



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II
2009 SEP 25 PM 1:55
REGIONAL HEARING
CLERK

EXPRESS MAIL

September 23, 2009

Jorge Marrero-Narvaez, Esq
Puerto Rico Aqueduct and Sewer Authority
P.O. Box 7066
604 Barbosa Avenue
Hato Rey, Puerto Rico 00917

RE: In the Matter of Rocha PWS (PRASA)
Docket No. SDWA-02-2009-8408

Dear Jorge:

Enclosed is a Consent Agreement and Final Order (CA/FO) in the above-referenced matter.
This CA/FO was fully executed on September 15, 2009.

Please note that the penalty of \$5,000.00 is required to be paid in full and received by EPA no
later than forty-five days after the Order's effective date.

Sincerely,

A handwritten signature in cursive script that reads "Diane".

Diane T. Gomes, Esq.

Enclosure

cc: Karen Maples
Regional Hearing Clerk (w/original CA/FO and copy)

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
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U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II
2009 SEP 25 PM 1:56
REGIONAL HEARING
CLERK

IN THE MATTER OF:

Jose F. Ortiz Vazquez, Executive President
Puerto Rico Aqueduct and Sewer Authority
604 Barbosa Avenue
Hato Rey, Puerto Rico 00917

Respondent

Proceeding Pursuant §1414(g)(3)(B)
of the Safe Drinking Water Act, 42 U.S.C.
§300g-3(g)(3)(B)

CONSENT AGREEMENT
AND
FINAL ORDER

Docket No.
SDWA-02-2009-8408

I. Preliminary Statement

This administrative proceeding for the assessment of a civil penalty was instituted pursuant to Section 1414(g)(3)(B) of the Safe Drinking Water Act (the "Act"), 42 U.S.C. §300g-3(g)(3)(B).

The Complainant in this proceeding, the Director of the Division of Enforcement and Compliance Assistance, Region 2, United States Environmental Protection Agency ("EPA"), issued a "Complaint, Findings of Violation, Notice of Proposed Assessment of a Civil Penalty and Notice of Opportunity to Request a Hearing" ("Complaint") to the Puerto Rico Aqueduct and Sewer Authority ("Respondent") on April 30, 2009.

The Complaint charged Respondent with violating the terms and conditions of an Administrative Order ("AO") issued to Respondent pursuant to Section 1414(g) of the Act, 42 U.S.C. §300g-3(g), requiring compliance with an applicable requirement of the Act at Respondent's Rocha public water system ("PWS"), located in Moca, Puerto Rico.

II. Findings of Fact and Conclusions of Law

1. Respondent owns and/or operates the Rocha "public water system," within the meaning of Section 1401(4) of the SDWA, 42 U.S.C. §300f(4), and 40 C.F.R. §141.2, located in Moca, Puerto Rico.
2. Respondent is a "supplier of water" within the meaning of Section 1401 (5) of the SDWA, 42 U.S.C. §300f (5), and 40 C.F.R. §141.2.

3. Respondent is a public corporation and an autonomous governmental instrumentality of the Commonwealth of Puerto Rico, organized and existing under the Laws of Puerto Rico, P.R. Laws Ann. Tit. 22, §§142, 144 (1987), is a “person” as defined in Section 1401(12) of the SDWA, 42 U.S.C. §300f(12), and 40 C.F.R. §141.2, and is subject to an AO issued under Section 1414(g)(1) of the SDWA, 42 U.S.C. §300g-3(g)(1).
4. The Rocha PWS is supplied by a surface water source, provides piped water for human consumption and regularly serves at least 15 service connections used by year-round residents or regularly serves at least 25 individuals, and is therefore a “community water system” (“CWS”) as defined by Section 1401(15) of the SDWA, 42 U.S.C. §300f(15) and 40 C.F.R. §141.2.
5. The Rocha PWS uses conventional filtration, as defined in 40 C.F.R. §141.2.
6. On January 14, 2002, EPA promulgated the Long Term I Enhanced Surface Water Treatment Rule (“LT1ESWTR”), 40 C.F.R. Part 141 Subpart T. LT1ESWTR increases public health protection from microbial pathogens, particularly *Cryptosporidium*. LT1ESWTR builds upon existing treatment technique requirements established by the 1989 Surface Water Treatment Rule by requiring systems using conventional or direct filtration to comply with strengthened turbidity standards and conduct continuous monitoring of individual filter effluent turbidity.
7. The Puerto Rico Department of Health (“PRDOH”) administers the Public Water Supply Supervision Program in Puerto Rico pursuant to Section 1413 of the SDWA. The approval and delegation of primary enforcement responsibility from EPA to PRDOH was effective as of March 1, 1980. However, at the time the LT1ESWTR came into effect, the PRDOH had not obtained enforcement responsibility for this rule; therefore, EPA issued enforcement actions against PRASA for violations to the LT1ESWTR. On October 18, 2005, EPA granted enforcement primacy for the LT1ESWTR to the PRDOH; however, EPA retained enforcement responsibility for the LT1ESWTR in regard to the Rocha PWS.
8. Pursuant to 40 C.F.R. §§141.501 and 141.502, PWSs using a surface water or ground water under the direct influence (“GWUDI”) of surface water as a source and serving fewer than 10,000 people are required to comply with the LT1ESWTR by January 1, 2005.
9. Pursuant to 40 C.F.R. §141.560, PWSs that provide conventional or direct filtration treatment and serve fewer than 10,000 people are required to conduct continuous monitoring of turbidity for each individual filter using an approved method in accordance with §141.74(a), and record the results of individual filter monitoring every 15 minutes. Whereas, PWSs consisting of 2 or fewer filters, may conduct continuous monitoring of combined filter effluent turbidity in lieu of individual filter effluent turbidity monitoring and record the results of combined filter effluent turbidity every 15 minutes. PWSs are

required to comply with the reporting and recordkeeping requirements of 40 C.F.R. §§141.570 and 141.571.

10. The Respondent's Rocha PWS utilizes a surface water source and serves fewer than 10,000 people, and, therefore, is required to comply with the LT1ESWTR by January 1, 2005.
11. On June 22, 2005, EPA issued a Section 1445 letter requesting information on the number of filters at each PWS serving less than 10,000 people to determine if individual filter requirements were applicable. Based on the information provided by the Respondent in its July 28, 2005, letter, EPA determined that the Rocha PWS was required to comply with the individual filter effluent turbidity monitoring requirements.
12. On August 17, 2005, EPA issued a Section 1445 letter, requesting information on the Respondent's compliance status regarding the installation and operation of turbidimeters for individual filters at the Rocha PWS. Based on Respondent's response, dated September 15, 2005, the Rocha PWS failed to comply with the requirements of the LT1ESWTR.
13. On September 26, 2005, EPA issued an AO, Docket No. SDWA-02-2005-8184 to Respondent, under authority of Section 1414 (g) of the SDWA, 42 U.S.C. §300g-3(g), for failure to comply with the requirements of the LT1ESWTR and the SDWA. The AO required the Rocha PWS to comply with the individual filter turbidity monitoring requirements by December 26, 2005. A copy of the AO is attached hereto and incorporated by reference.
14. Based on information available to EPA, Respondent has failed to demonstrate compliance with the requirements specified in 40 C.F.R. §§141.560, 141.570 and 141.571 and violated Paragraphs 13 of the AO.

III. Consent Agreement

Based upon the foregoing, and pursuant to Section 1414(g)(3)(B) of the Act, 42 U.S.C. §300g-3(g)(3)(B), and the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits" ("CROP") (40 C.F.R. §22.18), it is hereby agreed by and between the parties and Respondent voluntarily and knowingly agrees as follows:

Jurisdiction

1. For the purpose of this proceeding, Respondent a) admits the jurisdictional allegations of the Complaint as applied to the facility; and b) neither admits nor denies the specific factual allegations and legal conclusions contained in the Complaint and Findings of Fact.

Payment of Civil Penalty

2. Respondent shall pay a civil penalty to EPA in the amount of **Five Thousand Dollars (\$5,000.00)**. Such payment shall be made by cashier's or certified check or by Electronic Fund Transfer (EFT). If the payment is made by check, then the check shall be payable to the "**Treasurer, United States of America**", and shall be mailed to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000

The check shall be identified with a notation thereon listing the following: **IN THE MATTER OF ROCHA PWS**, and shall bear thereon the **Docket Number SDWA-02-2009-8408**. Payment of the penalty must be received at the above address on or before 45 calendar days after the Effective Date of this Consent Agreement and Final Order ("CA/FO") (the "due date").

If Respondent chooses to make the payment by EFT, then Respondent shall provide the following information to its remitter bank:

- a. Amount of Payment
- b. SWIFT address: FRNYUS33, 33 Liberty Street, New York, NY 10045
- c. Account Code for Federal Reserve Bank of New York receiving payment: 68010727
- d. Federal Reserve Bank of New York ABA routing number: 021030004
- e. Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"
- f. Name of Respondent: Rocha PWS
- g. Case Number: SDWA-02-2009-8408

Such EFT must be received on or before 45 calendar days after the Effective Date of this CA/FO.

Whether the payment is made by check or by EFT, the Respondent shall promptly thereafter furnish reasonable proof that such payment has been made, to both:

Diane Gomes, Esq.
Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency - Region 2
290 Broadway - 16th Floor
New York, NY 10007 -1866

and

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

- h. Failure to pay the amount in full within the time period set forth above may result in the referral of this matter to the United States Department of Justice or the United States Department of the Treasury for collection.
- i. Further, if the payment is not received on or before the due date, interest will be assessed at the annual rate established by the Secretary of Treasury pursuant to the Debt Collection Act, 31 U.S.C. §3717, on the overdue amount from the due date through the date of payment. In addition, a late payment handling charge of \$15.00 will be assessed for each 30 day period (or any portion thereof) following the due date in which the balance remains unpaid. A 6% per annum penalty also will be applied on any principal amount not paid within 90 days of the due date.
- j. The civil penalty constitutes a penalty within the meaning of 26 U.S.C. §162(f).
- k. The penalty to be paid is a civil penalty assessed by the EPA and shall not be deductible from Respondent's federal or state taxes.

General Provisions

- 3. This Consent Agreement is being voluntarily and knowingly entered into by the parties in full and final settlement of the civil liabilities that might have attached as a result of the allegations contained in the Complaint. Respondent has read the Consent Agreement, understands its terms, finds it to be reasonable and consents to its issuance and its terms. Respondent consents to the issuance of the accompanying Final Order. Respondent agrees that all terms of settlement are set forth herein.
- 4. Respondent explicitly and knowingly consents to the assessment of the civil penalty as set forth in this Consent Agreement and agrees to pay the penalty in accordance with the terms of this Consent Agreement.
- 5. Respondent knowingly and explicitly waives its right under §1414(g)(3)(B) of the Act, 42 U.S.C. §300g-3(g)(3)(B), to request or to seek any Hearing on or Judicial review of the Complaint or on any of the allegations therein asserted, on this Consent Agreement or the Findings of Fact and Conclusions of Law herein, or on the accompanying Final Order.
- 6. Respondent waives any right it may have pursuant to 40 C.F.R. §22.8 to be present during discussions with or to be served with and to reply to any memorandum or

communication addressed to the Regional Administrator or the Deputy Regional Administrator where the purpose of such discussion, memorandum, or communication is to discuss a proposed settlement of this matter or to recommend that such official accept this Consent Agreement and issue the accompanying Final Order.

7. Issuance of the Consent Agreement and Final Order does not constitute a waiver by EPA of its right to enforce the substantive legal requirements underlying this penalty assessment, either administratively or judicially pursuant to Sections 1414 of the Act, 42 U.S.C. §300g-3. Issuance of or compliance with this Consent Agreement/Final Order does not waive, extinguish or otherwise affect Respondent's obligation to comply with all applicable requirements of the Act, of regulations promulgated thereunder and of any legal order or permit issued thereunder.
8. Each undersigned signatory to this Consent Agreement certifies that he or she is duly and fully authorized to enter into and ratify this Consent Agreement and all the terms and conditions set forth in this Consent Agreement.
9. The provisions of this Consent Agreement and Final Order shall be binding upon the Respondent, its officers, directors, agents, servants, authorized representatives and successors or assigns.
10. Each party hereto agrees to bear its own costs and fees in this matter.
11. Respondent consents to service upon Respondent by a copy of this Consent Agreement and Final Order by an EPA employee other than the Regional Hearing Clerk.

FOR THE RESPONDENT:

Dated this 22 day of: June, 2009

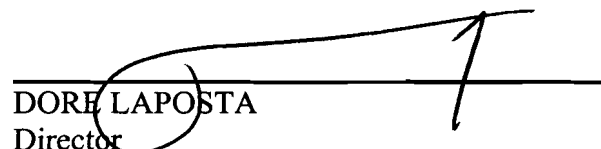


JOSE FORTIZ VAZQUEZ

Executive President
Puerto Rico Aqueduct and Sewer Authority
Rocha Public Water System
604 Barbosa Avenue
Hato Rey, Puerto Rico 00917

FOR THE COMPLAINANT:

Dated this 14th day of: September, 2009




DORE LAPOSTA

Director
Division of Enforcement and Compliance
Assistance
U.S. Environmental Protection Agency
Region 2
New York, NY 10007-1866

IV. Final Order

The Regional Administrator of the U.S. Environmental Protection Agency, Region 2, ratifies the foregoing Consent Agreement. The Agreement entered into by the parties is hereby approved, incorporated herein, and issued as an Order. The effective date of this Order shall be the date of filing with the Regional Hearing Clerk, U.S. EPA Region 2, New York, New York.

DATE: 9/15/09



GEORGE PAVLOU
Acting Regional Administrator
United States Environmental Protection Agency
Region 2
290 Broadway
New York, NY 10007-1866

To: Jose F. Ortiz Vázquez, Executive President
Puerto Rico Aqueduct and Sewer Authority
Rocha Public Water System
604 Barbosa Avenue
Hato Rey, Puerto Rico 00917

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 2

IN THE MATTER OF:

Rocha PWS

Jose F. Ortiz Vazquez, Executive President
Puerto Rico Aqueduct and Sewer Authority
604 Barbosa Avenue
Hato Rey, Puerto Rico 00917

Respondent.

Proceeding pursuant to §1414(g)(3)(B)
of the Safe Drinking Water Act,
42 U.S.C. §300g-3(g)(3)(B)

CONSENT AGREEMENT
AND
FINAL ORDER

DOCKET No: SDWA-02-2009-8408

I certify that on _____, I served the foregoing fully executed Consent Agreement/Final Order, bearing the above referenced docket number, on the persons listed below, in the following manner:


Original and One Copy
By Hand

Regional Hearing Clerk
Office of Regional Counsel
U.S. Environmental Protection Agency - Region 2
290 Broadway, 16th floor
New York, New York 10007-1866

Copy by Express Mail
to Attorney for Respondent

Jorge Marrero-Narvaez, Esq
Puerto Rico Aqueduct and Sewer Authority
P.O. Box 7066
604 Barbosa Avenue
Hato Rey, Puerto Rico 00917

Dated: SEP 24 2009



Ana Madera, Secretary
New York, New York