

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II
2007 NOV 2 AM 11:51
REGIONAL HEARING
CLERK

IN THE MATTER OF:

**PUERTO RICO AQUEDUCT AND
SEWER AUTHORITY,**

Ponce Regional Wastewater Treatment Plant
NPDES Permit No. PR 0021563

RESPONDENT

Proceeding to Assess Class II Civil
Penalty Under Section 309(g)(2)(B)

**DOCKET NUMBER
CWA-02-2008-3451**

**ADMINISTRATIVE COMPLAINT, FINDINGS OF VIOLATION,
NOTICE OF PROPOSED ASSESSMENT OF A CIVIL PENALTY, AND
NOTICE OF OPPORTUNITY TO REQUEST A HEARING**

I. Statutory Authority

1. This Complaint, Findings of Violation, Notice of Proposed Assessment of a Civil Penalty, and Notice of Opportunity to Request a Hearing ("Complaint") is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA") by Section 309(g)(2)(B) of the Clean Water Act ("Act"), 33 U.S.C. § 1319(g)(2)(B). The Administrator has delegated this authority to the Regional Administrator of EPA, Region 2, who in turn has delegated it to the Director, Caribbean Environmental Protection Division ("CEPD") of EPA, Region 2 ("Complainant").
2. Pursuant to Section 309(g)(2)(B) of the Act, and in accordance with the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits" ("CROP"), 40 C.F.R. Part 22 (2005), a copy of which is attached, Complainant hereby requests that the Regional Administrator assess a civil penalty against the Puerto Rico Aqueduct and Sewer Authority ("Respondent") for the unlawful discharges of untreated sewage into the Caribbean Sea, failure to properly notify the unlawful discharges and failure to provide proper Operation & Maintenance ("O&M") at the Ponce Regional Wastewater Treatment Plant ("Ponce RWWTP" or "the facility"), NPDES Permit (PR0021563), in violation of Section 301(a) of the Act, 33 U.S.C. § 1311.

II. Statutory and Regulatory Background

1. Section 301(a) of the Act, 33 U.S.C. § 1311(a), provides in part that except as in compliance with this section and sections 402 and 404 of the Act, the discharge of any pollutant by any person shall be unlawful.
2. Section 308(a)(A) of the Act, 33 U.S.C. § 1318(a)(A), establishes that whenever required to carry out the objectives of the Act, the Administrator shall require the owner or operator of any point source to:
 - a. establish and maintain such records;
 - b. make such reports;
 - c. install, use and maintain such monitoring equipment or methods;
 - d. sample such effluents; and
 - e. provide such other information as may be required.
3. Section 502 of the Act, 33 U.S.C. § 1362, and its implementing regulations, contain the following definitions:
 - a. Section 502(5) defines "person" as an individual, corporation, partnership or association;
 - b. Section 502(6) defines "pollutant" as including, among others, solid waste, dredged spoil, rock, sand, cellar dirt, sewage, sewage sludge and industrial, municipal and agricultural waste discharged into water;
 - c. Section 502(7) defines "navigable waters" as the waters of the United States, including the territorial seas;
 - d. Section 502(12) defines in part "discharge of a pollutant" as any addition of any pollutant to navigable waters from any point source;
 - e. Section 502(14) defines "point source" as any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged.
4. Section 402 of the Act, 33 U.S.C. § 1342, defines the NPDES as the national program for, among other things, issuing and enforcing permits.

5. Section 402 of the Act authorizes the Administrator to promulgate regulations for the implementation of the NPDES requirements.
6. Pursuant to the Act, on April 1, 1983, EPA promulgated regulations to implement the NPDES program, under EPA Administered Permit Programs: the NPDES, at 40 C.F.R. Part 122, as amended.
7. Pursuant to the NPDES regulations at 40 C.F.R. § 122.5(b), the NPDES program requires permits for the discharge of any pollutant from any point source into waters of the United States.
8. The NPDES regulations under 40 C.F.R. § 122.2 define such terms:
 - a. "Pollutant," in part, as dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, chemical wastes, rock, sand and others.
 - b. "Facility," as any NPDES point source or any other facility or activity (including land or appurtenances thereto) that is subject to the regulations of the NPDES program.
 - c. "Owner" or "operator," as the owner or operator of any facility or activity subject to regulation under the NPDES program.
 - d. "Point Source," as any discernible, confined and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, from which pollutants are or may be discharged.
 - e. "Discharge," as the addition of a pollutant or combination of pollutants into waters of the United States from any point source.
 - f. "NPDES" means National Pollutant Discharge Elimination System under Section 402 of the Act, 33 U.S.C. § 1342. National Pollutant Discharge Elimination System means the national program for, among other things, issuing and enforcing permits.
9. "Publicly Owned Treatment Works" or "POTW" is defined at 40 C.F.R. § 403.3(q) as a treatment works which is owned by a State or municipality. This definition includes any devices and systems used in the storage, treatment, recycling and reclamation of municipal sewage or industrial wastes of a liquid nature. It also includes sewers, pipes and other conveyances only if they convey wastewater to a POTW Treatment Plant.
10. The NPDES regulations under 40 C.F.R. § 122.41(m)(a) requires a permittee to comply with all conditions of its NPDES permit. Any permit noncompliance constitutes a

violation of the Clean Water Act and is grounds for: enforcement action, permit termination, revocation and reissuance, modification or denial of a permit renewal application.

11. The NPDES regulations under 40 C.F.R. § 122.41(m)(1)(i), define “bypass” as the intentional diversion of waste streams from any portion of a treatment facility. A bypass may be allowed which does not cause effluent limitations to be exceeded, but only if it is for essential maintenance to assure efficient operation; otherwise, a bypass is prohibited. If the permittee knows in advance of the need for a bypass, it shall submit prior notice. Pursuant to 40 C.F.R. §§ 22.41(l)(6)(ii)(A) and 122.41(m)(3)(i), the permittee shall submit notice of an unanticipated bypass within twenty four (24) hours.
12. The NPDES regulations under 40 C.F.R. § 122.41(m)(4)(i) establishes that a “[b]ypass is prohibited, and the Director may take enforcement action against a permittee for bypass....”

III. Findings of Violation

13. Respondent is a public corporation organized and authorized to do business under the laws of the Commonwealth of Puerto Rico.
14. Respondent is a "person" within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5).
15. Respondent owns and operates the Ponce RWWTP.
16. The facility, located at P.R. 2 Kilometer 258.5, Ponce, Puerto Rico 00731, is a publicly owned treatment works (“POTW”).
17. Respondent’s facility was, and is, at all relevant times, a “point source” as defined in 40 C.F.R. § 122.2.
18. Respondent “discharges pollutants” from its facility into the “Caribbean Sea”.
19. The “Caribbean Sea” is a water of the United States, pursuant to Section 502(7) of the Act, 33 U.S.C. § 1362(7).
20. The NPDES Permit No. PR0021563 ("the permit") was issued to Respondent on September 28, 2006, by EPA under Section 402 of the Act, 33 U.S.C. § 1342, for the discharge of pollutants from its facility. By its own terms, the permit became effective on November 1, 2006, and expires on October 31, 2011.
21. General Condition C.1 of the Ponce RWWTP NPDES permit requires compliance with all conditions of the permit. Any permit non-compliance constitutes a violation of the

Act and is grounds for enforcement action, permit termination, revocation and reissuance, modification, or denial of a permit renewal application.

22. General Condition C.4 of the Ponce RWWTP NPDES permit indicates that the permittee shall take all reasonable steps to minimize or prevent any discharge in violation of its permit which has a reasonable likelihood of adversely affecting human health and/or the environment.
23. General Condition C.5 of Ponce RWWTP NPDES permit requires permittee at all times to properly operate and maintain all treatment facilities (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of the permit. Proper operation and maintenance also include adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit.
24. Section 1 (Page 2) of the Ponce RWWTP NPDES Permit, which implements Section 301 of the Act, 33 U.S.C. § 1311, limits the discharge of wastewater to the outfall location set forth therein.
25. Attachment #1 of the Ponce RWWTP NPDES Permit, in its Section 12 "Reporting Requirements" prescribes that Respondent shall report any noncompliance which may endanger health or the environment. The information shall be provided orally within twenty four (24) hours from the time it becomes aware of the circumstances. It further requires that a written submission be provided within five (5) days of the time it becomes aware of the event. The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.
26. On the dates from May 30 to April 2, 2007, approximately 84.5 hours of non-authorized discharges took place. The reporting of such event was characterized by error and imprecision, as it is illustrated by the record of communications from Respondent, established below:
 - a. On the afternoon of May 31, 2007, PRASA reported via telephone that the Ponce RWWTP discharged through an unauthorized outfall on March 30, 2007.
 - b. On April 2, 2007, EPA received two bypass reports (each one identified as "TWENTY FOUR HOUR NOTIFICATION") from Respondent. The first notification reports that on March 29, 2007, the Ponce RWWTP discharged through an unauthorized outfall due to electrical failures of the outfall pumps. According to the notification, the event ended the same day (March 29, 2007.) The second one states that on April 2, 2007, the Ponce RWWTP discharged

through an unauthorized outfall again and establishes that this event also concluded the same day (on this case, April 2, 2007.)

- c. On April 3, 2007, PRASA submitted a revised bypass report, in which it was established that the submitted notifications contained the following errors: the date of the event reported as March 29, 2007, should have read March 30, 2007.
 - d. On April 4, 2007, a written notification was submitted. The same reported the April 2, 2007 event as starting and ending that same day.
 - e. On April 13, 2007, a revised notification was reported. The same stated that “based on information obtained after the notice operational events reports were sent to EPA corresponding to the dates March 30, 2007 and April 2, 2007, the overflows might be occurring intermittently during that period.”
27. On April 4, 2007, EPA issued an Information Request Letter pursuant to Section 308 of the Act. The Information Request Letter requested the following: date and time in which the effluent discharges through the unauthorized ocean outfall; copy of both 24-hours bypass reports that occurred on March 29, 2007 and April 2, 2007; total number of unauthorized discharge hours, on March 29, 2007 and April 2, 2007; the specific reasons that caused the facility to discharge through the unauthorized ocean outfall; the operational conditions of the five (5) effluent pumps before the unauthorized outfall discharge occurred; a detailed description of PRASA’s corrective actions regarding the effluent pumps operational conditions; current operational condition of each pumping unit; cost estimates for the repairs of all effluent pumps; and, an estimate of the amount of wastewater discharged through the unauthorized outfall on March 29, 2007 and April 2, 2007.
28. On April 9, 2007, PRASA answered the information request stating, among others, that influent pump #2 lost its seal and flooded the dry well of the facility. PRASA indicated that its personnel used parts from influent pump # 4 to repair pump # 2. At that moment, the Ponce RWWTP was working with only two influent pumps.
29. In addition, on April 10, 2007, a PRASA representative reported via telephone an event that occurred on April 9, 2007, at the facility, in which influent pump # 2 lost its seal which flooded the dry pit. This event caused the discharge of raw sewage into the Caribbean Sea. No further information was provided by PRASA’s representative at that time. On April 13, 2007, PRASA submitted a written notification reporting such event.
30. On April 11, 2007, an EPA representative from the CEPD, conducted a Reconnaissance Inspection (RI) of the Ponce RWWTP. During the RI the following deficiencies were observed:

- a. influent pump # 4 was out of service.
 - b. influent pump # 2 was out of service since April 10, 2007. A flood at the dry pit well occurred on April 9, 2007. During this unanticipated event Pump # 2 lost its seal. This event caused the discharge of raw sewage into the Caribbean Sea.
 - c. Ponce RWWTP has five effluent pumps; pump # 4 and the spare pump are out of service since March 30, 2007. At the time of the inspection, the facility was operating with three (3) effluent pumps.
31. On April 17, 2007, Respondent submitted an amended response to the Information Request Letter stating the following:
 - a. That instead of two (2) separate unauthorized discharge events at the facility (one on March 30, 2007 and the other on April 2, 2007) it was only one incident. The old outfall (not a permitted location) had discharged into the Caribbean Sea more or less continuously to different degrees during the entire weekend. There were approximately 84.5 hours of non-authorized discharges from March 30, 2007, at 10:30 a.m. until April 2, 2007, at 11:00 p.m.
 - b. The investigation revealed that on March 30, 2007, at approximately 8:50 a.m., a power outage occurred that activated the emergency generator unit of the plant. During this event the transfer switch unit did not make the power transfer to all the facility buildings. This included the effluent pump station as well as the influent pumps. The bar screens got clogged as a result of the rising of water levels in the entrance channel. PRASA personnel placed two influent pumps in operation and later used a third one to further control the influent flow. At 3:58 p.m. the effluent pumps were not working properly. During the morning of April 2, 2007, the effluent pumps still could not handle the outgoing flow, PRASA personnel found that pump # 4 was burned and a spare pump was installed. The effluent pumps did not handle the volume of water received, which caused an overflow towards the old outfall structure. This old outfall is not a permitted point for discharge.
32. On April 18, 2007, EPA held a telephone conversation with one of Respondent's representatives in which he indicated that the Ponce RWWTP was operating with only two (2) influent pumps and three (3) effluent pumps.
33. Based on the observations made by EPA during the RI, Respondent's Notification Reports and Respondent's answer to the information request, EPA determined that the NPDES permit was violated at the Ponce RWWTP as a result of poor O&M practices. Accordingly, on April 27, 2007, EPA issued a Compliance Order to address the violations mentioned above (CWA-02-2007-3040).

34. The Compliance Order incorporated findings of violations, and ordered Respondent to, among other things:
 - a. maximize the Operation and Maintenance Practices at the Ponce RWWTP in order to achieve and maintain compliance with all the final effluent limitations immediately;
 - b. repair and put in service all the influent and effluent pumps of the facility within thirty (30) days; and
 - c. fully comply with all provisions of the permit, including General Condition C.1 of the Ponce RWWTP NPDES permit.

35. After the Compliance Order, PRASA submitted additional bypass report notifications, indicating that the facility's influent pumps failed and, as a consequence, several sewage overflows occurred during the following dates:
 - a. on May 15; one (1) day of raw sewage discharge due to problems with the influent pumps;
 - b. on May 23, 2007; one (1) day of raw sewage discharge due to problems with the influent pumps;
 - c. from June 8, 2007 to June 9, 2007; two (2) days of raw sewage discharge due to problems with the influent pumps;
 - d. on June 19, 2007; one (1) day of raw sewage discharge due to problems with the influent pumps; and
 - e. from July 3, 2007 to July 4, 2007; two (2) days of raw sewage discharge days due to problems with the influent pumps.

36. On June 6, 2007, EPA received a letter dated June 4, 2007, in response to the Compliance Order. This letter reported the status of the activities -already taken or planned- to address the findings made during the EPA's RI. The letter states, among others, that: influent pump #4 was still out of service; that Respondent hired a private company to repair the leaks under the three grit chamber tanks and that plant personnel partially repaired the oil leak at the Conveyor #1. However, subsequent violations of the Act occurred.

37. On the basis of the findings cited in the paragraphs above, Respondent violated Section 301 of the Act, 33 U.S.C. § 1311(a), and its permit conditions established pursuant to it, for:
 - a. its failure to provide proper O&M at the facility, as required by General Condition C.5 of the NPDES permit;

- b. the illegal discharges of pollutants into waters of the United States at a location other than the one authorized in Section 1 of the NPDES permit; and,
- c. its failure to timely submit complete and accurate non-compliance reports.

38. The EPA will notify the Commonwealth of Puerto Rico regarding this proposed action by mailing a copy of this Complaint and Notice and offering an opportunity for the Puerto Rico Environmental Quality Board to confer with EPA on the proposed penalty assessment.

IV. Notice of Proposed Order Assessing a Civil Penalty

Based on the foregoing Findings of Violation, and pursuant to the authority of Section 309(g) of the Act, 33 U.S.C. § 1319(g), and the Debt Collection Improvement Act of 1996, EPA, Region 2, hereby proposes to issue a Final Order Assessing Administrative Penalties ("Final Order") to Respondent, assessing a penalty of one hundred and forty three thousand dollars (\$143,000.00.)

EPA determined the proposed penalty after taking into account the applicable factors identified at Section 309(g)(3) of the Act, 33 U.S.C. § 1319(g)(3). EPA has taken account of the nature, circumstances, extent and gravity of the violations, Respondent's prior history of noncompliance, degree of culpability, economic benefit or savings accruing to Respondent by virtue of the violations, and Respondent's ability to pay the proposed penalty. Respondent's knowledge of the NPDES regulations; its NPDES permit; the existing conditions of the facility; and the risks and possible effects to human health and the environment posed by the discharges of sewage into the Caribbean Sea were also considered.

The Respondent has been found to have violated the Act on at least thirteen (13) instances by failing to provide proper O&M, for the illegal discharges of pollutants into waters of the United States at a location other than the one authorized in its NPDES permit, and for not reporting instances of violations timely and accurately. Respondent is culpable for the violations.

Respondent knew of its obligations under the NPDES regulations and should have complied with its NPDES permit and the Act. Respondent does have a prior history of violations in the NPDES program. Respondent obtained an economic benefit for its failure to operate and maintain the facility and for not treating the discharged wastewater as required by its NPDES permit. No ability to pay argument is anticipated.

EPA may issue a final Order Assessing Administrative Penalties thirty (30) days after Respondent's receipt of this Notice, unless Respondent, within that time, files an answer to the Complaint and requests a hearing on this Notice pursuant to the following section.

V. Procedures Governing this Administrative Litigation

The rules of procedure governing this civil administrative litigation have been set forth in the CROP, 40 C.F.R. Part 22. A copy of these rules accompanies this Complaint.

A. Answering the Complaint

Where Respondent intends to contest any material fact upon which the Complaint is based, to contend that the proposed penalty is inappropriate or to contend that Respondent is entitled to judgment as a matter of law, Respondent must file with the Regional Hearing Clerk of EPA, Region 2, both an original and one copy of a written Answer to the Complaint, and such Answer must be filed within thirty (30) days after service of the Complaint, 40 C.F.R. § 22.15(a). The address of the Regional Hearing Clerk of EPA, Region 2, is:

**Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
290 Broadway, 17th floor
New York, New York 10007-1866**

Respondent shall also serve one copy of the Answer to the Complaint upon Complainant and any other party to the action, 40 C.F.R. § 22.15(a).

Respondent's Answer to the Complaint must clearly and directly admit, deny, or explain each of the factual allegations that are contained in the Complaint and with regard to which Respondent has any knowledge, 40 C.F.R. § 22.15(b). Where Respondent lacks knowledge of a particular factual allegation and so states in its Answer, the allegation is deemed denied, 40 C.F.R. § 22.15(b). The Answer shall also set forth: (1) the circumstances or arguments that are alleged to constitute the grounds of its defense, (2) the facts that Respondent disputes (and thus intends to place at issue in the proceeding), (3) the basis for opposing the proposed relief and (4) whether Respondent requests a hearing, 40 C.F.R. § 22.15(b).

Respondent's failure to raise in the Answer facts that constitute or that might constitute the grounds of its defense may preclude Respondent, at a subsequent stage in this proceeding, from raising such facts and/or from having such facts admitted into evidence at a hearing.

B. Opportunity to Request a Hearing

If requested by Respondent in its Answer, a hearing upon the issues raised by the Complaint and Answer may be held, 40 C.F.R. § 22.15(c). If, however, Respondent does not request a hearing, the Presiding Officer (as defined in 40 C.F.R. § 22.3) may hold a hearing if the Answer raises issues appropriate for adjudication, 40 C.F.R. § 22.15(c).

Any hearing in this proceeding will be held at a location determined in accordance with 40 C.F.R. § 22.21(d). A hearing of this matter will be conducted in accordance with the applicable provisions of the Administrative Procedure Act, 5 U.S.C. §§ 551-559, and the procedures set forth in Subpart D of 40 C.F.R. Part 22.

Should Respondent request a hearing on this proposed penalty assessment, members of the public, to whom EPA is obligated to give notice of this proposed action, will have a right under Section 309 (g)(4)(B) of the Act, 33 U.S.C. § 1319(g)(4)(B), to be heard and to present evidence on the appropriateness of the penalty assessment. Should Respondent not request a hearing, EPA will issue a Final Order, and only members of the public who submit timely comments on this proposal will have an additional thirty (30) days to petition EPA to set aside the Final Order and to hold a hearing thereon. EPA will grant the petition and will hold a hearing only if the petitioner's evidence is material and was not considered by EPA in the issuance of the Final Order.

C. Failure to Answer

If Respondent fails to admit, deny, or explain in its Answer any material factual allegation contained in the Complaint, such failure constitutes an admission of the allegation, 40 C.F.R. § 22.15(d). If Respondent fails to file a timely [i.e. in accordance with the 30-day period set forth in 40 C.F.R. § 22.15(a)] Answer to the Complaint, Respondent may be found in default upon motion, 40 C.F.R. § 22.17(a). Default by Respondent constitutes, for purposes of the pending proceeding only, an admission of all facts alleged in the Complaint and a waiver of Respondent's right to contest such factual allegations, 40 C.F.R. § 22.17(a). Following a default by Respondent for a failure to timely file an Answer to the Complaint, any order issued therefore shall be issued pursuant to 40 C.F.R. § 22.17(c).

Any penalty assessed in the default order shall become due and payable by Respondent without further proceedings thirty (30) days after the Default Order becomes final pursuant to 40 C.F.R. § 22.27(c) and 40 C.F.R. § 22.17(d). If necessary, EPA may then seek to enforce such Final Order of Default against Respondent, and to collect the assessed penalty amount in federal court.

VI. Informal Settlement Conference

Whether or not Respondent requests a formal hearing, EPA encourages settlement of this proceeding consistent with the provisions of the Act and its applicable regulations, 40 C.F.R. § 22.18(b). At an informal conference with a representative(s) of Complainant, Respondent may comment on the charges made in this complaint, and Respondent may also provide whatever additional information that it believes is relevant to the disposition of this matter, including: (1) actions Respondent has taken to correct any or all of the violations herein alleged, (2) any information relevant to Complainant's calculation of the proposed penalty, (3) the effect the proposed penalty would have on Respondent's ability to continue in business, and/or (4) any other special facts or circumstances Respondent wishes to raise.

Complainant has the authority to modify the amount of the proposed penalty, where appropriate, to reflect any settlement agreement reached with Respondent, to reflect any relevant information previously not known to Complainant or to dismiss any or all of the charges, if Respondent can

demonstrate that the relevant allegations are without merit and that no cause of action as herein alleged exists. Respondent is referred to 40 C.F.R. § 22.18.

Any request for an informal conference or any questions that Respondent may have regarding this Complaint should be directed to the EPA attorney named in Section VIII, Paragraph 2, below.

The parties may engage in settlement discussions irrespective of whether Respondent has requested a hearing, 40 C.F.R. § 22.18(b)(1). Respondent's requesting a formal hearing does not prevent it from also requesting an informal settlement conference; the informal conference procedure may be pursued simultaneously with the formal adjudicatory hearing procedure. A request for an informal settlement conference constitutes neither an admission nor a denial of any of the matters alleged in the Complaint. Complainant does not deem a request for an informal settlement conference as a request for a hearing as specified in 40 C.F.R. § 22.15(c).

A request for an informal settlement conference does not affect Respondent's obligation to file a timely Answer to the Complaint pursuant to 40 C.F.R. § 22.15. No penalty reduction, however, will be made simply because an informal settlement conference is held.

Any settlement that may be reached as a result of an informal settlement conference shall be embodied in a written Consent Agreement, 40 C.F.R. § 22.18(b)(2). In accepting the Consent Agreement, Respondent waives its right to contest the allegations in the Complaint and waives any right to appeal the Final Order that is to accompany the Consent Agreement, 40 C.F.R. § 22.18(b)(2). In order to conclude the proceeding, a Final Order ratifying the parties' agreement to settle will be executed, 40 C.F.R. § 22.18(b)(3).

Respondent's entering into a settlement through the signing of such Consent Agreement and its complying with the terms and conditions set forth in such Consent Agreement terminates this administrative litigation and the civil proceedings arising out of the allegations made in the Complaint. Respondent's entering into a settlement does not extinguish, waive, satisfy or otherwise affect its obligation and responsibility to comply with all applicable statutory and regulatory requirements, and to maintain such compliance.

VII. Resolution of this Proceeding Without Hearing or Conference

Instead of filing an Answer, Respondent may choose to pay the total amount of the proposed penalty within thirty (30) days after receipt of the Complaint, provided that Respondent files with the Regional Hearing Clerk, Region 2 (at the address noted above), a copy of the check or other instrument of payment, 40 C.F.R. § 22.18(a). A copy of the check or other instrument of payment should be provided to the EPA Assistant Regional Counsel identified on Section VIII, paragraph 2. Payment of the penalty assessed should be made by sending a cashier's or certified check payable to the "Treasurer, United States of America," in the full amount of the penalty assessed in this complaint to the following address:

**Regional Hearing Clerk
U. S. Environmental Protection Agency, Region 2
PO Box 360188
Pittsburgh, Pennsylvania 15251**

Pursuant to 40 C.F.R. § 22.18(a)(3), if Respondent elects to pay the full amount of the penalty proposed in the Complaint within thirty (30) days of receiving the Complaint, then, upon EPA's receipt of such payment, the Regional Administrator of EPA, Region 2 (or, if designated, the Regional Judicial Officer), shall issue a Final Order in accordance with 40 C.F.R. § 22.18(a)(3). In accordance with 40 C.F.R. § 22.45(c)(3), no Final Order shall be issued until at least ten (10) days after the close of the comment period on this Complaint. Issuance of a Final Order terminates this administrative litigation and the civil proceedings arising out of the allegations made in the Complaint. Further, pursuant to 40 C.F.R. § 22.18(a)(3), the making of such payment by Respondent shall constitute a waiver of Respondent's right both to contest the allegations made in the Complaint and to appeal said Final Order to federal court. Such payment does not extinguish, waive, satisfy or otherwise affect Respondent's obligation and responsibility to comply with all applicable statutory and regulatory requirements, and to maintain such compliance.

VIII. Filing of Documents

1. The original and one copy of the Answer and any Hearing Request and all subsequent documents filed in this action shall be sent to:

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

2. A copy of the Answer, any Hearing Request and all subsequent documents filed in this action shall be sent to:

**Carolina Jordán García, Esq.
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 2
1492 Ponce de León Ave., Suite 417
San Juan, Puerto Rico 00907-4127
Telephone: (787) 977-5834
Fax: (787) 729-7748**

IX. General Provisions

1. Respondent has a right to be represented by an attorney at any stage of these proceedings.
2. This Complaint does not constitute a waiver, suspension or modification of the requirements of the Act, regulations promulgated there under, or any applicable permit.
3. Neither assessment nor payment of an administrative civil penalty pursuant to Section 309(g) of the Act will affect Respondent's continuing obligation to comply with the Act, and with any separate Compliance Order issued under Section 309(a) of the Act, 33 U.S.C. § 1319(a), for the violations alleged herein.

ISSUED THIS 1st DAY OF NOVEMBER, 2007.



CARL-AXEL P. SODERBERG, P.E.

**Director,
Caribbean Environmental Protection Division
United States Environmental Protection Agency - Region 2
1492 Ponce de León Ave., Suite 417
San Juan, Puerto Rico 00907-4127**

To: Jorge Ortiz, PE
Executive Director
P. O. Box 7066
Barrio Obrero Station
Santurce, Puerto Rico 00916

cc: Wanda García
Director
Water Quality Area
PR Environmental Quality Board
P.O. Box 11488
San Juan, PR 00910

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 2**

IN THE MATTER OF:

**PUERTO RICO AQUEDUCT AND
SEWER AUTHORITY,**
Ponce Reg. Wastewater Treatment Plant
P.O. Box 7066
Bo. Obrero Station
San Juan, Puerto Rico 00916
NPDES Permit No. PR0021563

Respondent

Docket No. CWA-02-2008-3451

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

CERTIFICATE OF SERVICE

I certify that, on the date noted below, I caused to be mailed, by certified mail, return receipt requested, a copy of the foregoing "ADMINISTRATIVE COMPLAINT" and a copy of the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties," (40 CFR Part 22, July 1, 2000) to the following persons at the address listed below:

Mr. José Ortíz, Executive President
Puerto Rico Aqueduct and Sewer Authority
P. O. Box 7066
Barrio Obrero Station
San Juan, Puerto Rico 00916

Ms. Wanda García
Director
Water Quality Bureau
Environmental Quality Board
P.O. Box 11488
Santurce, Puerto Rico 00910

I sent Federal Express the original and a copy of the foregoing Complaint for filing, to the office of the Regional Hearing Clerk, United States Environmental Protection Agency, Region 2.

Date:

November 1, 2007


San Juan, Puerto Rico