

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 2

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG.II
2013 MAR 26 P 4:50
REGIONAL HEARING
CLERK

IN THE MATTER OF:

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Docket No. CWA-02-2012-3354

JR Corona Inc.

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P.O. Box 1297

San Lorenzo, Puerto Rico 00754

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Proceeding pursuant Section 309(g)

of the Clean Water Act, 33 U.S.C.

Sec. 1319(g) to Assess Class I Civil

Respondent

*

Penalty

JR Corona Inc. Dairy Farm

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NPDES Tracking No. PRU 021007

JR Corona Inc. Swine Farm

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NPDES Tracking No. PRU021008

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**RESPONDENT'S ANSWER TO ADMINISTRATIVE PENALTY
COMPLAINT AND NOTICE OF REQUEST OF OPPORTUNITY TO
ARRIVE AT SETTLEMENT**

Respondent, JR Corona Inc. Dairy Farm and JR Corona Inc. Swine Farm, by and through its undersigned Attorney, Germán A. González, Esquire, responds to the United States Department of Environmental Protection Agency's Administrative Penalty Complaint and requests that this matter be settled for the reasons set forth below.

I. STATUTORY AUTHORITY

Par. 1 -17 Admitted

II. JURISDICTIONAL FINDINGS

Par. 18 – 27 Admitted with the following comments to specific paragraphs meant to establish a clear record:

Par.21 - The composition of the facility in regards to animals present is the following: Mature Dairy Cow – 215; Dairy Heifers – 58; Veal Calves – 45; Swine – 120; Swine Under 50 pounds – 3.

Par.23 - Respondent installed a retention lagoon after EPA's inspection object of this proceeding. This has eliminated the discharge. Discharge would occur only after an exceptional event like 5-year rains or hurricanes.

Par.26 - Notification of intent to obtain NPDES permit was filed on September 18, 2012. Respondent is now complying with legal requirements.

Par.27 – Admitted.

III. FINDINGS OF VIOLATION

Par. 28 - Does not require a response.

Par. 29 - a. Admitted

b. Admitted

c. Admitted

d. Please refer to P.21

e. , f. and g. – This was an abnormal event caused by the temporary breakdown of the pump machine due to an exceptional period of very heavy rains. The malfunction was corrected in a timely fashion and very expeditiously.

Par. 30 – This supposition is correct. As a premise, if no preventive measures are applied. The actions taken and measures implanted by Respondent do not allow this to happen at present.

Par. 31 – Admitted with the proviso of the abnormal event and measures taken.

Par. 32 – Denied. The overflow occurred because of the abnormal heavy rains event. Respondent alleges that he has established a very effective maintenance program and is prepared to show evidence as to this aspect.

Par. 33 – Respondent does not dispute EPA's statement as to its internal administrative actions. This internal review was performed on September 20, 2012. On September 17, 2012, Respondent filed his application for an NPDES permit.

Par. 34 – See above Paragraph.

Par. 35 – Respondent admits that an abnormal rain event occurred which occasioned an overflow and damaged his pump system. This damage was corrected expeditiously. The discharge into the tributary of the river was caused by an event of extremely heavy rains that occurs rarely and impossible to predict. His operations at present comply fully with the local and federal applicable laws and regulations.

Par.36 – Respondent avers that said discharge was accidental, properly and expeditiously corrected and at present is operating his facility in compliance with EPA's and EQB's applicable Regulations.

IV. Notice of Proposed Order Assessing a Civil Penalty

Complainant EPA, suggests a Penalty to the amount of \$11,525.00 due to the alleged violations by Respondent as set forth in the Complaint.

Complainant alleges the act of discharging pollutants (manure) into waters of the United States without an NPDES Permit. Complainant alleges that Respondent failed to take appropriate measures to prevent the discharges of pollutants from the facility manure storage lagoon and tank, and details the damages that such pollutants perform on the environment.

Complainant states that to its knowledge, this discharge occurred on one instance, on September 20, 2011, the date of the inspection by Complainant.

Respondent's Answers to Alleged Violations Which Give Rise to Proposed Penalty

1. As stated before, the event which gives rise to this Complaint is the one observed by EPA's Inspector on his visit which occurred during an extremely and abnormal heavy rains period. This was in September 2011.
2. EPA issues its Complaint one year after and after Respondent has taken all necessary measures to avoid discharges.
3. Respondent is now in the formal process of obtaining an NPDES Permit.
4. The heavy rains not only caused an abnormal situation for which Respondent was unprepared but also damaged his pump which was the direct cause of the overflow.
5. At present Respondent's operation is in compliance with all applicable environmental laws and regulations, local and Federal.
6. On September 11, 2012, Respondent signed a stipulation with the Environmental Quality Board of Puerto Rico (EQB-PR) that contained basically the facts alleged in the present Complaint after EQB-PR had ascertained that Respondent was in total compliance. Respondent paid the agreed upon sum of \$10,000.00 as part of the Stipulation process.
7. Immediately after receiving the present Complaint, Respondent filed the NOI necessary for the obtainment of an NPDES Permit. This process has commenced and Respondent is at present filing all necessary documents, plans and implementation schedules.

8. Measures in schedule are the following: a) building of a retaining wall (90 days) Due- June 15, 2013; b) construction of pluvial systems for lagoon to divert runoff to receptor body of water (90 days) Due – September 30, 2013; c) Conformity with all applicable permits (180 days) Due – December 30, 2013; d) Anaerobic system to eliminate odors (methane, CO2, Ammonia, others) and production of compost (365 days) Due – September 30, 2014.
9. Respondent has also obtained the Use Permit from the PR General Permits Office. (Attached copy)
10. Respondent believes that the measures detailed as taken, the signing of the stipulation with EQB-PR, the payment of the sum of \$10,000.00 in lieu of a formal penalty, his actions to file for an NPDES Permit, the verification by EQB-PR that Respondent is in compliance and his total willingness to comply and avoid damage to the environment, should be taken into account by Complainant and waive the proposed penalty of \$11,525.00.
11. In addition, Respondent alleges that his operation is a small scale one that does not provide immense amounts of profit. Respondent barely manages to meet costs with a small amount left over as profits. The payment of the sum suggested by Complainant would deal a huge blow to the economic viability of his operation. Respondent is willing to offer all necessary information to Complainant in order to verify the present allegation.

WHEREFORE, after having stated all of the aforesaid, Respondent through his Legal Representation, prays for the elimination of the proposed penalty. We also request that an Informal Settlement Conference be scheduled in order to discuss the present Answer to the Complaint and the possibility of issuing a Consent Order and if, after such a Conference is held, the need for a Formal Hearing arises then Complainant would schedule it.

RESPECTFULLY SUBMITTED in San Juan, Puerto Rico, this 22nd day of March, 2013.



Germán A. González, Esq.
Legal Counsel for Respondent

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San Juan, Puerto Rico 00907
Email: eticorpo@yahoo.com

Certificate of Mailing: I certify that on this date I have mailed the present Answer to the Complaint to Lourdes Del Carmen Rodríguez, Esq., Office of Regional Counsel, US-EPA Region 2, City View Plaza II, Suite 7000, #48 State Road 165, Km 1.2 , Guaynabo PR 00968; and to Regional Hearing Clerk, US-EPA, 290 Broadway -16th Floor, New York NY 10007-1866.

A handwritten signature in blue ink, appearing to read "Germán A. González".

Germán A. González, Esq.
Legal Counsel for Respondent