja Department of Transportation and Public Works (DTPW).

4. The averments contained in paragraph 10 and 11, regarding Respondent’s generation of solid waste and hazardous wastes are admitted.

5. The averments contained in paragraphs 12 and 13 are denied as drafted. It is affirmatively alleged that MTB is a “generator” as the term is defined at 40 C.F.R. §260.10.

6. The averments contained in paragraph 14 and 15 are admitted. It is affirmatively alleged that MTB does not require a “permit” under 40 C.F.R. Part 270.

7. The averments contained in paragraph 16 are denied. It is affirmatively alleged that MTB is a conditionally exempt small quantity generator under 40 C.F.R. § 261.5.

Notification of Hazardous Waste Generation

8. The averments contained in paragraphs 17 do not require responsive pleadings insofar as they are conclusions of law. To the extent that they might be deemed to allege facts, such allegations are denied. It is affirmatively alleged that MTB is a conditionally exempt small quantity generator under 40 C.F.R. § 261.5

9. The averments contained in paragraphs 18 are admitted. It is affirmatively alleged that MTB is a conditionally exempt small quantity generator under 40 C.F.R. § 261.5.

10. The averments contained in paragraphs 19 are admitted. It is affirmatively alleged that MTB is a conditionally exempt small quantity generator under 40 C.F.R. § 261.5

EPA Investigative Activities

11. The averments contained in paragraphs 20, 21, 22, 23, 24, 25, 26, 27 and 28 are admitted.

12. The averments contained in paragraphs 29 are denied as drafted.

COUNT 1 – Failure to Make Hazardous Waste Determinations

13. The averment contained in paragraph 30 does not require a responsive pleading insofar it is a reiteration of previous averments. To the extent that they might be deemed to allege facts, Respondent incorporates by reference its responses to the averments contained in paragraphs “1” through “29”, as if fully set forth herein.

14. The averments contained in paragraphs 31, 32, 33 and 34 are admitted.

15. The averments contained in paragraph 35 regarding the generation of different waste streams the DTPW are admitted. The averments regarding number of containers identified are denied for lack of specific information.

16. The averments contained in paragraph 36 are admitted. It is affirmatively alleged that some of these materials were not solid wastes and/or hazardous wastes.

17. The averments contained in paragraph 37 do not require responsive pleadings insofar as they are conclusions of law.

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

18. In response to paragraph 38 of the Complaint, Respondent incorporates by reference its responses to the averments contained in paragraphs "1" through "29", as if fully set forth herein.

19. The averments contained in paragraphs 39 and 40 of the Complaint are admitted.

20. Regarding the averments contained in paragraph 41, Respondent admits the presence of certain localized spills of oil or used oil at the DTPW. Respondent denies that these incidents may pose a risk of fire, explosion, or a threat to human health or the environment.

21. The averments contained in paragraph 42 are admitted only in relation with the localized spills of oil or used oil in the DTPW.

COUNT 3- Failure to Comply with Universal Waste Regulations

22. In response to paragraph 43 of the Complaint, Respondent incorporates by reference its responses to the averments contained in paragraphs "1" through "29", as if fully set forth herein.

23. The averments contained in paragraphs 44, 45, and 46 are admitted.

24. The averments contained in paragraph 47 are admitted regarding the storage of universal waste lamps in the vicinity of the Public Works Area.

25. The averments contained in paragraphs 48 and 49 are admitted.

26. The averments contained in paragraphs 50 do not require a responsive pleading insofar as they are conclusions of law.

27. The averments contained in paragraphs 51 and 52 are admitted.

28. The averments contained in paragraphs 53 do not require a responsive pleading insofar as they are conclusions of law.

29. The averments contained in paragraphs 54 55, 56, and 57 are admitted.

30. The averments contained in paragraphs 58 do not require a responsive pleading insofar as they are conclusions of law.

COUNT- 4 Failure to Comply with Used Oil Generator Standards

31. In response to paragraph 59 of the Complaint, Respondent incorporates by reference its responses to the averments contained in paragraphs "1" through "29", as if fully set forth herein.

32. The averments contained in paragraph 60 and 61 are admitted.

33. The averments contained in paragraphs 62 do not require a responsive pleading insofar as they are conclusions of law.

34. The averments contained in paragraph 63 and 64 are admitted.

35. The averments contained in paragraph 65 do not require a responsive pleading insofar as they are conclusions of law.

36. The averments contained in paragraphs 66, 67 68 and 69 are admitted.

37. The averments contained in paragraphs 70 do not require a responsive pleading insofar as they are conclusions of law.

AFFIRMATIVE DEFENSES

MTB states the following affirmative defenses, and expressly reserves the right to amend this Answer to raise additional affirmative defenses as may arise during the course of discovery and information exchange in this matter.

1. MTB is a conditionally exempt small quantity generator of hazardous wastes under 40 C.F.R. §261.5. Therefore, all alleged violations applicable to small quantity generators and large quantity generators and/or treatment, storage or disposal facilities are not applicable to its waste management operations.

2. The proposed penalty is excessive and unreasonable.

3. The alleged violations did not pose a threat to human health or the environment.

4. Complainant's allegations constitute agency action that is arbitrary and capricious, and an abuse of discretion under the Administrative Procedure Act, 5 U.S.C. §§553 and 706.

5. We reiterate and incorporate by reference herein each and every affirmative allegation included in the response to each specific averment of the complaint stated above.

REQUEST FOR HEARING

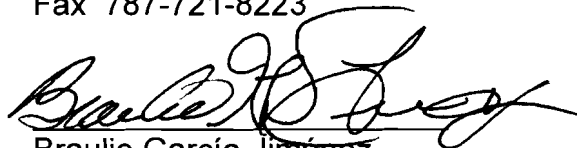
Respondent hereby requests a hearing upon the issues raised by the complaint and its answer as included herein pursuant to RCRA §3008(a) and the Consolidated Rules of Practice, 40 C.F.R. §22.15.

WHEREFORE, Respondent respectfully requests that this Honorable Regional Judicial Officer dismiss the present Complaint and/or deny the relief requested therein.

RESPECTFULLY SUBMITTED

In San Juan, Puerto Rico, this 30th day of October, 2009.

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