

**CERTIFICATE OF SERVICE**

I hereby certify that the Order Staying The Default Proceeding And Directing The Parties To File A Joint Status Report by Regional Judicial Officer Helen Ferrara in the matter of Rio Construction Corporation, Docket No. CWA-02-2007-3414, was served on the parties as indicated below:

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Dated: January 15, 2009

**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 2**

**IN THE MATTER OF:**

Rio Construction Corporation  
P.O. Box 10462  
Caparra Heights  
San Juan, PR 00922

NPDES Permit Number PRR10B936

Respondent

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

**DOCKET NO. CWA-02-2007-3414**

**ORDER STAYING THE DEFAULT PROCEEDING AND  
DIRECTING THE PARTIES TO FILE A JOINT STATUS REPORT**

On September 24, 2007, Complainant, EPA Region 2, issued a Complaint to Respondent, Rio Construction Corporation (Docket No. CWA-02-2007-3414). The United States Postal Service return receipt indicates that Respondent received the Complaint on October 24, 2007, but the Respondent did not file an Answer or any other response to the Complaint. On September 22, 2008, Complainant filed a Motion for Default Order on Liability.

On October 20, 2008, Rio Construction Corporation (“Rio” or “Respondent”) filed a Motion In Opposition To Order In Default, Answer to Complaint and Request for Hearing (“Respondent’s Motion”). In Respondent’s Motion, Respondent claims that, upon receipt by Respondent, the Complaint was placed unopened in a file which was then inadvertently misplaced. The Respondent explains that this was apparently due to the fact that the construction

project had been completed in 2006 and the Respondent was inoperative at the time the Complaint was received due to financial problems. The Respondent also submits a purported Answer to the Complaint and requests a hearing.

On October 29, 2008, Complaint submitted a Response of the EPA to Motion in Opposition to Order in Default, Answer to Complaint and Request for Hearing (“Complainant’s Response”). Based on the reasoning set forth in Complainant’s Response, including its position that Respondent has failed to demonstrate that it should not be found in default and that Respondent never filed a request for extension of time to file an Answer or to request a hearing, Complainant requests that: Complainant’s Motion for Respondent Default Order be granted; Respondent’s Answer be stricken from the record; and Respondent’s Request for a hearing be denied. Complainant also addresses the substantive claims made in the Answer.

Claimant is correct in noting that the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits at 40 C.F.R. § 22.17(a) provides that a party may be found to be in default after motion, upon failure to file a timely answer to the complaint, and that 40 C.F.R. § 22.17(c) states that when the Presiding Officer finds that default has occurred, she shall issue a default order unless the record shows good cause why a default order should not be issued.

However, Respondent has offered what it believes to be good cause for its failure to answer the Complaint in a timely manner. In addition, the Respondent is correct in its assertion that it is a “well known principle of law that the resolution of a case by default judgment is not favored.”

In light of the record in this case, the Undersigned must determine whether the explanation offered by Respondent for failing to answer the Complaint in a timely manner

constitutes "good cause" as that phrase is used in the applicable regulations.

In order to allow for proper consideration of this issue, the Undersigned will stay the default proceedings in this matter for approximately thirty (30) days, through February 17, 2009, by which date the parties are directed to submit a Joint Status Report. During the stay in these proceedings, the parties are encouraged to negotiate a settlement in this matter. The Undersigned will review the Joint Status Report, and within thirty (30) days of receipt of that report, the Undersigned will issue an Order setting forth her determination on these default proceedings. Based on her findings, the Undersigned may extend the stay in order that the parties may continue settlement discussions, schedule a status teleconference, issue a Default Order on Liability and request submissions from the parties addressing the penalty sought in this matter, and/or accept the Answer and forward the matter to the Office of the Administrative Law Judges for adjudication.

Based upon the record in this matter, and in light of the considerations set forth herein, the Undersigned issues the following **ORDER**.

**IT IS ORDERED:**

**The default proceedings in this matter are hereby stayed through February 17, 2009, during which time the Undersigned directs the parties to continue discussions in an attempt to resolve this matter. The parties are hereby directed to file a Joint Status Report by February 17, 2009, upon receipt of which the Undersigned will evaluate the status of these proceedings and issue further orders as necessary.**

**Dated: January 13, 2009**

  
Helen S. Ferrara  
Presiding Officer