

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 2

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II
2011 DEC 18 PM 2:21
REGIONAL HEARING
CLERK

IN THE MATTER OF: *
*
Puerto Rico Aqueduct & Sewer *
Authority *
*
Ponce Regional Wastewater *
Treatment Plant, the "Plant" *
*
NPDES PR0021563 *
*
Respondents *

Docket EPA-CWA-02-2008-3451
Proceeding to Assess Class II
Civil Penalty under 309 (g)
of the Clean Water Act

**PUERTO RICO AQUEDUCT AND SEWER AUTHORITY'S ANSWER TO
ADMINISTRATIVE COMPLAINT, FINDINGS OF VIOLATION, NOTICE OF
PROPOSED ASSESSMENT OF A CIVIL PENALTY, AND NOTICE OF OPPORTUNITY
TO REQUEST A HEARING**

The Puerto Rico Aqueduct and Sewer Authority (Respondent) answers the allegations stated in the Administrative Complaint, Findings of Violation, Notice of Proposed Assessment of a Civil Penalty, and Notice of Opportunity to request a Hearing (Complaint) issued by the United States Environmental Protection Agency (Complainant) in the above captioned matter by stating the following:

I. Statutory Authority

1. The allegations in Paragraphs 1 to 2 are generally statements of law and procedure and fail to make

allegations that require a response. Any factual allegations and conclusions of law are responded to as set forth herein.

II. Statutory and Regulatory Background

2. Paragraphs 1 through 12 do not require a response, since they either reference a section of the Act or regulations under 40 C.F.R. Part 122.

III. Findings of Violation

3. Paragraphs 13 through 17, 19 and 20 are admitted.
4. Paragraph 18 is admitted subject to the clarification that the Plant has a NPDES permit.
5. Paragraphs 21, 22, 23, and 25 do not require a response, since they reference NPDES permit conditions. The cited permit conditions each speak for themselves.
6. As to Section 1 (Page 2) of the Plant's NPDES Permit cited in Paragraph 24, Respondent states that said permit section establishes that the location of outfall 001 is at the latitude and longitude therein specified and discharges from outfall 001 shall be in accordance with the effluent limitations and monitoring requirements set forth therein. The cited permit condition speaks for itself.

7. Regarding Paragraph 26, Respondent admits submitting to the EPA, pursuant to the Plant's NPDES permit, notifications of discharge events through the old outfall associated with electrical problems with the effluent pumps of the Plant. The first notification was oral and made March 31, 2007. Written notifications were submitted on April 2, 3, 4 and 13, 2007. The remainder of the paragraph is denied. Each written notification speaks for itself.
8. With regards to Paragraph 27, Respondent admits receipt of an Information Request Letter issued by EPA on April 4, 2007. Said document speaks for itself.
9. Paragraph 28 is denied. Also, Respondent incorporates by reference its response to Paragraph 31 below.
10. Regarding Paragraph 29, Respondent admits, pursuant to the Plant's NPDES permit, reporting orally an event that occurred at the Plant on April 9, 2007 associated with the lost of the influent pump 2 seal and the flooding of the dry pit and submitting on April 13, 2007 a written notification, which speaks for itself. As to the remainder of the paragraph, Respondent denies reporting that the event caused the discharge of raw sewage into the Caribbean Sea.

11. As to Paragraph 30, Respondent admits that EPA conducted an inspection of the Plant on April 11, 2007. As for the alleged observations of the inspection, Respondent admits subparagraph "a" and the first three sentences of subparagraph "b". As to the last sentence of subparagraph "b", Respondent denies reporting that the April 9, 2007 event caused the discharge of raw sewage into the Caribbean Sea. As to subparagraph "c", Respondent clarifies that the Plant has four (4) effluent pumps, not five (5), and operates only one (1) during low flow periods and two (2) during peak flow periods. Respondent adds that only one (1) of the four (4) effluent pumps was out-of-service. Thus at the time of the inspection, the Plant was operating with two (2) effluent pumps and a third one was on stand-by. The shell of a spare pump that was used to replace the burnt pump was located with the other effluent pumps in the basement of the effluent pump station building.
12. In response to Paragraph 31, Respondents admits submitting on April 17, 2007 an answer to EPA's April 4, 2007 Information Request Letter. Said answer speaks for itself. Respondent denies that the April 4, 2007 document was an amended answer.

13. Paragraph 32 is denied for lack of sufficient information as to the extent of the conversation alleged held on April 18, 2007 and with whom.
14. With regards to Paragraph 33 and 34, Respondent admits that EPA issued on April 27, 2007 Compliance Order CWA-02-2007-3040. The Compliance Order speaks for itself.
15. As to Paragraph 35, Respondent denies submitting bypass report notifications and admits submitting oral, 24 hour and five day notifications of sanitary sewer system overflows that occurred on the dates and for the duration alleged.
16. Regarding Paragraph 36, Respondents admits submitting on June 4, 2007 a response to EPA's April 27, 2007 Compliance Order CWA-02-2007-3040. Said response speaks for itself.
17. Paragraph 37 contains conclusions of law and does not require a response. Furthermore, Respondent incorporates as if expressed here the answers above provided to the paragraphs of the Complaint.
18. Paragraph 38 does not require a response. The paragraph avers to a future event to be performed by EPA.

IV. Notice of Proposed Order Assessing a Civil Penalty

With regard to the determination of the proposed penalty, EPA has no authority to assess such administrative penalty under 33 U.S.C §1319(g) because it has failed to consult with the state (Commonwealth of Puerto Rico) before proposing to assess the administrative penalty of \$143,000.00. Paragraph 38 of the Complaint is an admission by EPA that it did not consult the state (Commonwealth of Puerto Rico) before proposing an administrative penalty. Therefore, EPA's proposed assessment should be dismissed.

Respondent lacks sufficient information and knowledge with which to respond and specifically contest the elements accounted for by EPA in its calculation of the proposed penalty assessment. Respondent further asserts and alleges that the penalty amount proposed is excessive. In addition, EPA failed to give due consideration to the factors identified in Section 309 (g) of the Clean Water Act, which must be taken into account in determining the amount of any penalty assessed.

Respondent lacks sufficient information and knowledge with which to respond to what thirteen (13) instances of violations are referred to by Complainant that have been incurred by Respondent. Respondent contends that notifications were

pursuant to the Plants NPDES permit, timely and based on the assessment of the events at the time of each notification. Respondent takes exception to EPA's allegation that Respondent obtained an economic benefit.

V. Procedures governing this Administrative Litigation

Respondent contends that no response is necessary to this specific section since it merely restates procedural requirements and does not set forth facts or allegations for the finding of violations or in support of the assessment of any penalty.

In accordance with 40 C.F.R. Part 22.15 (c), Respondent requests a hearing.

VI. Informal Settlement Conference

Respondent contends that no response is necessary to this specific section since it merely restates procedural requirements and does not set forth facts or allegations for the finding of violations or in support of the assessment of any penalty. Pursuant to 40 C.F.R. Section 22.18(b)(1), Respondent seeks to pursue and requests an informal settlement conference.

VII. Resolution of this proceeding without a Hearing or Conference

Respondent contends that no response is necessary to this specific section since it merely restates procedural

requirements and does not set forth facts or allegations for the finding of violations or in support of the assessment of any penalty.

VIII. Filing Documents

Respondent contends that no response is necessary to this specific section since it merely restates procedural requirements and does not set forth facts or allegations for the finding of violations or in support of the assessment of any penalty.

IX. General Provisions

Respondent contends that no response is necessary to this specific section since it merely restates procedural requirements and does not set forth facts or allegations for the finding of violations or in support of the assessment of any penalty.

X. General Denial

To the extent not expressly admitted or denied, any and all other allegations of the Complaint are denied.

XI. Affirmative Defenses

By asserting the following, Respondent does not admit any violations of the Plant's NPDES permit.

1. Respondent has voluntarily disclosed information to the EPA of the alleged events in the Complaint and cooperated

fully during inspections and investigations of the alleged events.

2. There exists no economic benefit or savings accruing to the Respondent by virtue of the allegation of the complaint.
3. The Complaint does not allege any known environmental harm.
4. Respondent has acted in good faith to fulfill the requirements of the Act, the NPDES permit in question, and took and has taken steps to mitigate, minimize, and remedy its influent and effluent pump problems alleged in the Complaint.
5. Discharges to the Caribbean Sea alleged in the Complaint as the result of the effluent pump problems were discharges of treated wastewaters in compliance with the end-of-pipe permit effluent limitations of the Plant's NPDES permit.
6. There was no bypass, an intentional diversion of waste streams from any portion of a treatment facility (40 CFR 122.41 (m)); nor does the Complaint state factual allegations to that effect.
7. Respondent asserts that it may have further Affirmative Defenses which are not yet known, but which may become

known through additional investigation and discovery. Respondent hereby asserts each and every Affirmative Defense that it may later ascertain or identify through additional investigation and discovery, and failure to identify and assert those affirmative defenses at this point and time shall not be considered a waiver thereof.

Respectfully submitted,

Puerto Rico Aqueduct & Sewer
Authority

By its attorney,



Jorge Marrero-Narváez
Legal Counsel

Puerto Rico Aqueduct and Sewer
Authority
P.O. Box 7066
Santurce, Puerto Rico 00916
Telephone (787) 620-2277, x 2668
Fax (787) 620-3830
jorge.marrero@acueductospr.com

December 14, 2007

Ponce RWWTP
EPA-CWA-02-2008-3451
PRASA's Answer
Page 11 of 11

CERTIFICATE OF MAILING

I certify that a copy of the *Puerto Rico Aqueduct and Sewer Authority's Answer to Administrative Complaint, Findings of Violation, Notice of Proposed Assessment of a Civil Penalty, and Notice of Opportunity to Request a Hearing* has been delivered on this 14th day of December 2007 to Carolina Jordán Gracia, Assistant Regional Counsel, by fax (787-729-7748) and first class mail, U.S. E.P.A., Region 2, Office of Regional Counsel, 1492 Ponce de León, Suite 417, San Juan, PR 00907-4127.



Jorge Marrero-Narvárez
Legal Counsel for PRASA