

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

U.S. Environmental Protection Agency
2016 EPC - 6 AM 9:23

IN THE MATTER OF:

Marina PDR Operations, LLC
4900 State Road PR-3
Fajardo, PR 007-38-4067

Marina Puerto Del Rey
NPDES MSGP Tracking Number
PRR053171

RESPONDENT

Docket No. CWA-02-2017-3452

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

ANSWER TO THE COMPLAINT AND REQUEST FOR HEARING

To the Honorable Presiding Officer:

Comes now Marina PDR Operations, LLC (the "Respondent") represented by the undersigned attorneys, and respectfully alleges, states and prays as follows:

I. Statutory and Regulatory Authorities

1. The allegations contained in paragraph 1 are conclusions of law and as such do not require an answer. In the alternative, they are hereby denied.
2. The allegations contained in paragraph 2 are conclusions of law and as such do not require an answer. In the alternative, they are hereby denied.
3. The allegations contained in paragraph 3 are conclusions of law and as such do not require an answer. In the alternative, they are hereby denied.
4. The allegations contained in paragraph 4 are conclusions of law and as such do not require an answer. In the alternative, they are hereby denied.

5. The allegations contained in paragraph 5 are conclusions of law and as such do not require an answer. In the alternative, they are hereby denied.
6. The allegations contained in paragraph 6 are conclusions of law and as such do not require an answer. In the alternative, they are hereby denied.
7. The allegations contained in paragraph 7 are conclusions of law and as such do not require an answer. In the alternative, they are hereby denied.
8. The allegations contained in paragraph 8 are conclusions of law and as such do not require an answer. In the alternative, they are hereby denied.
9. The allegations contained in paragraph 9 are conclusions of law and as such do not require an answer. In the alternative, they are hereby denied.
10. The allegations contained in paragraph 10 are conclusions of law and as such do not require an answer. In the alternative, they are hereby denied.
11. The allegations contained in paragraph 11 are conclusions of law and as such do not require an answer. In the alternative, they are hereby denied.
12. The allegations contained in paragraph 12 are conclusions of law and as such do not require an answer. In the alternative, they are hereby denied.
13. The allegations contained in paragraph 13 are conclusions of law and as such do not require an answer. In the alternative, they are hereby denied.
14. The allegations contained in paragraph 14 are conclusions of law and as such do not require an answer. In the alternative, they are hereby denied.
15. The allegations contained in paragraph 15 are hereby denied.

16. The allegations contained in paragraph 16 are hereby denied.
17. The allegations contained in paragraph 17 are statements or conclusions of law and as such do not require an answer.
18. The allegations contained in paragraph 18 are statements or conclusions of law and as such do not require an answer.
19. The allegations contained in paragraph 19 are statements or conclusions of law and as such do not require an answer.
20. The allegations contained in paragraph 20 are statements or conclusions of law and as such do not require an answer.
21. The allegations contained in paragraph 21 are statements or conclusions of law and as such do not require an answer.
22. The allegations contained in paragraph 22 are statements or conclusions of law and as such do not require an answer.
23. The allegations contained in paragraph 23 are statements or conclusions of law and as such do not require an answer.
24. The allegations contained in paragraph 24 are statements or conclusions of law and as such do not require an answer.
25. The allegations contained in paragraph 25 are statements or conclusions of law and as such do not require an answer.
26. The allegations contained in paragraph 26 are statements or conclusions of law and as such do not require an answer.

27. The allegations contained in paragraph 27 are statements or conclusions of law and as such do not require an answer.
28. The allegations contained in paragraph 28 are statements or conclusions of law and as such do not require an answer.
29. The allegations contained in paragraph 29 are statements or conclusions of law and as such do not require an answer.
30. The allegations contained in paragraph 30 are statements or conclusions of law and as such do not require an answer.
31. The allegations contained in paragraph 31 are statements or conclusions of law and as such do not require an answer.
32. The allegations contained in paragraph 32 are statements or conclusions of law and as such do not require an answer.

II. Jurisdictional Statements

33. The allegations contained in paragraph 33 are admitted.
34. The allegations contained in paragraph 34 are admitted.
35. The allegations contained in paragraph 35 are admitted.
36. With respect to paragraph 36, it is only admitted that MPR owns the marina known as Marina Puerto del Rey located at State Road # 3, Km 51.4, Demajagua Ward, Fajardo, Puerto Rico and that it operates parts of its premises. There are other operators on the premises known as Marina Puerto del Rey.

37. With respect to paragraph 37, it is only admitted that MPR began operations at the marina known at Marina Puerto del Rey in or about May 2013.
38. The allegations contained in paragraph 38 are statements or conclusions of law and as such do not require an answer. In the alternative, they are hereby denied.
39. With respect to paragraph 39, it is only admitted that MPR was the owner of the premises known as Marina Puerto del Rey during the relevant times to the Order and did not operate the totality of its premises.
40. The allegations contained in paragraph 40 are admitted.
41. The allegations contained in paragraph 41 are statements or conclusions of law and as such do not require an answer.
42. The allegations contained in paragraph 42 are statements that do not require an answer.
43. The allegations contained in paragraph 43 are statements or conclusions of law and as such do not require an answer.
44. The allegations contained in paragraph 44 are statements or conclusions of law and as such do not require an answer.
45. The allegations contained in paragraph 45 are statements or conclusions of law and as such do not require an answer.
46. The allegations contained in paragraph 46 are admitted.
47. The allegations contained in paragraph 47 are statements or conclusions of law and as such do not require an answer.

48. The allegations contained in paragraph 48 are statements or conclusions of law and as such do not require an answer.

III. Findings of Violations

49. Paragraph 49 is statement that does not require an answer. In the alternative, it is denied.

50. With respect to paragraph 50, it is only admitted that an inspection was conducted at the marina known as Marina Puerto del Rey by a representative of the U.S. Environmental Protection Agency ("EPA"). With respect to the rest of the allegations in paragraph 50, Respondent does not have sufficient information in order to be able to admit or deny them.

51. Paragraph 51 contains a statement that does not require an answer. In the alternative, it is denied.

52. Paragraph 52 contains conclusions of law which do not require a response or are denied for lack of sufficient knowledge as to what the inspector observed. In the alternative the totality of paragraph 52 is denied.

53. With respect to paragraph 53, Respondent does not have sufficient information in order to be able to admit or deny this paragraph.

54. With respect to paragraph 54, Respondent does not have sufficient information in order to be able to admit or deny this paragraph.

55. With respect to paragraph 55, it is only admitted that the ACO required Respondent to take the actions listed as items a, b and c therein. The remaining allegations in paragraph 55 are denied for lack of sufficient knowledge as to what the inspector observed.

56. The allegations contained in paragraph 56 are admitted.

57. The allegations contained in paragraph 57 are admitted.

58. The allegations contained in paragraph 58 are admitted.

59. The allegations contained in paragraph 59 are admitted.

60. The allegations contained in paragraph 60 are admitted.

61. The allegations in paragraph 61 are denied for lack of sufficient knowledge as to what the inspector observed.

62. With respect to Paragraph 62, Respondent does not have sufficient information in its records in order to be able to admit or deny this paragraph.

63. The allegations contained in paragraph 63 are admitted.

64. Paragraph 64 is a statement that does not require a response. In the alternative, it is denied.

IV. Notice of Proposed Order Assessing a Civil Penalty

Respondent hereby object to the proposed penalty set forth in the Complaint as unwarranted, excessive, unreasonable, arbitrary, capricious and disproportionate.

V. Procedures Governing This Administrative Litigation

This Section contains statements or conclusions of law which do not require a response.

A. Answering the Complaint

Please see above for the answers to the Complaint.

Respondent hereby raises the following defenses:

1. Defenses

- a. The Complaint fails to state a claim upon which relief can be granted.
- b. The allegations in the Complaint involve third party actions or omissions.
- c. Respondent does not have a prior history of noncompliance with the Act.
- d. There is no evidence that any alleged noncompliance caused any harm to the human health or the environment.
- e. The volume of pollutants, if any, involved in any alleged violation, if any, is small.
- f. The alleged findings in the inspection report mentioned in the Complaint are merely a snapshot and are not representative of the conditions of Respondent's operation.
- g. Respondent is a good corporate citizen and not an unwilling party who needs enforcement to compel compliance.
- h. Respondent has acted in good faith.
- i. Respondent did not derive economic benefit from the alleged violations.
- j. The proposed penalty is unwarranted, excessive, unreasonable, arbitrary and capricious and is not sustained by the totality of the administrative record.
- k. The proceeding constitutes selective enforcement.
- l. The proposed penalty is disproportionate compared to penalties imposed by EPA to other members of the regulated community subject to similar enforcement actions in similar circumstances.

m. As of the date of the Complaint, Respondent has addressed the requirements of the ACO, has obtained coverage under the 2015 MSGP and is in compliance with the Act.

n. Failure to prosecute.

o. Estoppel.

p. Unclean hands.

q. Respondent reserves the right to raise any other affirmative defenses of law or fact as the same may be discovered in the course of the investigation of the allegations and in the course of any discovery.

B. Opportunity to Request a Hearing

Respondent hereby requests a hearing.

C. Failure to Answer

This Section does not require a response.

VI. Informal Settlement Conference

An informal settlement conference was held on November 9, 2016. The parties continue to hold good faith settlement discussions.

VII. Resolution of this Proceeding Without Hearing or Conference

This Section does not require a response.

VIII. Filing of Documents

This Section does not require a response.

IX. General Provisions

This Section does not require a response.

WHEREFORE, in view of the foregoing, it is respectfully requested that after the appropriate

procedures, including the hearing requested herein, the Hearing Examiner dismiss the Complaint in its entirety.

Respectfully submitted, in San Juan, Puerto Rico, this
2nd day of December, 2016.

Pietrantoní Méndez & Alvarez LLC
Attorneys for Respondent

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Doira Díaz-Rivera

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CERTIFICATE OF SERVICE

I certify that I have this day caused to be sent the foregoing **Answer to Complaint and Request for a Hearing**, dated December 2, 2016, and bearing the above-referenced docket number, in the following manner to the respective addressees below:

ORIGINAL AND COPY BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED,
AND COPY BY ELECTRONIC TO:

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

COPY TO COMPLAINANT BY ELECTRONIC MAIL AND CERTIFIED MAIL, RETURN
RECEIPT REQUESTED TO:

Evelyn Rivera-Ocasio, Esq.
Assistant Regional Counsel
U.S. EPA, Region 2
CEPD
Office of Regional Counsel-
Caribbean Team
Citi View Plaza 2, Suite 7000
#48 PR-165 Km 1.2
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Rivera-Ocasio.Evelyn@epa.gov

12/2/2016
Date


Doira Díaz-Rivera