UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 Broadway
New York, NY 10007

In the Matter of:	)	
	)	
R&O Housing Corporation	)	**Docket No. CWA-02-2001-3314**
State Road 956, Guzmán Abajo Ward	)	
Río Grande, Puerto Rico,	)	
	)	
Respondent.	)	
	)	

DEFAULT ORDER AND INITIAL DECISION

By Motion for Default, the Complainant, the Director of the Division of Enforcement and Compliance Assistance ("DECA") for Region 2 of the United States Environmental Protection Agency ("EPA"), has moved for a Default Order finding the Respondent, R&O Housing Corporation, liable for violation of Section 308(a) of the Clean Water Act ("Act"), 33 U.S.C. § 1318(a) and Section 301 of the Act, 33 U.S.C. § 1311. The Complainant requests assessment of a civil penalty in the full amount of Twenty Five Thousand One Hundred and Twenty Dollars ($25,120), as proposed in the Administrative Complaint.

Pursuant to the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties ("Consolidated Rules"), 40 C.F.R. Part 22, and based upon the record in this matter and the following Findings of Fact, Conclusions of Law and Determination of Penalty, Complainant's Second Motion for Entry of Default, which incorporated the first Motion for Entry of Default and exhibits thereto, is hereby GRANTED. The Respondent is hereby found in default and a civil penalty is assessed against it in the amount of $25,120.

I. BACKGROUND

This civil administrative proceeding is instituted under Section 309(g)(2)(A) of the Act, 33 U.S.C. § 1319(g)(2)(A) and is governed by the Consolidated Rules. Complainant initiated the proceeding by filing an Amended Complaint, Findings of Violation, Notice of Proposed Assessment of a Civil Penalty, and Notice of Opportunity to Request a Hearing ("Complaint") on October 15, 2001 against Respondent, R&O Housing Corporation. In its Complaint, U.S. EPA alleged that Respondent violated Section 308(a) of the Act, 33 U.S.C. § 1318(a) for failure to provide information to Complainant, and Section 301 of the Act, 33 U.S.C. § 1311 for unauthorized discharge of pollutants and failure to comply with an Administrative Order.

The Complaint stated, on page 6 in the section entitled Failure to Answer, that:

> If Respondent fails to file a timely [i.e. in accordance with the 30-day period set forth in 40 CFR § 22.15(a)] Answer to the Complaint, Respondent may be found in default upon motion. 40 CFR § 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 CFR § 22.17(a). Following a default by Respondent for a failure to timely file an Answer to the Complaint, any order issued therefor shall be issued pursuant to 40 CFR § 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 CFR § 22.27 (c). 40 CFR § 22.17(d).

Service of the Complaint and a copy of the Consolidated Rules was complete on October 16, 2001. A copy of the Federal Express receipt establishing the date of service has been attached to

the Motion for Default.

To date, no Answer has been filed in this matter.

On February 25, 2002, Complainant filed a Motion for Entry of Default. It was served on Respondent via Federal Express. On November 27, 2002, Complainant filed a Second Motion for Entry of Default, incorporating its first Motion for Entry of Default and exhibits thereto. It was also served via Federal Express on Respondent. To date, the Respondent has failed to file a Response to either Motion for Entry of Default Order.

II. FINDINGS OF VIOLATION

Pursuant to 40 C.F.R. § 22.17 and the entire record in this matter, I make the following findings of fact:

1. On October 15, 2001, EPA filed an Amended Complaint against R&O Housing Corporation pursuant to Section 309(g)(2)(A) of the Act, 33 U.S.C. § 1319(g)(2)(A), alleging violation of Sections 301 and 308(a) of the Act, 33 U.S.C. §§ 1311 and 1318(a), respectively and, seeking an administrative penalty of Twenty-Five Thousand One Hundred Twenty Dollars ($25,120).
2. The Complaint was properly served on October 16, 2001, as evidenced by a fully executed Federal Express receipt.
3. Respondent owns and operates a residential housing project known as Riberas del Río Housing Complex.
4. The Environmental Quality Board informed EPA by letter dated August 15, 2000 that a manhole which receives wastewater from Río Grande Elderly Complex and Lola Millán Intermediate School was overflowing. The overflow was reaching the Río Grande.

5. On October 3, 2000, enforcement officers from EPA's Caribbean Environmental Protection Division conducted a Reconnaissance Inspection ("RI") of the Río Grande Elderly Complex sewage pump station and collection system.

6. The Reconnaissance Inspection revealed that Respondent was constructing a sewage system which is connected to the Río Grande Elderly Complex sewage collection system. This sewage pipeline was observed broken and overflowing sewage into the Rio Grande without a permit. Río Grande Elderly Complex owns and operates a pump station and sewage collection system, and the pump station, which was not in operation during the RI, discharges into the Puerto Rico Aqueduct and Sewer Authority (PRASA) sewer system.

7. On November 15, 2000, U.S. EPA issued an Administrative Order (CWA-02-2001-3017) against Respondent ordering it *inter alia* to immediately cease and desist the discharge of pollutants into the Río Grande from the sewer lines located at Riberas del Rio Housing Complex. Respondent was further ordered to notify EPA, in writing, of Respondent's compliance with said cease and desist order and to take other steps necessary to abate the problem.

8. On November 29, 2000, a meeting was held in the offices of the Caribbean Environmental Protection Division (CEPD), and Mr. Ortiz, President of R&O Housing Corporation, acknowledged receipt of the Administrative Order (AO).

9. Respondent did not comply with the Administrative Order.

10. On December 19, 2000, EPA conducted a second RI which revealed that the pipeline carrying sewage from Riberas del Río Housing Complex to the pump station was broken

and discharging sewage into the Río Grande.

11. On December 26, 2000, U.S. EPA sent a letter to Respondent indicating a violation of the Administrative Order issued on November 15, 2000.

12. To date, Respondent has not complied with the Administrative Order.

13. EPA sent to Respondent a request for information letter (the "308 letter") pursuant to Section 308(a) of the Act, 33 U.S.C. § 1318(a). The request was sent in order to obtain information regarding storm water discharges from the Riberas del Río Housing Complex and to determine the applicability of the National Pollutant Discharge Elimination System ("NPDES") storm water permit application regulations to the Riberas del Río Housing Complex.

14. Based upon the confirmation of receipt of the 308 letter, which indicated that the Respondent received the 308 letter on July 9, 2001, the requested information was due to Complainant by July 24, 2001.

15. Respondent never responded to the letter requesting information.

16. To date, Respondent has not filed an Answer to the Complaint.

17. Both the Motion for Entry of Default and Second Motion for Entry of Default were sent to Respondent via Federal Express.

18. To date, Respondent has not responded to the Motions for Entry of Default.

III. CONCLUSIONS OF LAW

1. Jurisdiction for this action was conferred upon EPA by Section 309(g) of the Act, 33 U.S.C. § 1319(g).

2. Pursuant to 40 C.F.R. § 22.5(b)(1)(iii), proof of service of the Complaint shall be made

by affidavit of the person making personal service or by properly executed receipt.

3. The Respondent was properly served with the Complaint.

4. The Respondent's failure to file an Answer to the Complaint constitutes a default.

> "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. §§ 22.15(d) and 22.17(a).

5. Respondent is a person within the meaning of Section 502(5) of the Act, 33.U.S.C. § 1362(5).

6. Sewage is a pollutant pursuant to Section 502(6) of the Act, 33 U.S.C. § 1362(6).

7. Respondent's manhole and sewage pipeline are point sources pursuant to Section 502(14) of the Act, 33. U.S.C. § 1362(14).

8. The Río Grande is a water of the United States pursuant to Section 502(7) of the Act. 33 U.S.C. § 1362(7).

9. By allowing sewage to overflow from a manhole and sewage pipe into the Río Grande, Respondent's operations resulted in the discharge of a pollutant pursuant to Section 502(12) of the Act, 33. U.S.C. § 1362(12).

10. Under Section 301 of the Act, 33 U.S.C. § 1311, it is unlawful for any person to discharge a pollutant from a point source into waters of the United States, except with the authorization of a NPDES permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342. Respondent does not have a NPDES permit to discharge pollutants from Riberas del Río Housing Complex into the Río Grande.

11. By discharging sewage into the Río Grande on October 3, 2000 and December 19, 2001 without a NPDES permit, Respondent violated Section 301 of the Act, 33 U.S.C. § 1311.

12. By failing to comply to the Administrative Order issued on November 15, 2000, Respondent violated Section 301 of the Act, 33 U.S.C. § 1311.

13. By failing to respond to EPA's letter requesting information pursuant to Section 308(a) of the Act, 33 U.S.C. § 1318(a) from July 24, 2001 to the date of issuance of the Complaint, Respondent violated Section 308(a) of the Act, 33 U.S.C. § 1318(a).

14. Section 309(g)(2)(A) of the Act, 33. U.S.C. § 1319(g)(2)(A) and the Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19, authorize EPA to assess a civil penalty of up to $11,000 per violation, except that the maximum amount of any Class I penalty shall not exceed $27,500.

15. Respondent's failure to file a timely Answer or otherwise respond to the Complaint is grounds for entry of a Default Order against Respondent assessing a civil penalty for the aforementioned violations pursuant to 40 C.F.R. § 22.17(a).

16. As described in the "Penalty Calculation" section below, I find that the Complainant's proposed civil penalty of $25,120 is properly based upon the statutory requirements of Section 309(g) of the Act, 33 U.S.C. § 1319(g).

IV. PENALTY CALCULATION

Pursuant to Section 309(g)(3), 33 U.S.C. § 1319(g)(3), in determining the amount of any penalty, factors to be considered include "the nature, circumstances, extent and gravity of the violation, or violations, and, with respect to the violator, ability to pay, any prior history of such violations, the degree of culpability, economic benefit or savings (if any) resulting from the violation, and such other matters as justice may require."

In both its Complaint and Motions for Entry of Default, Complainant seeks a civil penalty

of $25,120. Complainant's explanation of its calculation of the proposed penalty, as set forth in EPA's Penalty Memorandum dated September 25, 2001, Exhibit 3 to Complainant's first Motion for Entry of Default and incorporated into its Second Motion for Entry of Default, is incorporated herein by reference. In calculating the penalty, Complainant took the following findings regarding the nature, circumstances, extent and gravity of the violations into consideration:

1. Respondent failed to comply with the Administrative Order from December 29, 2000 until the date the Complaint was filed, for a total of 243 days or instances of violation of Section 301 of the Act. Failure to comply with the requirements of the Administrative Order caused unauthorized discharges of raw sewage in to the Rio Grande. The discharge of raw sewage into the Río Grande posed an immediate threat to human health and the environment.

2. Respondent never provided the information requested by Complainant in its letter issued pursuant to Section 308(a) of the Act, 33. U.S.C. § 1318(a), which information was due by July 24, 2001, in violation of Section 308 of the Act. As a result of Respondent's failure to respond to the 308 letter, Complainant was not able to determine if storm water NPDES permit application regulations were applicable to the Riberas del Río Housing Complex, hindering Complainant's ability to evaluate the Complex in order to make a permitting decision. A penalty is warranted to prevent Respondent and others from ignoring requests for information in violation of the Act.

3. Respondent was in violation of Section 301 of the Act by illegally discharging sewage from the project into the Rio Grande without a NPDES permit on at least two different occasions: October 3, 2000 and December 19, 2000. As stated above, the discharge of

raw sewage into the Río Grande posed an immediate threat to human health and the environment.

Based upon the above findings, Complainant calculated the gravity portion of the penalty at $24,000. Complainant also considered the following with respect to the Respondent:

4. Regarding Respondent's degree of culpability, EPA, since June 2000, has made great efforts to provide information to Respondent, and inquire about Respondent's activities on the project. EPA subsequently escalated its enforcement actions by means of issuing a 308 letter and one compliance order. EPA and Respondent had meetings and telephone communications concerning the 308 letters and the compliance order. Respondent has chosen not to provide the requested information, which should have been readily available and provided to EPA without delay. Respondent's failure to cooperate has prevented EPA from ascertaining Respondent's compliance with the Act and its implementing regulations. Given Respondent's high degree of culpability for the violations, a major penalty within the penalty authority of Section 309(g)(2)(A) of the Act, 33 U.S.C. § 1319(g)(2)(A), is warranted.

5. Complainant calculated the economic benefit to the Respondent as a result of the violations by estimating the avoided and delayed costs, if any, for each violation. For failure to respond to the 308 letter, its was estimated that avoided economic benefit was $720, as follows:

Research of documents and information by an Environmental Consultant -

Consultant, 4 hours @ $60/hour: $240

Discussion among Environmental Consultant and Legal Counsel -

Consultant - 2 hours @ $60/hour and Legal

Counsel - 2 hours @ $125/hour: $370

Copy of Documents -

Site drawings: $ 30

Other documents: $ 10

Support Staff - 4 hours @ $10/hour: $ 40

Preparing formal response to 308 letter -

Consultant - .5 hours at $60/hour: $ 30

Complainant also estimated the economic benefit associated with the unauthorized discharge. Complainant believed that there was no avoided economic benefit associated with the failure to repair the broken sewage line, but estimated that Respondent saved $200 for each day that the sewage was discharged rather than hauled by truck from its sewage collection system to a permitted waste water plant during the October 3, 2000 and December 19, 2000 discharges, for a total of $400. Complainant was unable to calculate the economic benefit from Respondent's noncompliance with the Administrative Order because Respondent withheld the information necessary to make that assessment. Adding the economic benefit associated with failure to respond to the 308 letter, $720, to the economic benefit associated with the unauthorized discharge, $400, yields $1,120 as Respondent's total economic benefit of noncompliance.

Complainant combined the gravity penalty amount, $24,000 with the economic benefit of $1,120, for a total proposed penalty amount of $25,120.

Evaluating all of the information, I have determined that the proposed civil penalty is

appropriate. The proposed penalty was calculated in accordance with Section 309(g) of the Act, 33 U.S.C. § 1319(g). Further, the record supports this penalty. A penalty of $25,120 is hereby assessed against Respondent.

V. DEFAULT ORDER

Pursuant to the Consolidated Rules at 40 C.F.R. Part 22, including 40 C.F.R. § 22.17, Complainant's Motion for Entry of Default is hereby GRANTED and Respondent R&O Housing Corporation is ordered to comply with all the terms of this Order:

1. Respondent R&O Housing Corporation is assessed a civil penalty in the amount of Twenty-Five Thousand One Hundred Twenty Dollars ($25,120), and ordered to pay the civil penalty as directed in this Order.

2. Respondent R&O Housing Corporation shall pay the civil penalty in the form of a certified or cashier's check payable to the "Treasurer of the United States of America" within thirty (30) days after this default order has become a final order pursuant to 40 C.F.R. § 22.27(c) . The Check shall be identified with a notation of the name and docket number of this case, set forth in the caption on the first page of this document. Such payment shall be remitted to:

   Regional Hearing Clerk
   EPA Region 2
   P.O. Box 360188M
   Pittsburgh, Pennsylvania 15251

C. A copy of the payment shall be mailed to:

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

3. This Default Order constitutes an Initial Decision, as provided in 40 C.F.R. § 22.17(c). This Initial Decision shall become a final order unless (1) an appeal to the Environmental Appeals Board is taken by any party to the proceedings *within thirty (30) days from the date of service provided in the Certificate of Service accompanying this order*, or (2) a party moves to set aside the Default Order, or (3) the Environmental Appeals Board elects, *sua sponte*, to review the Initial Decision within forty-five (45) days after its service upon the parties.

IT IS SO ORDERED.

Dated: September 12, 2003

Helen S Ferrara

Helen S. Ferrara
Regional Judicial Officer