

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2

In the Matter of:  CONSOLIDATED WASTE SERVICES, CORP.  YABUCOA MUNICIPAL LANDFILL NPDES MSGP Number PRR05BW07  RESPONDENT	DOCKET NUMBER CWA-02-2013-3455  Proceeding pursuant to Section 113(d) of the Clean Air Act, 42 USC § 7413(d)
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U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REG. II  
2013 NOV - 1 A 11: 34  
REGIONAL HEARING  
CLERK

ANSWER TO THE COMPLAINT AND REQUEST FOR HEARING

TO THE HONORABLE ADMINISTRATIVE LAW JUDGE:

NOW COMES Respondent, Consolidated Waste Services, Corp. ("Conwaste"), through its undersigned attorneys, and for its Answer to the Administrative Complaint, Findings of Violation, Notice of Proposed Assessment of a Civil Penalty, and Notice of Opportunity to Request a Hearing issued by the U. S. Environmental Protection Agency, Region II ("EPA") by letter dated September 30, 2013, and received on October 2, 2013, (hereinafter, the "Complaint"), admits, denies and alleges as follows:

1. The averments contained in paragraphs 1 through 16 require no responsive pleadings insofar as they recite provisions of law or regulation. To the extent that they might be deemed allegations of fact, such allegations are denied.
2. The averments contained in paragraphs 17 through 20 and 22 through 27, are admitted.
3. The averments contained in paragraph 21 are partially denied insofar as they relate to the time during which Conwaste's has been the operator of the Yabucoa municipal landfill. Conwaste ceased to be the operator of the Yabucoa Municipal landfill on June 30th, 2011, just 1 day after the EPA inspector's site visit.
4. The averments contained in paragraph 28 are partially denied insofar as Conwaste ceased to be the operator of the Yabucoa Municipal Landfill on June 30th, 2011.

However, Conwaste admits that it was required to apply for and obtain NPDES coverage for the landfill's stormwater discharges associated with industrial activities pursuant to 40 C.F.R. Section 122.26(b)(14)(V).

5. The averments contained in paragraph 29 do not require a responsive pleading.

6. The averments contained in paragraphs 30 through 33 are denied as drafted for lack of knowledge of the EPA Inspector's file review and findings.

7. The averments contained in paragraphs 34 through 38 are admitted, subject to the defenses and mitigating factors later described in this responsible pleading.

8. The averments contained in paragraph 39 are denied.

9. The averments contained in paragraph 40 are denied as drafted insofar as these contain conclusions of law for which no responsive pleadings are required and admitted with respect to the filing of the NPDES permit Notice of Intent on June 27, 2011.

10. The averments contained in paragraph 41 are denied as these relate to facts unknown to Respondent Conwaste.

11. Respondent denies any and all allegations not specifically admitted herein.

### **Affirmative Defenses**

1. At the time when EPA issued the Administrative Compliance Order CWA-02-2012-3106 (AOC) Respondent Conwaste had long ceased to be the operator of the Yabucoa Municipal landfill and had no contractual, legal or access rights to implement any of the activities required in the AOC. Conwaste's contract with the Municipality of Yabucoa for the operation of the Landfill terminated on June 30, 2011, the date that it ceased to operate the Landfill. In view of the conclusion of its contract with the Municipality of Yabucoa, Conwaste was physically and legally unable to meet the ordered provisions contained in paragraphs 41 through 47 of the AOC.

2. EPA's inspection occurred during the morning of June 29, 2011, while Conwaste was implementing and improving some of the facility's Best Management Practices' ("BMP") and control measures in order to ascertain that at the time it ceased to be the landfill operator on the following day, the facility was in a good condition with its stormwater BMP and Sediment and Erosion controls in good shape.

3. Conwaste advised the Environmental Quality Board ("EQB") of its forthcoming cessation as the Landfill's operator and provided a report on the Landfill's compliance status and of its stormwater control measures.

4. Conwaste has demonstrated that at the time it ceased to operate the Landfill, adequate sedimentation, erosion and stormwater BMP controls (hay packs and stormwater channels) had been implemented, silt fences installed and maintained in good working condition.

5. Complainant has improperly failed to join the Municipality of Yabucoa, the landfill's owner at all pertinent times and operator since July 1, 2011, as an indispensable party to this action.

6. The proposed civil penalty is excessive, unreasonable and is not supported by the individual facts and circumstances present in this case, including but not limited to the existence of mitigating factors which should be taken into consideration.

7. Complainant's allegations and penalty assessment 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.

8. Conwaste obtained no economic benefit from any of the alleged non-compliance with the applicable regulatory requirements.

9. Conwaste has shown EPA good faith and commitment in maintaining its operations in compliance with the applicable regulations.

10. Respondent expressly reserves the right to raise additional affirmative defenses which may arise during discovery or under other procedures associated with the present Complaint.

### **Informal Settlement Conference**

Respondent respectfully informs that the parties have scheduled an informal settlement conference for November 19, 2013, at 2:00pm.

### **Request for Hearing**

Respondent hereby requests a hearing upon the issues raised by the Complaint and its Answer as included herein, pursuant to 5 U.S.C. §§ 552 et seq. and the Consolidated Rules of Practice, 40 CFR §22.15.

WHEREFORE, Respondent respectfully requests that Respondent be granted a hearing on this matter and any other remedy deemed fit and proper; that after an objective assessment of the pertinent facts involved, that the present Complaint be dismissed and/or that the proposed civil penalty amount assessed be significantly reduced and adjusted to reflect all the mitigating factors involved.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 31 day of October, 2013.

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