

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG.II
2009 JUL 10 PM 12:38
REGIONAL HEARING
CLERK

In The Matter of:)
)
MUNICIPALITY OF CAYEY,) Docket No. CWA-02-2009-3454
)
Respondent.)

**ORDER DIRECTING SETTLEMENT CONFERENCE
AND FILING OF AMENDED ANSWER**

On April 1, 2009, The Environmental Protection Agency, Region 2 (EPA), initiated this action by filing a Complaint charging Respondent in an a single Count with violating Sections 308 and 402 of the Clean Water Act (CWA) , 33 U.S.C. §§ 1318 and 1342, by failing to file for a storm water discharge permit under the CWA’s National Pollutant Discharge Elimination System. Specifically, the Complaint alleges that Respondent, a municipality in Puerto Rico, owns and operates a Small Municipal Separate Storm Sewer System which discharges its storm water into the waters of the United States, and as such it was required to, but did not, submit an individual permit application and/or Notice of Intent to come under the general permit on or before March 10, 2003 and February 5, 2007, respectively. It further asserts Respondent was obliged to, but did not, submit a Storm Water Management Program (SWMP) on or before August 6, 2007. For these violations, the EPA proposes assessment of a penalty in the amount of \$48,920.

The Respondent, acting *pro se*, filed its Answer to the Complaint on May 5, 2009. Although it cited the relevant Rule regarding Answers in its pleading (40 C.F.R. § 22.15), Respondent’s Answer failed to respond to each of the individually numbered allegations made in the Complaint as required by the Rule.¹ Instead the Answer appears to generally admit the violations and raise only claims in mitigation of the proposed penalty, *i.e.*, that “due to limited administrative and technical personnel” it hired a contractor to prepare its NPDES permit application in January 2009 and submitted it in April 2009 along with its SWMP, that it has received no economic benefit from the violations, and that payment of the proposed penalty will

¹ Respondent is not required to be represented by an attorney in this process; it may represent itself. However, Respondent should be aware that, should it decide to continue to represent itself in this process, it will be required to comply with the procedures involved in this case and be familiar with the relevant law and rules of practice and procedure to the same extent as if it were represented by counsel. Thus, further failures to strictly comply with the requirements of the applicable procedural rules (40 C.F.R. Part 22) may result in the imposition of sanctions.

have an adverse effect on it. Furthermore, the Answer requests “accelerated decision dismissing this proceeding” in light thereof. In support thereof, Respondent submitted with its Answer two exhibits.²

Agency policy strongly supports settlement, and the procedures regarding documenting settlements are set forth in Section 22.18 of the Rules of Practice, 40 C.F.R. § 22.18. In light of the current posture of the case, and in an effort to potentially expedite and simplify the proceedings, the parties are hereby directed to engage in one or more settlement conferences on or before **June 30, 2009** and attempt to reach an amicable resolution of this matter. The Complainant shall then file a status report regarding settlement on or before **July 6, 2009**. In regard to such conferences, each party is reminded that pursuing this matter through a hearing and possible appeals will require the expenditure of significant amounts of time and financial resources. The parties should also realistically consider the risk of not prevailing in the proceeding despite such expenditures. A settlement allows the parties to control the outcome of the case, whereas a judicial decision takes such control away.

In the event that the parties do not reach a settlement beforehand, on or before **July 10, 2009**, Respondent shall file an Amended Answer to the Complaint fulfilling all of the requirements of Rule 22.15(b), *i.e.* such amended answer shall “clearly and directly admit, deny or explain *each* of the factual allegations contained in the complaint . . . , [state] [t]he circumstances or arguments which are alleged to constitute the grounds for any defense; the facts which respondent disputes; [and] the basis for opposing any proposed relief” 40 C.F.R. § 22.15(b) (italics added).

RESPONDENT IS HEREBY ADVISED THAT IF IT FAILS TO SUBMIT AN AMENDED ANSWER AS REQUIRED, A DEFAULT JUDGMENT MAY BE ENTERED AGAINST IT WITHOUT FURTHER NOTICE.



Susan L. Bird
Chief Administrative Law Judge

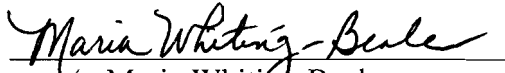
Dated: June 8, 2009
Washington, D.C.

² One of the two exhibits attached to Respondent’s Answer appears to be in Spanish. To the extent that either party wishes this Tribunal at any point in this proceeding to consider exhibits written in a language other than English, such exhibits must be accompanied by a certified English translation.

In the Matter of Municipality of Cayey, Respondent
Docket No. CWA-02-2009-3454

CERTIFICATE OF SERVICE

I certify that the foregoing **Order Directing Settlement Conference And Filing Of Amended Answer**, dated June 8, 2009, was sent this day in the following manner to the addressees listed below:



Maria Whiting-Beale
Staff Assistant

Dated: June 9, 2009

Original And One Copy By Pouch Mail To:

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