

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 2

IN THE MATTER OF:

Puerto Rico Public Building Authority
P. O. Box 41029
San Juan, Puerto Rico 00940

NPDES Permit Number PRR10BC39

Respondent

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

PROCEEDING TO ASSES A CLASS I
CIVIL PENALTY

DOCKET NO. CWA-02-2008-3309

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II
2008 NOV -4 PM 4: 18
REGIONAL HEARING
CLERK

ANSWER TO ADMINISTRATIVE COMPLAINT

To the Honorable Administrative Judge:

Comes now the respondent Public Buildings Authority (PRPBA), through the undersigned counsel, and respectfully alleges and prays as follow:

I. STATUTORY AND REGULATORY AUTHORITIES

1. Paragraph Number one (1) of the administrative complaint is hereby accepted.
2. Paragraph number two (2) of the administrative complaint does not requires an answer.
3. Paragraph number three (3) of the administrative complaint is hereby accepted.
4. Paragraph number four (4) of the administrative complaint is hereby accepted.
5. Paragraph number five (5) of the administrative complaint is hereby accepted.
6. Paragraph number six (6) of the administrative complaint is hereby accepted.

7. Paragraph number seven (7) of the administrative complaint is hereby accepted.
8. Paragraph number eight (8) of the administrative complaint is hereby accepted.
9. Paragraph number nine (9) of the administrative complaint is hereby accepted.
10. Paragraph number ten (10) of the administrative complaint is hereby accepted.
11. Paragraph number eleven (11) of the administrative complaint is hereby accepted.

II. JURISDICTIONAL FINDINGS

12. Paragraph number twelve (12) of the administrative complaint is hereby accepted.
13. Paragraph number thirteen (13) of the administrative complaint is hereby accepted.
14. Paragraph number fourteen (14) of the administrative complaint is hereby accepted.
15. Paragraph number fifteen (15) of the administrative complaint is hereby accepted.
16. Paragraph number sixteen (16) of the administrative complaint is hereby denied due lack of information or knowledge.
17. Paragraph number seventeen (17) of the administrative complaint is hereby denied due lack of information or knowledge.

18. Paragraph number eighteen (18) of the administrative complaint is hereby accepted.

19. Paragraph number nineteen (19) of the administrative complaint is hereby denied.

III. FINDINGS OF VIOLATION

20. See above answers to allegations 12-19.

21. Paragraph twenty one (21) is denied due lack of information or knowledge. Respondent has not found the document mentioned in paragraph twenty one. If the document is found, we will promptly amend our answer to the complaint.

22. Paragraph twenty two (22) is hereby accepted.

23. Paragraph twenty three (23) is hereby denied due lack of information or knowledge.

24. Paragraph twenty four (24) is hereby accepted.

25. Paragraph twenty five (25) is hereby denied and construction activities did not begin until late January or early February 2004 .

26. Paragraph twenty six (26) is hereby denied.

AFFIRMATIVE DEFENSES

1. The allegations in the Complaint fail to state a claim upon which a relief can be granted.

2. The Environmental Protection Agency does not have jurisdiction over non- point source discharges under the NPDES program.

3. A storm water runoff is not a point source discharge as defined in 33 U.S.C. §1362 (14).
4. Although a notice to proceed was issued to the Contractor on December 1, 2003, the construction activity did not begin until late January and/or early February (2004).
5. No earth works (grading, clearing, excavation, etc.) was done before late January and/or early February (2004). We are gathering the daily and weekly reports in order to establish the exact days that the construction activities started in the project site.
6. "La Comandancia de la Policía" is not discharging storm water in relation to an industrial activity as defined in 40 CFR 122.26 (b) (14) (x).
7. Storm water discharges from "la Comandancia de la Policía" are excluded from the NPDES program, therefore, from the requirements of the NPDES General Permit.
8. "La Comandancia de la Policía in Ponce" did not discharge storm water from any conveyance that is used for collecting and conveying storm water as required by 40 CFR §122.26 (b) (14).
9. Particles or substances washed by rain, in diffuse patterns, over the land and into navigable waters is not consider point source pollution as required by the Clean Water Act.
10. The PRPBA respectfully requests an informal and/or formal hearing.

11. In the alternative, if Respondent is to be found in violation of sections 1311 and 1342 of the Clean Water Act, 33 U.S.C §1311 and §1342, although we deny any responsibility, it will be for less days than those stated in the complaint.

12. Respondent reserves its right to raise additional affirmative defenses in this case as maybe required by the facts emerged in the pending discovery and/or investigation.

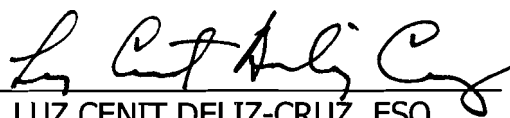
WHEREFORE, Respondent respectfully requests to this Honorable Administrative Judge to accept our answer to the complaint and **dismisses** with prejudice the above-captioned Complaint in its entirety.

Respectfully Submitted.

In San Juan, Puerto Rico, today, 29th of October 2008.

I CERTIFY that on this date I filed the foregoing document with the Regional Hearing Clerk of the Environmental Protection Agency and that a copy of the current document has been served to: Nadine Orrell, Esq., US Environmental Protection Agency, Region 2, 290 Broadway, 16th Floor, New York, NY 10007-1866.

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