

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2**

In the Matter of:

MUNICIPALITY OF AGUAS BUENAS
P.O. Box 128
Aguas Buenas, Puerto Rico 00703

RESPONDENT

Proceeding pursuant to Section
309(g)(2)(B) of the Clean Water Act, 33
USC § 1319(g)

PROCEEDING TO ASSESS A CLASS II
CIVIL PENALTY

DOCKET NUMBER CWA-02-2010-3455

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REGION II
2010 DEC 16 P 2:51
REGIONAL HEARINGS
CLERK

**ANSWER TO THE COMPLAINT AND REQUEST FOR
HEARING**

TO THE HONORABLE ADMINISTRATIVE LAW JUDGE:

NOW COMES Respondent, Municipality of Aguas Buenas (hereinafter "Respondent"), through its undersigned attorneys, to provide its Answer to the Administrative Complaint, Findings of Violation, Notice of Proposed Assessment of a Civil Penalty, and Notice of Opportunity to Request a Hearing issued by the U. S. Environmental Protection Agency, Region II ("EPA") by letter dated September 27, 2010 (hereinafter, the "Complaint"), and received by Respondent on October 18, 2010. On October 26, 2010, Respondent requested an extension of time to file an answer to EPA,s Complaint and the requested extension was granted through December 15, 2010 as per November 16, 2010 Order issued by EPA Regional Judicial Officer. Now, Respondent admits, denies and alleges as follows:

1. The averments contained in paragraphs 1, 2, 3, 4, 5, 6 and 7 require no responsive pleadings insofar as they recite provisions of law. To the extent that they might be deemed allegations of fact, such allegations are denied.
2. The averments contained in paragraphs 8, 9, 10, 11, 12 and 13 do not require a responsive pleading, since they refer to statutory and regulatory requirements.
3. The averments contained in paragraphs 14, 15, 16, 17 and 18 are admitted.
4. The averments contained in paragraph 19 do not require a responsive pleading or are admitted.
5. The averments contained in paragraphs 20 and 21 are denied for lack of information.
6. The averments contained in paragraph 22 do not require a responsive pleading or are denied as drafted.
7. The averments contained in paragraph 23 require no responsive pleadings.
8. The averments contained in paragraph 24 are admitted. It is affirmatively alleged that Respondent's fiscal situation at the time affected Respondent's ability to timely comply with the Compliance Order. It is clarified that at the time, Respondent commenced a

process to identify the necessary funds to proceed with the ordered provisions.

9. The averments contained in paragraphs 25, 26 and 27 are admitted. It is affirmatively alleged that Respondent commenced efforts to prepare the Storm Water Management Program ("SWMP") and provide copy to the EPA within the 90 day extension granted by EPA.
10. The averments contained in paragraph 28 are admitted. It is affirmatively alleged that by September 2008, Respondent, already with coverage under the MS4 permit, had commenced efforts for the preparation of a SWMP but the efforts were affected by the lack of sufficient funds to obtain the necessary consulting services to conduct the necessary activities to complete the SWMP.
11. The averments contained in paragraphs 29 and 30 are denied for lack of information.
12. The averments contained in paragraphs 31 and 32 do not require a responsive allegation insofar as they are conclusions of law. To the extent that they may be deemed allegations of fact, they are denied.
13. The averments contained in paragraph 33 require no responsive pleadings.
14. The averments contained in Section IV of the Complaint set forth the relief requested therein and require no response. To the extent a

response is required, Respondent denies that the relief requested is appropriate.

15. The averments contained in Sections V, VI, VII, VIII and IX of the Complaint do not require a responsive pleading, since they refer to statutory, regulatory and procedural requirements.
16. Respondent denies any and all allegations not specifically admitted herein.

Affirmative Defenses

1. The Complaint fails to state a claim upon which relief can be granted.
2. The proposed civil penalty is excessive, unreasonable and is not supported by the individual facts and circumstances present in this matter, including but not limited to the existence of mitigating factors which must be taken into consideration.
3. The proposed civil penalty is excessive and unreasonable and will compromise Respondent's ability to continue with the implementation of activities to comply with the General Permit for Discharges from Small MS4s taking in consideration Respondent's current fiscal situation.
4. We reiterate and incorporate by reference herein each and every affirmative allegation included in the response to each specific averment of the Complaint stated above.

5. Respondent expressly reserves the right to raise additional affirmative defenses which may arise during discovery or under other procedures associated with the present Complaint.

Informal Settlement Conference

Respondent respectfully informs that the parties have scheduled an informal settlement conference for December 21, 2010 at 10:00 am.

Request for Hearing

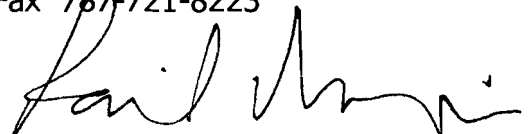
Respondent hereby requests a hearing upon the issues raised by the Complaint and its Answer as included herein, pursuant to CWA § 309 and the Consolidated Rules of Practice, 40 CFR §22.15.

WHEREFORE, Respondent respectfully requests that the present Complaint be dismissed and/or that the relief requested in the Complaint be denied, including the proposed civil penalty amount assessed; that Respondent be granted a hearing on this matter; and/or that Respondent be granted any other remedy deemed fit and proper.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 14th day of December, 2010.

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CERTIFICATE OF SERVICE

I CERTIFY that, on the date noted below, I caused to be submitted a copy of the foregoing Answer to the Complaint to the following persons, at the addresses listed below, and in the manner specified below:

Original and copy for filing via Federal Express:

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

Copy by messenger:

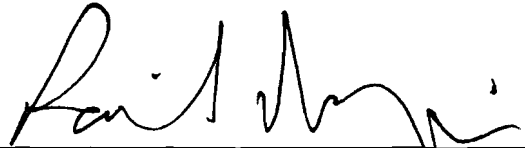
Héctor L. Vélez Cruz, Esq.
Office of Regional Counsel
U.S. Environmental Protection Agency – Region 2
1492 Ponce de León Avenue., Suite 417
San Juan, Puerto Rico 00907-4127
Tel. (787) 977-5850

Copy by regular mail:

Roberto Ayala
Acting Director, Water Quality Area
P.R. Environmental Quality Board
PO Box 11488
San Juan, PR 00910-1488

In San Juan, Puerto Rico, this 14th day of December, 2010.

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