

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2

In the Matter of:

**WYETH PHARMACEUTICALS COMPANY, INC.**

State Road 3, Km. 142.1  
Guayama, Puerto Rico 00784

**RESPONDENT**

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

**DOCKET NUMBER  
CWA-02-2009-3460**

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REG. II  
2009 OCT 26 PM 2:32  
REGIONAL HEARINGS  
CLERK

**MOTION FOR ADDITIONAL DISCOVERY**

COMES NOW Complainant through the undersigned attorney and very respectfully avers and prays as follows:


1. Pursuant to Section 22.19(e) of the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits" (Rules of Practice), Complainant respectfully requests that this Honorable Court order Respondent to produce additional discovery. This request is made after the Parties prehearing exchanges, and after requesting discovery from Respondent.
2. That on July 21, 2009, the undersigned attorney sent a letter, (*see, Attachment 1*) requesting that Respondent produce the following items:
  - a. the video and/or photographs, depicting the Facility's Wastewater Treatment Plant (WWTP) and nearby storm water retention lagoon between September 22 and September 24, 2008;
  - b. the WWTP Process Control Log Sheet records from Monday, September 15 to Monday, September 29, 2008;
  - c. the WWTP Log Sheet records from Monday, September 15 to Monday, September 29, 2008; and
  - d. a detailed explanation and description of the sampling procedures undertaken by Respondent relating to the sampling activities performed in order to comply with the monitoring and reporting requirements contained in Respondent's NPDES permit for the month of September 2008, including a copy of the chain of custody records; all available written documentation and

electronic correspondence; and sworn statements from those individuals who conducted the monitoring activities.

3. That as of the date of this motion, October 23, 2009, over three months have elapsed and Respondent has failed to voluntarily produce the above-referenced items.
4. That due to the impending hearing date set by this Honorable Court, December 7–11, 2009, and due to Respondent's failure to voluntarily produce the above-referenced items, Complainant also respectfully requests that this Court order Respondent to produce the following, additional items of evidence:
  - a. the video and/or photographs, depicting the WWTP and nearby storm water retention lagoon from September 18 to September 21, 2008;
  - b. the video and/or photographs, depicting the WWTP and nearby storm water retention lagoon from September 25 to September 27, 2008;
  - c. all written documentation and electronic correspondence relating to the events reported by respondent in its October 3, 2008, Event Notification Report (Number 885-549), (see, **Attachment 2**), including, but not limited to the results from the purported investigation that took place during and after the September 2008 events; communications held between WWTP operators, supervisors, managers, and other Respondent representatives, concerning the September 2008 events;
  - d. a copy of Respondent's Storm Water Pollution Prevention Plan in effect for the September 2008 period, developed pursuant to Special Condition 11, of NPDES Permit PR0024724; and
  - e. a date, time, and place where Complainant can interview Antonio Otaño, María Santiago, and Juan Rivera, who are believed to continue to be Respondent's employees, and that Complainant believes posses essential information regarding the illegal discharges alleged in the Complaint.
5. Pursuant to Section 22.19(e) of the Rules of Practice, Complainant respectfully requests that this Court order Respondent to produce the above-referenced items of evidence, as doing so "[w]ill neither unreasonably delay the proceeding nor unreasonably burden [Respondent]; [the] information [sought] is most reasonably obtained from [Respondent] and [Respondent] has refused to provide voluntarily; and [the information sought] has significant probative value on a disputed issue of material fact, relevant to liability or the relief sought." 40 C.F.R. § 22.19(e)(i)–(iii).

WHEREFORE, Complainant respectfully requests that this Honorable Court Order Respondent, to produce the above-referenced items of evidence, pursuant to Section 22.19(e)(i)–(iii) of the Rules of Practice.

Respectfully submitted, in San Juan, Puerto Rico this 23rd day of October 2009.



Roberto M. Durango, Esq.  
Assistant Regional Counsel  
U.S. Environmental Protection Agency, Region 2  
Office of Regional Counsel—Caribbean Team  
Centro Europa Building, Ste. 407  
1492 Ponce de León Ave.  
San Juan, PR 00907  
Tel. (787) 977-5822; Fax: (787) 729-7748

**CERTIFICATE OF SERVICE**

I certify that I have this day caused to be sent the foregoing **Motion for Additional Discovery**, dated October 23, 2009, and bearing the above-referenced docket number, in the following manner to the respective addressees below:

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

Karen Maples  
Regional Hearing Clerk  
Region 2  
U.S. Environmental Protection Agency  
290 Broadway, 16<sup>th</sup> Floor  
New York, NY 10007-1866.

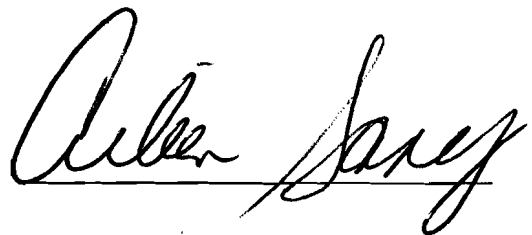
Copy by **Certified Mail** to:

Attorney for Respondents:

Karin G. Díaz-Toro, Esquire  
Counsel, Wyeth Pharmaceuticals Company, Inc.  
705 Fernández Juncos Avenue  
San Juan, Puerto Rico 00907-4226

Original **Federal Express** to:

Judge William B. Moran  
U.S. Environmental Protection Agency  
Office of Administrative Law Judges  
Franklin Court Building  
1099 14<sup>th</sup> Street, N.W. Suite 350  
Washington, D.C. 20460  
Ph: 202.564.6255 / Fax (202) 565-0044

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



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
OFFICE OF REGIONAL COUNSEL  
CENTRO EUROPA BUILDING, SUITE 207  
1492 PONCE DE LEON AVENUE, STOP 22  
SAN JUAN, PR 00907-4127

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

July 21, 2009

Ms. Karin Díaz-Toro, Esq.  
Torres & García, P.S.C.  
PO Box 19539  
San Juan, PR 00910-1539

**Re: Notice Assessment of a Class II Civil Penalty  
Wyeth Pharmaceuticals, Inc.  
Gauyama, Puerto Rico  
Docket Number CWA-02-2009-3460**

Dear Ms. Diaz:

This letter addresses the June 22, 2009 letter that you submitted on behalf of Wyeth Pharmaceuticals, Inc. (Respondent), referencing the informal settlement conference held on June 17, 2009 and communications held thereafter.

In response, EPA's Enforcement Team also believes that there are major discrepancies between the company records that were reviewed in preparing Respondent's Answer to the Complaint and those that should have been reviewed and provided to EPA in order to adequately address the allegations and claims set forth in the Complaint. Specifically, during the June 17 conference Respondent provided EPA with a photograph of the Wastewater Treatment Plant (WWTP) and nearby storm water retention lagoon, which was taken on September 27, 2008.

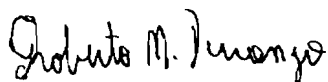
In the Complaint, however, EPA does not allege that there were unauthorized discharges on such date. Therefore, in order to clarify that major discrepancy in the records Respondent reviewed and submitted, EPA requests that Respondent provide the video and/or photographs, depicting the Facility's WWTP and nearby storm water retention lagoon between September 22 and September 24, 2009—the dates on which EPA claims that there were unauthorized discharges of pollutants.

In addition, EPA reiterates the request it made during the June 17 conference. That is, EPA requests, prior to reaching an expeditious settlement to this matter, that Respondent submit the following information:

1. The WWTP Process Control Log Sheet records from Monday, September 15 to Monday, September 29, 2008;
2. The WWTP Log Sheet records from Monday, September 15 to Monday, September 29, 2008; and
3. A detailed explanation and description of the sampling procedures undertaken by Respondent relating to the sampling activities performed in order to comply with the monitoring and reporting requirements contained in Respondent's NPDES permit for the month of September 2008. Please include a copy of the chain of custody records, all available written documentation, including electronic correspondence, and sworn statements from those individuals who conducted the monitoring activities.

Upon receiving such information, EPA's Enforcement Team will continue to engage in informal discovery, in a good-faith effort to reach a prompt, amicable resolution to this matter, pursuant to Agency policies.

Best regards,



Roberto M. Durango, Esq.  
Assistant Regional Counsel  
Caribbean Team  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 2  
1492 Ponce de Leon Avenue, Suite 417  
San Juan, PR 00907  
Telephone (787) 977-5822  
Fax: (787) 729-7748

Call Box 10012  
Guayama, PR 00785

**Wyeth**

**Ruben Soto Arroyo**  
EHS Director  
Sotor4@wyeth.com

October 03, 2008

7007 2680 0001 9231 8019  
7007 2680 0001 9231 8026  
7007 2680 0001 9231 8033  
7007 2680 0001 9231 7876

Mr. Patrick H. Harvey  
Compliance Assistance & Program Support Group  
US Environmental Protection Agency  
290 Broadway -21<sup>st</sup> Floor  
New York, NY 10007-1866

**Re: Event Notification Report Number 885-549  
Wyeth Pharmaceuticals Company  
Guayama, Puerto Rico  
NPDES Permit PR0024724**

Dear Mr. Harvey:

Reference is made to the above Event Notification Report Number 885-549 (the Event Report) and to the Wyeth Pharmaceuticals Company (WPC) National Pollutant Discharge Elimination System (NPDES) (Permit No PR0024724) (the Permit) for our Guayama, Puerto Rico facility. Section 12.f. (2) of the Permit requires a written submission to the Regional Administrator and State Director, in addition to the oral 24-Event Report. This correspondence is intended to satisfy the written submission requirement in the Permit. While we feel that the filing of an oral report in the first instance might not have been required (as we do not believe there was any noncompliance with the Permit discharge limitations), we prefer to take conservative approach to these matters.

During the week of September 21 to 27, 2008, Puerto Rico experienced one of the biggest rain events in the island's history. The Guayama area, where WPC is located, registered almost twenty (20) inches of rain.

WPC undertook the operation of draining collected rainwater from an inactive wastewater treatment lagoon to the storm water retention system. These operations were performed periodically from September 22 through 27, 2008. On Saturday, September 27, 2008, it came to the attention of WPC that the

inactive lagoon might have received, as a result of overflows caused by the rain, wastewater from an active aeration lagoon. An investigation was immediately commenced by WPC and it was determined that water from the active wastewater lagoon apparently overflowed into the inactive lagoon as a result of the extraordinary rain event. It is estimated that overall, approximately 120,000-180,000 gallons of water was pumped from the inactive lagoon into the storm water retention system during the September 22 through September 27, 2008 time frame. The storm water retention system includes a 3 million gallon retention pond.

The following actions were taken immediately:

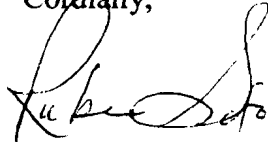
- All pumping operations from the inactive lagoon to the storm water retention system were ceased.
- Samples were taken from the storm water retention pond and the inactive lagoon for preliminary characterization at the WPC Waste Water Treatment Plant (WWTP) Laboratory. The Chemical Oxygen Demand (COD) and pH test results from both locations were within the NPDES Permit PR0024724 Discharge Limitations (COD = 100 ppm and pH= 7.3 to 8.5).
- In accordance with our NPDES Permit PR0024724, a verbal report was filed within twenty-four hours with the Regional Administrator and State Director. The Environmental Protection Agency (EPA) Caribbean Field Office, and the Environmental Quality Board (EQB) Guayama Puerto Rico Office, were also contacted. Notification Report Number 885-549 was issued.
- Four (4) additional samples were taken from the same two locations to be analyzed by an external Laboratory. These samples have yielded the following reported results:
  - COD Storm water Lagoon
    - September 27, 2008: 11.6 ppm
    - September 29, 2008: <5.0 ppm
  - COD Inactive WWTP Lagoon
    - September 27, 2008: 7.0 ppm
    - September 29, 2008: <5.0 ppm
- The storm water retention system was visually inspected to determine the potential presence of any impacts caused by the wastewater from the active lagoon (e.g., discoloration, damage to grass, chemical burning). No impacts were observed.



Based on the foregoing, it is our view that there have been no impacts resulting from the apparent and inadvertent discharge of wastewater from the active lagoon to the storm water retention system. In addition, the results of the sampling indicate that any discharge that might have included the overflow water from the active lagoon was in compliance with the Permit limitations. As a result, we feel that no further action is warranted at this time. We trust that you will agree.

If you have any question or need additional information, please feel free to contact me at (787) 866-7561.

Cordially,

A handwritten signature in black ink, appearing to read "Ruben Soto". The signature is written in a cursive style with a large initial "R".

Ruben Soto

Attachments

cc: Ruben González- Environmental Quality Board  
Tere Rodríguez-EPA's Caribbean Field Office  
Angel Rivera Ramos – Environmental Quality Board, Guayama PR  
Mr. Ricardo Zayas, WPC Guayama  
Mr. Pete Alexandro, Wyeth  
file 1.04.00