

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

In the Matter of:

MUNICIPALITY OF RÍO GRANDE
P. O. BOX 847
RÍO GRANDE, PUERTO RICO 00745

RESPONDENT

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

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

**DOCKET NUMBER
CWA-02-2009-3458**

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II
2009 OCT 13 AM 11:48
REGIONAL HEARING
CLERK

MOTION FOR REMEDIES

To the Honorable Court:

COMES NOW the Complainant to the instant action and very respectfully avers and prays as follows:

1. Pursuant to the Prehearing Order, dated July 16, 2009 (Prehearing Order), Complainant and Respondent were directed to file their prehearing exchanges *in seriatim* fashion, by September 4 and September 25, 2009, respectively.
2. Complainant filed its Initial Prehearing Exchange on September 1, 2009, three days prior to the September 4, 2009, deadline established by this Honorable Court.
3. The Prehearing Order and the Consolidated Rules of Practice Governing Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 C.F.R. §22.1 *et seq.*, (Rules of Practice), required Respondent to send its Initial Prehearing Exchange, including any direct and/or rebuttal evidence to the Presiding Judge, The Honorable Susan L. Biro, Chief Administrative Law Judge, and to the Regional Hearing Clerk. Respondent failed to comply with the Prehearing Order requirements, as it did not submit its Initial Prehearing Exchange to this Honorable Court and to the Regional Hearing Clerk, failed to supply the information this Honorable

Court directed Complainant to provide in ¶¶ 3(A)–(D) of the Prehearing Order, failed to specify whether the witnesses it intends to call are expert or factual witnesses, and failed to provide an adequate summary of their expected testimony.

4. Pursuant to the Prehearing Order, “[t]he Respondent [was] notified that its failure to either comply with the prehearing exchange requirements set forth herein or to state that it is electing only to conduct cross-examination of the Complainant’s witnesses, **can result in the entry of default judgment against it.**” (Prehearing Order, at 4, ¶ 1) (second emphasis added). In addition, under §22.17 of the Rules of Practice, “[a] party **may be found in default, after motion. . . . upon failure to comply with the information exchange requirements of [the Prehearing Order].**” 40 C.F.R. §22.17 (second emphasis added).

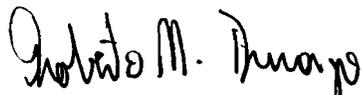
5. Pursuant to the Prehearing Order and Section 22.19(a) of the Rules of Practice, “**except in accordance with Section 22.22(a), any document not included in the prehearing exchange shall not be admitted into evidence, and any witnesses whose name and testimony summary are not included in the prehearing exchange shall not be allowed to testify.**” (Prehearing Order, at 3, ¶ 8), 40 C.F.R. § 22.22(a) (second emphasis added).

6. Respondent filed a document entitled “Respondent’s [sic.] Prehearing Exchange” at Complainant’s offices in San Juan, Puerto Rico, on September 25, 2009 (Respondent’s Letter) (emphasis added). Respondent’s Letter neither complies with the Prehearing Order nor with the Rules of Practice, in that Respondent failed to supply the information this Honorable Court directed Complainant to provide in ¶¶ 3(A)–(D) of the Prehearing Order, failed to specify whether the witnesses it intends to call are expert or factual witnesses, and failed to provide an adequate summary of their expected testimony.

WHEREFORE, Complainant respectfully requests that this Honorable Court enter a Default Order against Respondent, pursuant to the Prehearing Order and the Rules of Practice. In the alternative, Complainant respectfully requests that this

Honorable Court strike all evidence provided in Respondent's Information Letter and not allow any witnesses to testify on behalf of Respondent. If none of the remedies requested are granted, then Complainant requests an extension to the October 9, 2009, deadline for filing its Rebuttal Prehearing Exchange.

Respectfully submitted in San Juan, Puerto Rico, on this 9th day of October, 2009.



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Region 2
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CERTIFICATE OF SERVICE

I hereby certify that on this day I have caused to be sent the foregoing **Motion for Remedies**, dated October 9, 2009, and bearing the above-referenced docket number, in the following manner to the respective addressees below:

Original by **Fax** and **Federal Express** to:

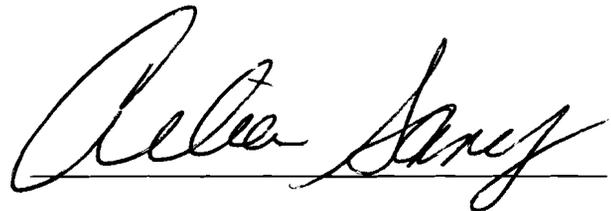
The Honorable Susan L. Biro
Chief Administrative Law Judge
Office of Administrative Law Judges
U.S. Environmental Protection Agency
Franklin Court Building
1099 14th Street, N.W., Suite 350
Washington, D.C. 20460
Ph: 202.564.6291 / Fax (202) 565-0044.

Original and copy by **Federal Express** to:

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

Copy by **Certified Mail** to:

Alejandro Carrasco-Castillo, Esq.
Legal Counsel
Municipality of Rio Grande
Parana 1684
Urb. El Cerezal
San Juan, Puerto Rico 00926-3144

A handwritten signature in black ink, appearing to read "Peter S. Sanchez", written over a horizontal line.