

UNITED STATES OF AMERICA
ENVIRONMENTAL PROTECTION AGENCY
REGION 2

2012 JUN -5 P 3:00

REGIONAL HEARING
CLERK

IN THE MATTER OF:

Municipality of Mayagüez
PO Box 447
Mayagüez, PR 00681

RESPONDENT

Proceeding pursuant to Section
309(g) (2) (B) of the
Clean Water Act, 33 U.S.C. §1319(g)

PROCEEDING TO ASSES A
CLASS II CIVIL PENALTY

DOCKET NUMBER
CWA 02-2011-3453

ANSWER TO COMPLAINT

TO THE HONORABLE GOVERNMENT AGENCY:

Representing the Municipality of Mayagüez appearing as counsel of this case attorney Luis J. Sánchez Mercado who respectfully plead the following:

I. Statutory Provisions and Authority

1. Plead number one don't requires allegation in response because constitutes the legal basis according to the complaint.
2. Plead number two don't require allegation in response because constitutes the legal basis according to the complaint.
3. We deny plead number three pursuant to sections 301 and 402 of the Act 33 USC 1311 and 1342. The Municipality of Mayagüez notice the intention, prepare and submit to the plaintiff the description of the measurable goals for each of the chosen best management practices along with the (SWMP) Storm Water Management Program and we still waiting the final approval.
4. We admit pleading number 4.
5. We admit pleading number 5.

6. We admit pleading number 6.
7. We admit pleading number 7.
8. We admit pleading number 8.
9. We admit pleading number 9.
10. We admit pleading number 10.
11. We admit pleading number 11.
12. We admit pleading number 12.
13. We admit pleading number 13.

II. Jurisdictional Findings

14. We admit pleading number 14.
15. We admit pleading number 15.
16. We admit pleading number 16.
17. We admit pleading number 17.
18. We admit pleading number 18.

III. Findings of Violations

19. Plead number 19 don't requires responsive allegations.
20. We admit plead number 20.
21. We denied plead number 21. Autonomous Municipality of Mayagüez submitted the Notice of Intent on December 3, 2008.
22. We denied plead number 22. Autonomous Municipality of Mayagüez submitted the Notice of Intent on December 3, 2008 according to the letter of compliance.
23. We admit plead number 23.
24. We admit plead number 24.

25. We admit plead number 25.
26. We admit plead number 26.
27. We denied pleading number 27 because on January 3, 2010 the SWMP was submitted to EPA offices at San Juan, PR.
28. We admit pleading number 28.
29. We denied pleading number 29. The Municipality of Mayagüez and their experts on contract (University of Puerto Rico Mayagüez Campus Water Studios Division) are working with the Compliance of Law and the NPDS Program.
30. We denied pleading number 30 on the form that the complaint was redacted.
31. We denied in part pleading number 31.
32. Pleading number 32 don't require a responsive allegation.

Affirmatives Defenses

1. The Autonomous Municipality of Mayagüez submitted the documents in compliment of the NPDS.
2. On January 12, 2011 the Municipality numbered the following tasks for the accomplishment:
 - December 16, 2008 (Received by US EPA on December 17, 2008) – The Municipality submitted the Notice of Intent (NOI).
 - February 11, 2009 – The US EPA acknowledged the submittal of the NOI and a NPDES Permit number was assigned.
 - March 5, 2009 – As requested by the US EPA, we submitted a description of the measurable goals for each of the chosen Best Management Practices.
 - July 2009 – The Puerto Rico Water Resources and Environmental Research Institute started working on the SWMP.
 - January 3, 2010 – The Storm Water Management Program was personally submitted to the US EPA, Caribbean Environmental Protection Division.
 - To this date we are waiting for the revision and approval of the Program.

This information was submitted to EPA officials by our contractor in this matter.

3. The Municipality of Mayagüez is committed to fully comply the SWMP and all requirements in Sections 301 and 402 of the Clean Water Act (CWA), 33 U.S.C. 1311 and 1342. They asked to reevaluate the complaint and proposed any assessment to the civil penalty.

Therefore they respectfully submitted for the acceptance of the SWMP submitted on January 3, 2011; for dismiss the proposed assessment of a civil penalty, and let us continue working in the implementation phase of our SWMP. That will be on contract with our experts from The Water Studios Division of the University of Puerto Rico, Mayaguez Campus and Dean and Director Jorge Rivera Santos P.E.

4. Respondent requests a informal hearing. EPA encourages settlement of this proceeding consistent with the provisions of the Act and its applicable regulations. 40C F.R. § 22.18 (b).

We desire to have an informal conference with a representative(s) of Complaint, 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.

The financial situation of our operational budget along with our previous record in enforcing the State and Federal Law put our Municipality in a positive situation for the cooperation from EPA in this assessment and finish the public implementation of the framed plan.

At Mayagüez, Puerto Rico, this 23 day of May, 2012.



LUIS J. SÁNCHEZ MERCADO, ESQ.
SÁNCHEZ MERCADO LAW OFFICES
PO Box 6551
Mayagüez, PR 00681-6551
Email: sanchezmercdolaw@gmail.com

To: **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, PR 00907-4127

Héctor L. Vélez Cruz, Esq.
Office of Regional Counsel
United States Environmental Protection Agency Region 2
1492 Ponce de León Ave., Suite 417
San Juan, PR 00907-4127

C/c: **Roberto Ayala**
Director
Water Quality Area
PR Environmental Quality Board
PO Box 11488
San Juan, PR 00910

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 2**

IN THE MATTER OF:

**Municipality of Mayagüez
PO Box 447
Mayagüez, PR 00681**

RESPONDENT

**Proceeding pursuant to Section
309(g) (2) (B) of the
Clean Water Act, 33 U.S.C. §1319(g)**

**PROCEEDING TO ASSES A
CLASS II CIVIL PENALTY**

**DOCKET NUMBER
CWA 02-2011-3453**

CERTIFICATE OF SERVICE

I certify that the foregoing Answer to Complaint was sent to the following persons, in the manner specified, on the date below:

**CERTIFIED MAIL
RETURN RECEIPT**

Original & Copy

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

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, PR 00907-4127

Héctor L. Vélez Cruz, Esq.

Office of Regional Counsel

United States Environmental Protection Agency Region 2

1492 Ponce de León Ave., Suite 417

San Juan, PR 00907-4127

Roberto Ayala

Director

Water Quality Area

PR Environmental Quality Board

PO Box 11488

San Juan, PR 00910