

JURISDICTION, VENUE, AND NOTICE

3. This Court has jurisdiction over the subject matter of this action under Sections 7003(a) and (b) of RCRA, 42 U.S.C. § 6973 (a) and (b), and 28 U.S.C. §§ 1331, 1345 and 1355.

4. Venue is proper in this District because the violations occurred and are continuing to occur in this District and Toa Alta is located in this District. 28 U.S.C. §§ 1391(b) and 1395(a).

5. The United States has given notice of this action to Puerto Rico as required by Section 7003(a) of RCRA, 42 U.S.C. § 6973(a).

THE DEFENDANT

6. Toa Alta owns the Landfill and has been the owner of the Landfill since approximately 1966.

7. Toa Alta operated the Landfill from 1966 to 1998 and from approximately April 2014 to November 2019. Since November 2019, a third-party contractor has operated the Landfill at the direction of and for the benefit of Toa Alta.

STATUTORY AND REGULATORY BACKGROUND

8. RCRA includes a comprehensive federal program that provides for the regulation of solid waste and hazardous waste. 42 U.S.C. § 6901, *et seq.*

9. “Solid waste” is defined to include garbage, refuse, and other discarded material including solid, liquid, semisolid, or contained gaseous material resulting from, aside from certain exclusions, industrial, commercial, mining, and agricultural operations, and community activities. 42 U.S.C. § 6093(27).

10. Section 7003(a) of RCRA, 42 U.S.C. § 6973(a), provides, in pertinent part:

[U]pon receipt of evidence that the past or present handling, storage, treatment, transportation or disposal of any solid waste or hazardous waste may present an imminent and substantial endangerment to human health or the environment, the Administrator may bring a suit on behalf of the United States in the appropriate district court against any person (including ... past or present owner or operator of a treatment, storage or disposal facility) who has contributed or is contributing to such handling, storage, treatment, transportation or disposal to restrain such person from such handling, storage, treatment, transportation or disposal, to order such person to take such other action as may be necessary, or both. The Administrator may also ... take other action under this section including, but not limited to, issuing such orders as may be necessary to protect public health and the environment.

11. Section 7003(b) of RCRA, 42 U.S.C. § 6973(b), provides that any person who fails to comply with any EPA order issued under Section 7003(a) of RCRA may, in a civil action brought by the United States to enforce such order, be fined up to \$5,000 for each day of each violation.

12. The maximum daily civil penalty amount under Section 7003(b) of RCRA has been increased to \$15,352 for violations occurring after November 2, 2015. 40 C.F.R. § 19.4.

GENERAL ALLEGATIONS

THE LANDFILL AND ITS PRESENT CONDITION

13. The Landfill is located off the PR-165 thoroughfare, at Km 8.2, Barrio Contorno, Municipality of Toa Alta, Puerto Rico. The Landfill comprises approximately 32 acres.

14. More than 100 homes and businesses are located within 1,300 feet of the Landfill perimeter, including one home that is approximately 55 feet from the southwest side of the Landfill.

15. Toa Alta has not installed fencing or other controls limiting access to the Landfill by scavengers and others.

16. Toa Alta has disposed of its municipal solid waste at the Landfill since 1966. Toa Alta also accepts municipal solid waste from other municipalities for disposal at the Landfill.

17. Toa Alta constructed and filled the Landfill in four main stages: (a) the initial waste deposit into an approximately 11-acre sinkhole and in an area in the northeast section of the Landfill; (b) an expansion to the northwest of the initial waste deposit; (c) the newer, Southeast Cell; and (d) a combined waste deposit area overlaying the preexisting waste deposit areas.

18. The 11-acre sinkhole area, the northeast section, and the expansion in the northwest portion of the Landfill are not lined at the bottom with an impermeable membrane.

Leachate

19. Approximately 72 inches of rain fall per year in the region in which the Landfill is located.

20. The surface of the Landfill is not capped with a low permeability cover.

21. Like all landfills without low permeability covers, rain that falls on the Landfill surface passes into and through the solid waste mass within the Landfill.

22. Like all landfills without low permeability covers, water passing through the Landfill's waste mass becomes contaminated with harmful constituents that are in the waste, including heavy metals and organic compounds, as well as pathogens, including viruses and microorganisms such as bacteria and protozoan parasites.

23. This contaminated water, or "leachate," is released from the bottom, sides, and "toe" of the Landfill.

24. The Landfill releases an estimated 12 to 20 million gallons of leachate per year.

25. The Southeast Cell was constructed with a membrane liner at the bottom and a leachate collection system that was intended to remove the leachate that is captured by the liner.

26. Waste was first deposited in the Southeast Cell in 2007.

27. Toa Alta ceased operating and maintaining the leachate collection system in approximately 2014.

28. Toa Alta does not remove the leachate captured by the Southeast Cell's liner.

29. Leachate captured by the liner pools on top of the liner, overflows from the edges of the liner, and leaks through the liner.

30. The liner below the Southeast Cell accounts for approximately 15% of the waste disposal area of the Landfill. Leachate generated in the other 85% of the waste disposal area of the Landfill is not captured by any liner.

31. The Landfill is located above a highly permeable member of the Cibao Formation, which is a recharge area for the North Coast Limestone lower aquifer.

32. The North Coast Limestone lower aquifer is part of the North Coast Limestone aquifer system, which also includes an upper aquifer.

33. The North Coast Limestone aquifer system is a large and productive source of groundwater in Puerto Rico.

34. The U.S. Geological Service ("U.S.G.S") has designated the North Coast Limestone aquifer system as a "Principal Aquifer of the United States," i.e., an aquifer that the U.S.G.S. has determined is a regionally extensive aquifer or aquifer system that has the potential to be used as a source of potable water.

35. Groundwater is mostly extracted from the upper aquifer because it is more accessible for drilling and pumping. The groundwater in the upper aquifer has already been extensively contaminated, resulting in numerous well closures since 1987.

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