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HATO REY, PR 00918

February 7, 2011

VIA UNITED PARCEL SERVICE

Regional Hearing Clerk  
U.S. Environmental Protection Agency  
Region 2  
290 Broadway, 16th Floor  
New York, New York 10007-1866

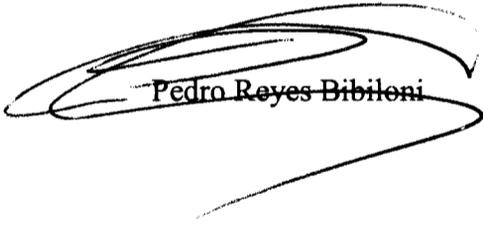
RE: **Pepsi Cola Puerto Rico Bottling  
Company LLC.**  
Docket No. CWA-02-2010-3463

U.S. ENVIRONMENTAL  
PROTECTION AGENCY REGION 2  
2011 FEB -9 A 11:10  
REGIONAL HEARING  
CLERK

Sirs:

Enclosed for filing please find original and two copies of Answer to Complaint, Request for Hearing and Informal Settlement Conference in the case of reference. I will appreciate if you can return the enclosed one additional copy stamped filed in the enclosed addressed envelope.

Cordially,

  
Pedro Reyes Bibiloni

tvv

Enclosure

c: Héctor L. Vélez Cruz  
Environmental Protection Agency  
Office of Regional Counsel

#827938

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2

IN THE MATTER OF:

**Pepsi Cola Puerto Rico Bottling  
Company LLC.**  
P.O. Box 2600  
Toa Baja, Puerto Rico 00949

NPDES MSGP No. PRR05B157

Respondent

**Docket No. CWA-02-2010-3463**

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

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REG. II  
2011 FEB -9 A 11:10  
REGIONAL HEARING  
CLERK

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

TO THE ENVIRONMENTAL PROTECTION AGENCY:

COMES NOW, Pepsi Cola Puerto Rico Distributing, LLC ("Respondent"),<sup>1</sup>  
through its undersigned attorney, and respectfully alleges, states, and prays as follows:

**I. Statutory and Regulatory 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 Administrative Complaint, Findings of Violation, Notice of Proposed Assessment of an Administrative Penalty, and Notice of Opportunity to Request a Hearing dated September 30, 2010, which was received on January 17, 2011 (the "Complaint").
2. Respondent explains the allegation in paragraph 2 that it failed to comply with certain requirements of the National Pollutant Discharge Elimination System (NPDES) Multi-Sector General Permit (MSGP) of reference in the section titled Grounds for Defense below.
3. The allegation in paragraph 3 does not require an answer; it is a conclusion of law.

<sup>1</sup> Pepsi Cola Puerto Rico Distributing, LLC is a successor of Pepsi Cola Manufacturing, LLC, which is an ultimate successor of Pepsi Cola Puerto Rico Bottling Company.

4. The allegation in paragraph 4 does not require an answer; it is a conclusion of law.
5. The allegation in paragraph 5 does not require an answer; it is a conclusion of law.
6. The allegation in paragraph 6 does not require an answer; it is a conclusion of law.
7. The allegation in paragraph 7 does not require an answer; it is a conclusion of law.
8. The allegation in paragraph 8 does not require an answer; it is a conclusion of law.
9. The allegation in paragraph 9 does not require an answer; it is a conclusion of law.
10. The allegation in paragraph 10 does not require an answer; it is a conclusion of law.
11. The allegation in paragraph 11 does not require an answer; it is a conclusion of law.
12. The allegation in paragraph 12 does not require an answer; it is a conclusion of law.
13. The allegation in paragraph 13 does not require an answer; it is a conclusion of law.
14. The allegation in paragraph 14 does not require an answer; it is a conclusion of law.
15. The allegation in paragraph 15 does not require an answer; it is a conclusion of law.
16. The allegation in paragraph 16 does not require an answer; it is a conclusion of law.
17. The allegation in paragraph 17 does not require an answer; it is a conclusion of law.

## **II. Jurisdictional Findings**

18. The allegation in paragraph 18 is admitted. It is clarified that on December 28, 2010, Pepsi Cola Puerto Rico Manufacturing, LLC merged into Pepsi Cola Puerto Rico Distributing, LLC.
19. The allegation in paragraph 19 is admitted.
20. The allegation in paragraph 20 is admitted.
21. The allegation in paragraph 21 is admitted.
22. The allegation in paragraph 22 is admitted.
23. The allegation in paragraph 23 is admitted.
24. The allegation in paragraph 24 is admitted.
25. The allegation in paragraph 25 is admitted.
26. The allegation in paragraph 26 is admitted.
27. The allegation in paragraph 27 does not require an answer; it is a conclusion of law.
28. The allegation in paragraph 28 does not require an answer; it is a conclusion of law.
29. The allegation in paragraph 29 does not require an answer; it is a conclusion of law.
30. The allegation in paragraph 30 does not require an answer; it is a conclusion of law.
31. The allegation in paragraph 31 does not require an answer; it is a conclusion of law.
32. The allegation in paragraph 32 does not require an answer; it is a conclusion of law.
33. The allegation in paragraph 33 does not require an answer; it is a conclusion of law.

## **III. Findings of Violation**

34. Respondent re-alleges paragraphs 18-33 above.

35. The allegation in paragraph 35 is admitted.
36. The allegation in paragraph 36 is explained. Respondent admits that the alleged findings were included in the inspection report.
37. The allegation in paragraph 37 is explained as follows:
  - a. At the time of the October 24, 2008 inspection, Respondent, with the assistant of environmental consultants, had developed a Storm Water Pollution Prevention Plan (SWPPP) as revised in September 2007. Section 8.0 of said 2007 SWPPP includes a description of existing and planned Best Management Practices (BMPs) that Respondent believed were in compliance with Part 4.2.7 of the 2000 MSGP. The 2007 SWPPP contained BMPs for the Fueling Station Area, Fuel Storage Area, Loading and Unloading Area, Hazardous waste Storage Area, Diesel Storage Area Mechanical Workshop Area, and Maintenance Shop. Respondent had prepared its 2008 SWPPP, which was revised in accordance with the requirements of the March 13, 2009 Administrative Compliance Order. As acknowledged in the Complaint, Respondent submitted complete and adequate SWPPP as part of its submittals pursuant to the Administrative Compliance Order. As per the revised 2008 SWPPP, Respondent installed and is maintaining best management practices in compliance with the permit requirements.
  - b. Respondent has taken the Administrative Compliance Order and the Complaint as an advice from a concerned government agency. To that end, Respondent is reviewing its environmental compliance policy and procedures. Regarding compliance with storm water management, MSGP requirements and EPA directives, in addition to the responsibilities of Respondent's personnel pertaining to compliance with the 2008 MSGP, Respondent has commissioned independent environmental consultants to conduct oversight facility inspections and audits pertaining compliance with the requirements of the 2008 MSGP.
  - c. See paragraph "a" above.
  - d. See paragraph "b" above.
38. Respondent has no personal information to admit or deny allegation 38.
39. Respondent has no personal information to admit or deny that the review revealed the findings in paragraph 39. Respondent admits the allegation regarding the 2000 MSGP coverage.

40. Respondent has no personal information to admit or deny that EPA performed the review. Respondent submits that it did file an electronic draft Notice of Intent (NOI) to EPA NOI Processing Center in December 31, 2008 (before the January 5, 2009 deadline). Apparently, there was no certification generated after the December 31, 2008 filing; therefore, it was determined to be incomplete by EPA.
41. The allegation in paragraph 41 is explained. Respondent admits that EPA issued the Order, that the Order includes alleged findings of violation and the ordered provisions stated in “a”, “b”, “c” and “d”.
42. The allegation in paragraph 42 is admitted.
43. The allegation in paragraph 43 is admitted. It is clarified that as explained in paragraph 45.d below, Respondent filed a draft NOI with EPA in December 31, 2008.
44. The allegation in paragraph 44 is admitted. It is clarified that as explained in paragraph 37 above, before July 20, 2009 Respondent had significantly complied with the SWPPP development and implementation requirements.
45. The allegation in paragraph 45 is explained as follows:
  - a. **Claim 1 – Failure to develop a complete SWPPP.** As acknowledged in the Complaint, by July 20, 2009, Respondent had submitted a complete SWPPP as required by EPA.
  - b. **Claim 2 – Failure to adequately implement the SWPPP controls/BMPs.** As acknowledged in the Complaint, by September 18, 2009, Respondent had adequately implemented SWPPP controls.
  - c. **Claim 3 – Failure to maintain SWPPP controls/BMPs.** As acknowledged in the Complaint, by September 18, 2009, Respondent had adequately implemented SWPPP controls. It is submitted that Claim 3 derives from Claim 2 and is not independent or substantially distinguishable from Claim 2. Both, Claim 2 and Claim 3, result from the same factual event.
  - d. **Claim 4 – Failure to apply for and obtain NPDES Coverage.** A draft electronic NOI to seek coverage under EPA’s 2008 MSGP was submitted in December 31, 2008 with EPA NOI Processing Center. Said draft NOI was saved under the tracking number PRR05BK31. It is respectfully submitted that through the December 31, 2008 filing of the draft NOI, Respondent demonstrated its intention to comply with the EPA permit coverage requirement before the January 5, 2009 deadline. Through an e-mail dated December 31, 2008, EPA NOI Processing Center acknowledged said submittal and requested Respondent’s Plant Manager,

Luis Ramos, to certify the NOI via an electronic signature to be submitted by March 30, 2009. According to EPA's NOI Processing Center, it was not until June 25, 2009 that the draft NOI submitted back in December 30, 2008 was completed.

- e. **Claims 5 – Illegal Discharges without NPDES permit coverage.** It is submitted that Claim 5 derives from Claim 4 and is not independent or substantially distinguishable from Claim 4. Both, Claim 4 and Claim 5, result from the same factual event, namely incomplete filing of the NOI. Both claims pose the same legal risk. The alleged stormwater discharge without the NPDES permit coverage is necessarily the direct consequence of the alleged incomplete filing of the NOI.

#### **IV. Proposed Civil Penalty**

46. The proposed civil penalty of \$73,327.00 is unwarranted. Respondent is a good corporate citizen and not an unwilling party who needs enforcement to compel compliance.
47. 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**

48. Respondent acted in good faith by filing a draft NOI before the January 5, 2009 deadline, and demonstrated good faith efforts to comply with EPA requirements by swiftly addressing the noted violations to the MSGP requirements. In addition, the noted violations did not pose a significant harm to public health or the environment.
49. The proposed penalty is unwarranted and unfairly disproportionate considering the nature, circumstances of the case, and the extent and gravity of the alleged violation, lack of prior history of violations, the degree of culpability of the unintentional violation, the possible economic benefit, and the willingness of Respondent to cooperate with EPA at all relevant times. Respondent did not incur in repeat or flagrant violations.
50. Claim 3 derives from Claim 2 and is not independent or substantially distinguishable from Claim 2. Both, Claim 2 and Claim 3, result from the same factual event. In addition, Claim 5 derives from Claim 4 and is not independent or substantially distinguishable from Claim 4. Both, Claim 4 and Claim 5, result from the same factual event, namely incomplete filing of the NOI. Both, claims 4 and 5, pose the same legal risk. The alleged storm water discharge without the NPDES permit coverage is necessarily the direct consequence of the alleged incomplete filing of the NOI.

51. Respondent has no prior history of violations to the Clean Water Act.
52. The proposed civil penalty of \$73,327.00 is unwarranted. Respondent is a good corporate citizen and not an unwilling party who needs enforcement to compel compliance.
53. A penalty calculation section or worksheet was not included with the Complaint. Respondent reserves the right to amend its answer to the Complaint after being provided with information pertaining to the calculation of the penalty amount proposed in the Complaint.

#### **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.

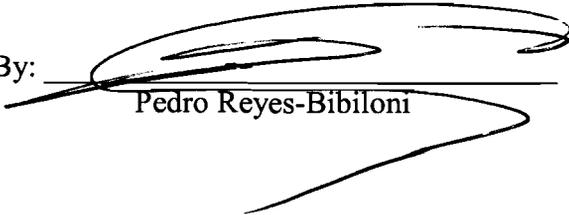
In San Juan, Puerto Rico, this 7th day of February 2011.

**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 Héctor L. Vélez Cruz, Esq., Assistant Regional Counsel, Office of Regional Counsel, U.S. Environmental Protection Agency, Region 2, Centro Europa Building, Suite 417, 1492 Ponce de León Avenue, San Juan, Puerto Rico 00907-4127.

#### **Pepsi Cola Puerto Rico Distributing, LLC**

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By: \_\_\_\_\_

  
Pedro Reyes-Bibiloni

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