

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

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In the Matter of:) Docket No. CAA-02-2008-1214
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Puerto Rico Aqueduct and Sewer) Administrative Complaint under
Authority,) Section 113 of the Clean Air Act,
) 42 U.S.C. § 7413
)
)
Respondent.)
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U.S. ENVIRONMENTAL PROTECTION AGENCY
REGIONAL HEARING CLERK
OCT 16 PM 3:02

ADMINISTRATIVE COMPLAINT

I. JURISDICTION

1. This Complaint ("Complaint") initiates an administrative action for the assessment of a civil penalty pursuant to Section 113(d) of the Clean Air Act ("the Act"), 42 U.S.C. § 7413(d). The Complainant in this action is the Director of the Emergency and Remedial Response Division of the United States Environmental Protection Agency ("EPA"), Region 2, who has been delegated the authority to institute this action.

2. EPA and the U.S. Department of Justice have determined, pursuant to Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), that EPA may pursue this matter through administrative enforcement action.

II. APPLICABLE STATUTES AND REGULATIONS

3. Section 113(d) of the Act, 42 U.S.C. § 7413(d), provides for the assessment of penalties for violations of Section 112(r) of the Act, 42 U.S.C. § 7412(r).

4. Section 112(r)(7) of the Act, 42 U.S.C. § 7412(r)(7), requires the Administrator to promulgate release prevention, detection, and correction requirements regarding regulated substances in order to prevent accidental releases of regulated substances. EPA promulgated regulations in 40 C.F.R. Part 68 to implement Section 112(r)(7) of the Act, which set forth the requirements of risk management programs that must be established and implemented at affected stationary sources. The regulations at 40 C.F.R. Part 68, Subparts A through G, require owners and operators of stationary sources to, among other things, develop and implement: (1) a management system to oversee the implementation of the risk management program elements; and (2) a risk management program that includes, but is not limited to, a hazard assessment, a prevention program, and an emergency response program. Pursuant to 40 C.F.R. Part 68, Subparts A and G, the risk management program for a stationary source that is subject to these requirements is to be described in a risk management plan ("RMP") that must be submitted to EPA.

5. Sections 112(r)(3) and (5) of the Act, 42 U.S.C. §§ 7412(r)(3) and (5), require the Administrator to promulgate a list of regulated substances, with threshold quantities. EPA promulgated a regulation known as the List Rule, at 40 C.F.R. Part 68, Subpart F, to implement Section 112(r)(3) of the Act, 42 U.S.C. § 7412(r)(3), which lists the regulated substances and their threshold quantities.

6. Pursuant to Section 112(r)(7) of the Act, 42 U.S.C. §7412(r)(7), and 40 C.F.R. §§ 68.10(a), 68.12, and 68.150, an owner or operator of a stationary source that has more than a threshold quantity of a regulated substance in a process shall comply with the requirements of 40 C.F.R. Part 68 (including, but not limited to, submission of an RMP to EPA), no later than June 21, 1999, or three years after the date on which such regulated substance is first listed under 40 C.F.R. § 68.130, or the date on which the regulated substance is first present in a process above the threshold quantity, whichever is latest.

7. The regulations at 40 C.F.R. Part 68 separate the covered processes into three categories, designated as Program 1, Program 2, and Program 3. A covered process is subject to Program 3 requirements, as per 40 C.F.R. § 68.10(d), if the process: a) does not meet one or more of the Program 1 eligibility requirements set forth in 40 C.F.R. § 68.10(b); and b) is listed in one of the specific North American Industry Classification System codes found at 40 C.F.R. § 68.10(d)(1) or is subject to the United States Occupational Safety and Health Administration (“OSHA”) process safety management standard set forth in 29 C.F.R. § 1910.119.

8. 40 C.F.R. § 68.12(d) requires that the owner or operator of a stationary source with a Program 3 process undertake certain tasks, including, but not limited to, development and implementation of a management system (pursuant to 40 C.F.R. § 68.15), the implementation of prevention program requirements, which include mechanical integrity (pursuant to 40 C.F.R. §§ 68.65-68.87), the development and implementation of an emergency response program (pursuant to 40 C.F.R. §§ 68.90-68.95), and the submission of additional information on prevention program elements regarding Program 3 processes (pursuant to 40 C.F.R. § 68.175).

9. Pursuant to Section 112(r)(7) of the Act, 42 U.S.C. §7412(r)(7), and 40 C.F.R. §68.190(b), an owner or operator of a stationary source shall revise and update the RMP submitted pursuant to 40 C.F.R. § 68.150 at least once every five years from the date of its initial submission or most recent update required by 40 C.F.R. §68.190(b)(2) - (7), whichever is later.

10. Pursuant to 40 C.F.R. §68.190(c), if a stationary source is no longer subject to the requirements of 40 C.F.R. Part 68, the owner or operator shall submit a revised registration to EPA within six months indicating that the stationary source is no longer covered.

III. DEFINITIONS

11. 40 C.F.R. § 68.3 defines “stationary source” in relevant part, as any buildings, structures, equipment, installations, or substance-emitting stationary activities which belong to the same industrial group, which are located on one or more contiguous properties, which are under the control of the same person (or persons under common control), and from which an accidental release may occur.

12. 40 C.F.R. § 68.3 defines “threshold quantity” as the quantity specified for regulated substances pursuant to Section 112(r)(5) of the Act as amended, listed in 40 C.F.R. § 68.130, and determined to be present at a stationary source as specified in 40 C.F.R. § 68.115.

13. 40 C.F.R. § 68.3 defines “regulated substance” as any substance listed pursuant to Section 112(r)(3) of the Act in 40 C.F.R. § 68.130.

14. 40 C.F.R. § 68.3 defines “process,” in relevant part, as any activity involving a regulated substance including any use, storage, manufacturing, handling, or on-site movement of such substances, or combination of these activities.

15. 40 C.F.R. § 68.3 defines “covered process” as a process that has a regulated substance present in more than a threshold quantity pursuant to 40 C.F.R. § 68.115.

IV. FINDINGS OF VIOLATIONS

16. Respondent, Puerto Rico Aqueduct and Sewer Authority, is, and at all times referred to herein, was, a “person” within the meaning of Section 302(e) of the Act, 42 U.S.C. § 7602(e).

17. Chlorine is a regulated substance pursuant to Section 112(r)(2) and (3) of the Act and 40 C.F.R. § 68.3. The threshold quantity for chlorine, as listed in 40 C.F.R. § 68.130, Tables 1 and 2, is 2,500 pounds.

18. On September 27, 2007, EPA issued an Administrative Order, Index Number CAA-02-2007-1023 (the “Order”) to Respondent. The Order listed thirty-one of Respondent’s facilities and determined that Respondent did not timely revise and update the RMPs and submit updated RMPs to EPA for those facilities. The Order required Respondent to undertake actions including, for each of the facilities determined to have chlorine and/or other regulated substances present in processes above the threshold quantities, to revise and update the RMPs for those facilities and submit the updated RMPs to EPA.

19. Following the issuance of the Order, Respondent began submitting updated RMPs to EPA for the facilities listed in the Order. The chart included as Attachment 1 lists facilities owned and/or operated by Respondent and for each facility shows the EPA Facility ID number, the name and address provided for the facility in the initial and updated RMP submissions, the quantity of chlorine reported in the most recent RMP submission, and the postmark dates of the initial and updated RMP submissions.

Facility 1 - Arecibo Regional Wastewater Treatment Plant

20. Respondent is, and at all times relevant to this Complaint, was, the owner and/or operator of the Arecibo Regional Wastewater Treatment Plant, located at PR Road 681, Km 4.0, Arecibo, Puerto Rico.

21. Respondent handles, stores, and uses, and has handled, stored, and used, chlorine in a process at the Arecibo Regional Wastewater Treatment Plant in amounts exceeding the threshold quantity for chlorine.

22. On or about June 21, 1999, an RMP was submitted to EPA for the Arecibo Regional Wastewater Treatment Plant.

23. Respondent did not submit any updated RMPs to EPA for the Arecibo Regional Wastewater Treatment Plant until on or about November 26, 2007, more than five years after the initial RMP submission for this facility. The updated RMP for this facility specified that 30,000 pounds of chlorine were present at this facility in a covered process, and identified the program level of the process as Program 3.

Facility 2 - Betances Cabo Rojo Filtration Plant

24. Respondent is, and at all times relevant to this Complaint, was, the owner and/or operator of the Betances Cabo Rojo Filtration Plant, located at Carretera 103, Km. 13.0 Interior Cabo Rojo, Puerto Rico.

25. Respondent handles, stores, and uses, and has handled, stored, and used, chlorine in a process at the Betances Cabo Rojo Filtration Plant in amounts exceeding the threshold quantity for chlorine.

26. On or about July 19, 2001, an RMP was submitted to EPA for the Betances Cabo Rojo Filtration Plant, which identified the name and address of this facility as "Betances Water Filter Plant, Km. 13.1 Camino Radi, Barrio Llanos, Puerto Rico."

27. Respondent did not submit any updated RMPs to EPA for the Betances Cabo Rojo Filtration Plant until on or about February 9, 2008, more than five years after the initial RMP submission for this facility. The updated RMP for this facility specified that 10,000 pounds of chlorine were present at this facility in a covered process, and identified the program level of the process as Program 3.

Facility 3 - Caguas Wastewater Treatment Plant

28. Respondent is, and at all times relevant to this Complaint, was, the owner and/or operator of the Caguas Wastewater Treatment Plant, located at PR Road #796, Km 6.6, Caguas, Puerto Rico.

29. Respondent handles, stores, and uses, and has handled, stored, and used, chlorine in a process at the Caguas Wastewater Treatment Plant in amounts exceeding the threshold quantity for chlorine.

30. On or about June 21, 1999, an RMP was submitted to EPA for the Caguas Wastewater Treatment Plant.

31. Respondent did not submit an updated RMP to EPA for the Caguas Wastewater Treatment Plant until on or about December 27, 2007, more than five years after the initial RMP submission for this facility. The updated RMP for this facility specified that 18,000 pounds of chlorine were present at this facility in a covered process, and identified the program level of the process as Program 3.

Facility 4 - Canóvanas Filtration Plant

32. Respondent is, and at all times relevant to this Complaint, was, the owner and/or operator of the Canóvanas Filtration Plant, located at Carr. 3, Km 17.4, Canóvanas, Puerto Rico.

33. Respondent has handled, stored, and used, chlorine in a process at the Canóvanas Filtration Plant in amounts exceeding the threshold quantity for chlorine.

34. On or about June 21, 1999, an RMP was submitted to EPA for the Canóvanas Filtration Plant, which specified that 8,000 pounds of chlorine were present at this facility in a covered process, and identified the program level of the process as Program 3.

35. Respondent did not timely submit an updated RMP to EPA for the Canóvanas Filtration Plant. On or about October 22, 2007, Respondent submitted a revised registration to EPA, indicating that this facility is no longer subject to the requirements of 40 C.F.R. Part 68, because the facility terminated operations.

Facility 5 - Carolina Regional Wastewater Treatment Plant

36. Respondent is, and at all times relevant to this Complaint, was, the owner and/or operator of the Carolina Regional Wastewater Treatment Plant, located at PR Road 187, Km 16.5 Bo. Torrecilla, Loiza, Puerto Rico.

37. Respondent handles, stores, and uses, and has handled, stored, and used, chlorine in a process at the Carolina Regional Wastewater Treatment Plant in amounts exceeding the threshold quantity for chlorine.

38. On or about June 21, 1999, an RMP was submitted to EPA for the Carolina Regional Wastewater Treatment Plant.

39. Respondent did not submit any updated RMPs to EPA for the Carolina Regional Wastewater Treatment Plant until on or about December 27, 2007, more than five years after the initial RMP submission for this facility. The updated RMP for this facility specified that 80,000 pounds of chlorine were present at this facility in a covered process, and identified the program level of the process as Program 3.

Facility 6 - Cayey Filtration Plant

40. Respondent is, and at all times relevant to this Complaint, was, the owner and/or operator of the Cayey Filtration Plant, located at Carretera PR-1, Km 59.9, Cayey, Puerto Rico.

41. Respondent handles, stores, and uses, and has handled, stored, and used, chlorine in a process at the Cayey Filtration Plant in amounts exceeding the threshold quantity for chlorine.

42. On or about June 21, 1999, an RMP was submitted to EPA for the Cayey Filtration Plant.

43. Respondent did not submit any updated RMPs to EPA for the Cayey Filtration Plant until on or about January 8, 2008, more than five years after the initial RMP submission for this facility. The updated RMP for this facility specified that 10,000 pounds of chlorine were present at this facility in a covered process, and identified the program level of the process as Program 3.

Facility 7 - Ceiba Sur-Juncos Filtration Plant

44. Respondent is, and at all times relevant to this Complaint, was, the owner and/or operator of the Ceiba Sur-Juncos Filtration Plant, located at PR Road 9934, Km 1.5, Juncos, Puerto Rico.

45. Respondent handles, stores, and uses, and has handled, stored, and used, chlorine in a process at the Ceiba Sur - Juncos Filtration Plant in amounts exceeding the threshold quantity for chlorine.

46. On or about June 21, 1999, an RMP was submitted to EPA for the Ceiba Sur - Juncos Filtration Plant.

47. Respondent did not submit any updated RMPs to EPA for the Ceiba Sur - Juncos Filtration Plant until on or about February 7, 2008, more than five years after the initial RMP submission for this facility. The updated RMP for this facility specified that 14,000 pounds of chlorine were present at this facility in a covered process, and identified the program level of the process as Program 3.

Facility 8 - Ciales Wastewater Treatment Plant

48. Respondent is, and at all times relevant to this Complaint, was, the owner and/or operator of the Ciales Wastewater Treatment Plant, located at Carr. 149, Km 12.1, Ciales, Puerto Rico.

49. Respondent has handled, stored, and used, chlorine in a process at the Ciales Wastewater Treatment Plant in amounts exceeding the threshold quantity for chlorine.

50. On or about June 21, 1999, an RMP was submitted to EPA for the Ciales Wastewater Treatment Plant, which specified that 10,000 pounds of chlorine were present at this facility in a covered process, and identified the program level of the process as Program 3.

51. Respondent did not timely submit an updated RMP to EPA for the Ciales Wastewater Treatment Plant. On or about October 24, 2007, Respondent submitted a revised registration to EPA, indicating that this facility is no longer subject to the requirements of 40 C.F.R. Part 68, because the facility reduced the inventory of all regulated substances below threshold quantities.

Facility 9 - Cotto Laurel-Ponce Filtration Plant

52. Respondent is, and at all times relevant to this Complaint, was, the owner and/or operator of the Cotto Laurel-Ponce Filtration Plant, located at Carr. 14, Km 8.2, Ponce, Puerto Rico.

53. Respondent has handled, stored, and used, chlorine in a process at the Cotto Laurel-Ponce Filtration Plant in amounts exceeding the threshold quantity for chlorine.

54. On or about June 21, 1999, an RMP was submitted to EPA for the Cotto Laurel-Ponce Filtration Plant, which specified that 12,000 pounds of chlorine were present at this facility in a covered process, and identified the program level of the process as Program 3.

55. Respondent did not timely submit an updated RMP to EPA for the Cotto Laurel-Ponce Filtration Plant. On or about October 24, 2007, Respondent submitted a revised registration to EPA, indicating that this facility is no longer subject to the requirements of 40 C.F.R. Part 68, because the facility reduced the inventory of all regulated substances below threshold quantities.

Facility 10 - Guayama Regional Wastewater Treatment Plant

56. Respondent is, and at all times relevant to this Complaint, was, the owner and/or operator of the Guayama Regional Wastewater Treatment Plant, located at PR Road #3 Int. 710, Km 2.2, Guayama, Puerto Rico.

57. Respondent handles, stores, and uses, and has handled, stored, and used, chlorine in a process at the Guayama Regional Wastewater Treatment Plant in amounts exceeding the threshold quantity for chlorine.

58. On or about June 21, 1999, an RMP was submitted to EPA for the Guayama Regional Wastewater Treatment Plant.

59. Respondent did not submit any updated RMPs to EPA for the Guayama Regional Wastewater Treatment Plant until on or about January 8, 2008, more than five years after the initial RMP submission for this facility. The updated RMP for this facility specified that 24,000 pounds of chlorine were present at this facility in a covered process, and identified the program level of the process as Program 3.

Facility 11 - Isabela Wastewater Treatment Plant

60. Respondent is, and at all times relevant to this Complaint, was, the owner and/or operator of the Isabela Wastewater Treatment Plant, located at Carretera PR-4466, Km. 1.9 Interior, Isabela, Puerto Rico.

61. Respondent handles, stores, and uses, and has handled, stored, and used, chlorine in a process at the Isabela Wastewater Treatment Plant in amounts exceeding the threshold quantity for chlorine.

62. On or about June 21, 1999, an RMP was submitted to EPA for the Isabela Wastewater Treatment Plant, which identified the address of this facility as "Villa Pespuera, Isabela, Puerto Rico."

63. Respondent did not submit any updated RMPs to EPA for the Isabela Wastewater Treatment Plant until on or about January 14, 2008, more than five years after the initial RMP submission for this facility. The updated RMP for this facility specified that 12,000 pounds of chlorine were present at this facility in a covered process, and identified the program level of the process as Program 3.

Facility 12 - Jayuya Filtration Plant

64. Respondent is, and at all times relevant to this Complaint, was, the owner and/or operator of the Jayuya Filtration Plant, located at Carr. 144, Km 21.4, Jayuya, Puerto Rico.

65. Respondent has handled, stored, and used, chlorine in a process at the Jayuya Filtration Plant in amounts exceeding the threshold quantity for chlorine.

66. On or about June 21, 1999, an RMP was submitted to EPA for the Jayuya Filtration Plant, which specified that 3,000 pounds of chlorine were present at this facility in a covered process, and identified the program level of the process as Program 3.

67. Respondent did not timely submit an updated RMP to EPA for the Jayuya Filtration Plant. On or about November 30, 2007, Respondent submitted a revised registration to EPA, indicating that this facility is no longer subject to the requirements of 40 C.F.R. Part 68, because the facility terminated operations.

Facility 13 - La Plata-Aibonito Filtration Plant

68. Respondent is, and at all times relevant to this Complaint, was, the owner and/or operator of the La Plata-Aibonito Filtration Plant, located at PR Road # 173, Km 1.21 Interior, Aibonito, Puerto Rico.

69. Respondent handles, stores, and uses, and has handled, stored, and used, chlorine in a process at the La Plata-Aibonito Filtration Plant in amounts exceeding the threshold quantity for chlorine.

70. On or about September 2, 1999, and then on or about January 4, 2000, RMPs were submitted to EPA for the La Plata-Aibonito Filtration Plant. These submissions identified the address of this facility as "Carr. 173, Km 0.4, Aibonito, Puerto Rico."

71. Respondent did not submit any updated RMPs to EPA for the La Plata-Aibonito Filtration Plant until on or about January 10, 2008, more than five years after the most recent RMP submission for this facility. The updated RMP for this facility specified that 12,000 pounds of chlorine were present at this facility in a covered process, and identified the program level of the process as Program 3.

Facility 14 - La Plata - Toa Alta Filtration Plant

72. Respondent is, and at all times relevant to this Complaint, was, the owner and/or operator of the La Plata - Toa Alta Filtration Plant, located at Carr. 827, Km 5.6, Toa Alta, Puerto Rico.

73. Respondent handles, stores, and uses, and has handled, stored, and used, chlorine in a process at the La Plata - Toa Alta Filtration Plant in amounts exceeding the threshold quantity for chlorine.

74. On or about June 21, 1999, an RMP was submitted to EPA for the La Plata - Toa Alta Filtration Plant.

75. Respondent did not submit any updated RMPs to EPA for the La Plata - Toa Alta Filtration Plant until on or about April 8, 2008, more than five years after the initial RMP submission for this facility. The updated RMP for this facility specified that 86,000 pounds of chlorine were present at this facility in a covered process, and identified the program level of the process as Program 3.

Facility 15 - Los Filtros Filtration Plant

76. Respondent is, and at all times relevant to this Complaint, was, the owner and/or operator of the Los Filtros Filtration Plant, located at Carr. 833, Km 14.8, Guaynabo, Puerto Rico.

77. Respondent handles, stores, and uses, and has handled, stored, and used, chlorine in a process at the Los Filtros Filtration Plant in amounts exceeding the threshold quantity for chlorine.

78. On or about June 21, 1999, an RMP was submitted to EPA for the Los Filtros Filtration Plant.

79. Respondent did not submit any updated RMPs to EPA for the Los Filtros Filtration Plant until on or about December 12, 2007, more than five years after the initial RMP submission for this facility. The updated RMP for this facility specified that 60,000 pounds of

chlorine were present at this facility in a covered process, and identified the program level of the process as Program 3.

Facility 16 - Matadero Tank and Chlorination Station

80. Respondent is, and at all times relevant to this Complaint, was, the owner and/or operator of the Matadero Tank and Chlorination Station, located at Carretera 636 Km. 0.1, Bo. Tanamá, Arecibo, Puerto Rico.

81. Respondent handles, stores, and uses, and has handled, stored, and used, chlorine in a process at the Matadero Tank and Chlorination Station in amounts exceeding the threshold quantity for chlorine.

82. On or about June 21, 1999, an RMP was submitted to EPA for the Matadero Tank and Chlorination Station, which identified the address of this facility as "Carr. 10, Arecibo, Puerto Rico."

83. Respondent did not submit any updated RMPs to EPA for the Matadero Tank and Chlorination Station until on or about February 19, 2008, more than five years after the initial RMP submission for this facility. The updated RMP for this facility specified that 32,550 pounds of chlorine were present at this facility in a covered process, and identified the program level of the process as Program 3.

Facility 17 - Mayagüez Vieja Filtration Plant

84. Respondent is, and at all times relevant to this Complaint, was, the owner and/or operator of the Mayagüez Vieja Filtration Plant, located at Urb. Ponce de León, Mayaguez, Puerto Rico.

85. Respondent handles, stores, and uses, and has handled, stored, and used, chlorine in a process at the Mayagüez Vieja Filtration Plant in amounts exceeding the threshold quantity for chlorine.

86. On or about June 21, 1999, an RMP was submitted to EPA for the Mayagüez (Vieja) Filtration Plant, which identified the address of this facility as "Carr. Ramos Antonini Interior, Mayaguez, Puerto Rico."

87. Respondent did not submit any updated RMPs to EPA for the Mayagüez Vieja Filtration Plant until on or about February 19, 2008, more than five years after the initial RMP submission for this facility. The updated RMP for this facility specified that 23,000 pounds of chlorine were present at this facility in a covered process, and identified the program level of the process as Program 3.

Facility 18 - Mayagüez Regional Wastewater Treatment Plant

88. Respondent is, and at all times relevant to this Complaint, was, the owner and/or operator of the Mayagüez Regional Wastewater Treatment Plant, located at PR Road # 342, Km 0.5, Mayagüez, Puerto Rico.

89. Respondent handles, stores, and uses, and has handled, stored, and used, chlorine in a process at the Mayagüez Regional Wastewater Treatment Plant in amounts exceeding the threshold quantity for chlorine.

90. On or about June 21, 1999, an RMP was submitted to EPA for the Mayagüez Regional Wastewater Treatment Plant.

91. Respondent did not submit any updated RMPs to EPA for the Mayagüez Regional Wastewater Treatment Plant until on or about November 30, 2007, more than five years after the initial RMP submission for this facility. The updated RMP for this facility specified that 54,000 pounds of chlorine were present at this facility in a covered process, and identified the program level of the process as Program 3.

Facility 19 - Minillas-Aguas Buenas Filtration Plant

92. Respondent is, and at all times relevant to this Complaint, was, the owner and/or operator of the Minillas-Aguas Buenas Filtration Plant, located at PR Road 174 Interior, Aguas Buenas, Puerto Rico.

93. Respondent handles, stores, and uses, and has handled, stored, and used, chlorine in a process at the Minillas-Aguas Buenas Filtration Plant in amounts exceeding the threshold quantity for chlorine.

94. On or about June 21, 1999, an RMP was submitted to EPA for the Minillas-Aguas Buenas Filtration Plant.

95. Respondent did not submit any updated RMPs to EPA for the Minillas-Aguas Buenas Filtration Plant until on or about February 7, 2008, more than five years after the initial RMP submission for this facility. The updated RMP for this facility specified that 12,000 pounds of chlorine were present at this facility in a covered process, and identified the program level of the process as Program 3.

Facility 20 - Ojo de Agua Potable Water Pump Station

96. Respondent is, and at all times relevant to this Complaint, was, the owner and/or operator of the Ojo de Agua Potable Water Pump Station, located at PR Road 123 Km. 70.3, Arecibo, Puerto Rico.

97. Respondent handles, stores, and uses, and has handled, stored, and used, chlorine in a process at the Ojo de Agua Potable Water Pump Station.

98. On or about June 21, 1999, an RMP was submitted to EPA for the Ojo de Agua Potable Water Pump Station.

99. Respondent did not submit any updated RMPs to EPA for the Ojo de Agua Potable Water Pump Station until on or about February 7, 2008, more than five years after the initial RMP submission for this facility. The updated RMP for this facility specified that 4,000 pounds of chlorine were present at this facility in a covered process, and identified the program level of the process as Program 3.

Facility 21 - Orocovis Filtration Plant

100. Respondent is, and at all times relevant to this Complaint, was, the owner and/or operator of the Orocovis Filtration Plant, located at Carretera 156, Km 1.5, Interior, Orocovis, Puerto Rico.

101. Respondent handles, stores, and uses, and has handled, stored, and used, chlorine in a process at the Orocovis Filtration Plant in amounts exceeding the threshold quantity for chlorine.

102. On or about June 21, 1999, an RMP was submitted to EPA for the Orocovis Filtration Plant.

103. Respondent did not submit any updated RMPs to EPA for the Orocovis Filtration Plant until on or about February 20, 2008, more than five years after the initial RMP submission for this facility. The updated RMP for this facility specified that 8,000 pounds of chlorine were present at this facility in a covered process, and identified the program level of the process as Program 3.

Facility 22 - Orocovis Wastewater Treatment Plant

104. Respondent is, and at all times relevant to this Complaint, was, the owner and/or operator of the Orocovis Wastewater Treatment Plant, located at Carr. 155, Km 28.7, Orocovis, Puerto Rico.

105. Respondent has handled, stored, and used, chlorine in a process at the Orocovis Wastewater Treatment Plant in amounts exceeding the threshold quantity for chlorine.

106. On or about June 21, 1999, an RMP was submitted to EPA for the Orocovis Wastewater Treatment Plant, which specified that 4,000 pounds of chlorine were present at this facility in a covered process, and identified the program level of the process as Program 3.

107. Respondent did not timely submit an updated RMP to EPA for the Orocovis Wastewater Treatment Plant. On or about November 30, 2007, Respondent submitted a revised registration to EPA, indicating that this facility is no longer subject to the requirements of 40

C.F.R. Part 68, because the facility reduced the inventory of all regulated substances below threshold quantities.

Facility 23 - Patillas Filtration Plant

108. Respondent is, and at all times relevant to this Complaint, was, the owner and/or operator of the Patillas Filtration Plant, located at Carretera 181 Km. 32.8, Patillas, Puerto Rico.

109. Respondent handles, stores, and uses, and has handled, stored, and used, chlorine in a process at the Patillas Filtration Plant in amounts exceeding the threshold quantity for chlorine.

110. On or about June 21, 1999, an RMP was submitted to EPA for the Patillas Filtration Plant.

111. Respondent did not submit any updated RMPs to EPA for the Patillas Filtration Plant until on or about February 19, 2008, more than five years after the initial RMP submission for this facility. The updated RMP for this facility specified that 12,000 pounds of chlorine were present at this facility in a covered process, and identified the program level of the process as Program 3.

Facility 24 - Peñuelas Wastewater Treatment Plant

112. Respondent is, and at all times relevant to this Complaint, was, the owner and/or operator of the Peñuelas Wastewater Treatment Plant, located at Carretera 132, Km 13.3 Bo. Saltos, Peñuelas, Puerto Rico.

113. Respondent handles, stores, and uses, and has handled, stored, and used, chlorine in a process at the Peñuelas Wastewater Treatment Plant in amounts exceeding the threshold quantity for chlorine.

114. On or about June 21, 1999, an RMP was submitted to EPA for the Peñuelas Wastewater Treatment Plant.

115. Respondent did not submit any updated RMPs to EPA for the Peñuelas Wastewater Treatment Plant until on or about February 19, 2008, more than five years after the initial RMP submission for this facility. The updated RMP for this facility specified that 4,000 pounds of chlorine were present at this facility in a covered process, and identified the program level of the process as Program 3.

Facility 25 - Rio Blanco - Humacao Filtration Plant

116. Respondent is, and at all times relevant to this Complaint, was, the owner and/or operator of the Rio Blanco - Humacao Filtration Plant, located at Carr. 31, Km 9.4, Naguabo, Puerto Rico.

117. Respondent handles, stores, and uses, and has handled, stored, and used, chlorine in a process at the Rio Blanco - Humacao Filtration Plant in amounts exceeding the threshold quantity for chlorine.

118. On or about November 28, 2000, an RMP was submitted to EPA for the Rio Blanco - Humacao Filtration Plant.

119. Respondent did not submit any updated RMPs to EPA for the Rio Blanco - Humacao Filtration Plant until on or about January 16, 2008, more than five years after the initial RMP submission for this facility. The updated RMP for this facility specified that 24,000 pounds of chlorine were present at this facility in a covered process, and identified the program level of the process as Program 3.

Facility 26 - Sabana Grande Wastewater Treatment Plant

120. Respondent is, and at all times relevant to this Complaint, was, the owner and/or operator of the Sabana Grande Wastewater Treatment Plant, located at Carretera 2, Km 182.6, Sabana Grande, Puerto Rico.

121. Respondent handles, stores, and uses, and has handled, stored, and used, chlorine in a process at the Sabana Grande Wastewater Treatment Plant in amounts exceeding the threshold quantity for chlorine.

122. On or about June 21, 1999, an RMP was submitted to EPA for the Sabana Grande Wastewater Treatment Plant.

123. Respondent did not submit any updated RMPs to EPA for the Sabana Grande Wastewater Treatment Plant until on or about February 19, 2008, more than five years after the initial RMP submission for this facility. The updated RMP for this facility specified that 8,000 pounds of chlorine were present at this facility in a covered process, and identified the program level of the process as Program 3.

Facility 27 - San Sebastián Filtration Plant

124. Respondent is, and at all times relevant to this Complaint, was, the owner and/or operator of the San Sebastián Filtration Plant, located at Carretera 449 Km. 0.4 Interior, San Sebastián, Puerto Rico.

125. Respondent handles, stores, and uses, and has handled, stored, and used, chlorine in a process at the San Sebastián Filtration Plant in amounts exceeding the threshold quantity for chlorine.

126. On or about June 21, 1999, an RMP was submitted to EPA for the San Sebastián Filtration Plant.

127. Respondent did not submit any updated RMPs to EPA for the San Sebastián Filtration Plant until on or about February 26, 2008, more than five years after the initial RMP submission for this facility. The updated RMP for this facility specified that 6,000 pounds of chlorine were present at this facility in a covered process, and identified the program level of the process as Program 3.

Facility 28 - Vega Alta Wastewater Treatment Plant

128. Respondent is, and at all times relevant to this Complaint, was, the owner and/or operator of the Vega Alta Wastewater Treatment Plant, located at Carretera PR 676, Km. 1.0, Vega Alta, Puerto Rico.

129. Respondent handles, stores, and uses, and has handled, stored, and used, chlorine in a process at the Vega Alta Wastewater Treatment Plant in amounts exceeding the threshold quantity for chlorine.

130. On or about June 21, 1999, an RMP was submitted to EPA for the Vega Alta Wastewater Treatment Plant.

131. Respondent did not submit any updated RMPs to EPA for the Vega Alta Wastewater Treatment Plant until on or about January 14, 2008, more than five years after the initial RMP submission for this facility. The updated RMP for this facility specified that 8,000 pounds of chlorine were present at this facility in a covered process, and identified the program level of the process as Program 3.

Facility 29 - Vieques Arcadia In Line Booster Pump Station

132. Respondent is, and at all times relevant to this Complaint, was, the owner and/or operator of the Vieques Arcadia In Line Booster Pump Station, located at M-A-F Navy, Vieques, Puerto Rico.

133. Respondent has handled, stored, and used, chlorine in a process at the Vieques Arcadia In Line Booster Pump Station in amounts exceeding the threshold quantity for chlorine.

134. On or about July 19, 2001, an RMP was submitted to EPA for the Vieques Arcadia In Line Booster Pump Station, which specified that 3,000 pounds of chlorine were present at this facility in a covered process, and identified the program level of the process as Program 3.

135. Respondent did not timely submit an updated RMP to EPA for the Vieques Arcadia In Line Booster Pump Station. On or about April 2, 2008, Respondent submitted a revised registration to EPA, indicating that this facility is no longer subject to the requirements of 40 C.F.R. Part 68, because the facility reduced the inventory of all regulated substances below threshold quantities.

Facility 30 - Yabucoa Filtration Plant

136. Respondent is, and at all times relevant to this Complaint, was, the owner and/or operator of the Yabucoa Filtration Plant, located at Carr. 3, Km 100.5, Yabucoa, Puerto Rico.

137. Respondent has handled, stored, and used, chlorine in a process at the Yabucoa Filtration Plant.

138. On or about June 21, 1999, an RMP was submitted to EPA for the Yabucoa Filtration Plant, which specified that 1,800 pounds of chlorine were present at this facility in a covered process, and identified the program level of the process as Program 3.

139. Respondent did not timely submit an updated RMP to EPA for the Yabucoa Filtration Plant. On or about November 30, 2007, Respondent submitted a revised registration to EPA, indicating that this facility is no longer subject to the requirements of 40 C.F.R. Part 68, because the facility reduced the inventory of all regulated substances below threshold quantities.

COUNT 1

140. The allegations contained in Paragraphs "1" through "139" are incorporated herein by reference.

141. Each of the above-described facilities is a "stationary source" as that term is defined at 40 C.F.R. § 68.3.

142. Pursuant to the requirements of 40 C.F.R. §§ 68.190(a) and (b), within five years from the date of the initial (or most recent) RMP submission for each of the above-described facilities, Respondent should have reviewed and updated the RMPs for each of the above-described facilities and submitted such updated RMPs to EPA.

143. Pursuant to the requirements of 40 C.F.R. §68.190(c), if a stationary source is no longer subject to the requirements of 40 C.F.R. Part 68, the owner or operator shall submit a revised registration to EPA within six months indicating that the stationary source is no longer covered.

144. Respondent did not timely submit updated RMPs or revised registrations for each of the above-described facilities to EPA.

145. Respondent's failures to comply with the requirements of 40 C.F.R. Part 68 as described above constitutes a violation of Section 112(r)(7) of the Act, 42 U.S.C. § 7412(r)(7). Respondent is therefore subject to the assessment of penalties under Section 113(d) of the Act, 42 U.S.C. § 7413(d).

V. NOTICE OF PROPOSED ORDER ASSESSING A CIVIL PENALTY

Pursuant to Section 113(d) of the Act, 42 U.S.C. § 7413(d), and 40 C.F.R. Part 19, Adjustment of Civil Monetary Penalties for Inflation, EPA is authorized to assess civil penalties not to exceed \$27,500 per day for each violation of Section 112 of the Act, 42 U.S.C. § 7412, that occurred on or after January 30, 1997 through March 15, 2004, and \$32,500 per day for each violation of Section 112 of the Act that occurred after March 15, 2004. Civil penalties under Section 113 of the Act may be assessed by Administrative Order. On the basis of the violations of the Act described above, Complainant alleges that Respondent is subject to penalties for violating Section 112(r) of the Act, 42 U.S.C. § 7412(r).

The proposed civil penalty in this matter has been determined in accordance with the "Combined Enforcement Policy for CAA Section 112(r) Risk Management Program," dated August 15, 2001 ("Section 112(r) Penalty Policy") and the September 21, 2004 memorandum from Thomas V. Skinner, Acting Assistant Administrator, to the Regional Administrators. A copy of the Section 112(r) Penalty Policy accompanies this Complaint. A Penalty Calculation Worksheet which shows how the proposed penalty was calculated is included as Attachment 2.

In determining the amount of any penalty to be assessed, Section 113(e) of the Act, 42 U.S.C. § 7413(e), requires EPA to take into consideration the size of Respondent's business, the economic impact of the proposed penalty on Respondent's business, Respondent's full compliance history and good faith efforts to comply, the duration of the violations as established by any credible evidence, payment by Respondent of penalties previously assessed for the same violation, the economic benefit of noncompliance, and the seriousness of the violations.

In accordance with Section 113(d) of the Act, 40 C.F.R. Part 19, and the Section 112(r) Penalty Policy, and based on the facts alleged in this Complaint, Complainant proposes to assess a civil penalty of \$219,200 against Respondent.

Payment of a civil penalty shall not affect Respondent's ongoing obligation to comply with the Act and other applicable federal, state or local laws.

The proposed penalty reflects a presumption of Respondent's ability to pay the penalty and to continue in business based on the size of its business and the economic impact of the proposed penalty on its business. Respondent may submit appropriate documentation to rebut this presumption.

VI. PROCEDURES GOVERNING THIS ADMINISTRATIVE LITIGATION

The rules of procedure governing this civil administrative litigation are entitled, "CONSOLIDATED RULES OF PRACTICE GOVERNING THE ADMINISTRATIVE ASSESSMENT OF CIVIL PENALTIES AND THE REVOCATION/TERMINATION OR SUSPENSION OF PERMITS" (hereinafter, the "Consolidated Rules"), and are codified at 40 C.F.R. Part 22. A copy of the Consolidated Rules accompanies this Complaint.

A. Notice of Opportunity to Request a Hearing and Answering The Complaint

To request a hearing, Respondent must file an Answer to the Complaint, pursuant to 40 C.F.R. §§ 22.15(a) - (c). Pursuant to 40 C.F.R. § 22.15(a), such Answer must be filed within 30 days after service of the Complaint.

An Answer is also to be filed, pursuant to 40 C.F.R. § 22.15(a), if Respondent contests any material fact upon which the Complaint is based, contends that the proposed penalty is inappropriate, or contends that Respondent is entitled to judgment as a matter of law. If filing an Answer, Respondent must file with the Regional Hearing Clerk of EPA, Region 2, both an original and one copy of a written Answer to the Complaint. The address of the Regional Hearing Clerk of EPA, Region 2, is:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th floor
New York, New York 10007-1866

Respondent shall also serve one copy of the Answer to the Complaint upon Complainant and any other party to the action. 40 C.F.R. § 22.15(a). Complainant's copy of Respondent's Answer, as well as a copy of all other documents that Respondent files in this action, shall be sent to:

Jean H. Regna, Esq.
Office of Regional Counsel
U.S. Environmental Protection Agency
290 Broadway, 17th Floor
New York, NY 10007
Phone: (212) 637-3164

Pursuant to 40 C.F.R. § 22.15(b), Respondent's Answer to the Complaint must clearly and directly admit, deny, or explain each of the factual allegations contained in the Complaint with regard to which Respondent has any knowledge. Where Respondent lacks knowledge of a particular factual allegation and so states in its Answer, the allegation is deemed denied, pursuant to 40 C.F.R. § 22.15(b). The Answer shall also set forth: (1) the circumstances or arguments that are alleged to constitute the grounds of defense; (2) the facts which Respondent disputes; (3) the basis for opposing any proposed relief; and (4) whether Respondent requests a hearing.

If Respondent fails in its Answer to admit, deny, or explain any material factual allegation contained in the Complaint, such failure constitutes an admission of the allegation, pursuant to 40 C.F.R. § 22.15(d).

Respondent's failure affirmatively to raise in the Answer facts that constitute or that might constitute the grounds of its defense may preclude Respondent, at a subsequent stage in this proceeding, from raising such facts and/or from having such facts admitted into evidence at a hearing.

Any hearing in this proceeding will be held at a location determined in accordance with 40 C.F.R. § 22.21(d). A hearing of this matter will be conducted in accordance with the provisions of the Administrative Procedure Act, 5 U.S.C. §§ 551-59, and the procedures set forth in Subpart D of 40 C.F.R. Part 22.

B. Failure To Answer

If Respondent fails to file a timely answer to the Complaint, EPA may file a Motion for Default pursuant to 40 C.F.R. §§ 22.17(a) and (b), which may result in the issuance of a default order assessing the proposed penalty pursuant to 40 C.F.R. § 22.17(c). If a default order is issued, any penalty assessed in the default order shall become due and payable by Respondent without further proceedings 30 days after the default order becomes final. If necessary, EPA may then seek to enforce such final order of default against Respondent, and to collect the assessed penalty amount, in federal court.

VII. INFORMAL SETTLEMENT CONFERENCE

Whether or not Respondent requests a formal hearing, EPA encourages settlement of this proceeding consistent with the provisions and objectives of CERCLA and EPCRA and the applicable regulations. 40 C.F.R. § 22.18(b). At an informal conference with a representative(s) of Complainant, Respondent may comment on the charges made in this Complaint, and Respondent may also provide whatever additional information that it believes is relevant to the disposition of this matter, including: (1) actions Respondent has taken to correct any or all of the violations herein alleged; (2) any information relevant to Complainant's calculation of the proposed penalty; (3) the effect the proposed penalty would have on Respondent's ability to continue in business; and/or (4) any other special facts or circumstances Respondent wishes to raise. Complainant has the authority to modify the amount of the proposed penalty, where appropriate, to reflect any settlement agreement reached with Respondent, to reflect any relevant information previously not known to Complainant or to dismiss any or all of the charges, if Respondent can demonstrate that the relevant allegations are without merit and that no cause of action as herein alleged exists.

Any request for an informal conference or any questions that Respondent may have regarding this Complaint should be directed to the EPA Assistant Regional Counsel identified in Section VI.A., above.

Respondent's request for a formal hearing does not prevent it from also requesting an informal settlement conference; the informal conference procedure may be pursued simultaneously with the formal adjudicatory hearing procedure. A request for an informal settlement conference constitutes neither an admission nor a denial of any of the matters alleged in the Complaint. Complainant does not deem a request for an informal settlement conference as a request for a hearing pursuant to 40 C.F.R. § 22.15(c).

A request for an informal settlement conference does not affect Respondent's obligation to file a timely Answer to the Complaint pursuant to 40 C.F.R. § 22.15. No penalty reduction will be made simply because an informal settlement conference is held.

In the event settlement is reached, its terms shall be recorded in a written Consent Agreement signed by the parties and incorporated into a Final Order, pursuant to 40 C.F.R. §§ 22.18(b)(2) and (3).

Respondent's entering into a settlement through the signing of such Consent Agreement and its complying with the terms and conditions set forth in such Consent Agreement terminates this administrative litigation and the civil proceedings arising out of the allegations made in this Complaint. Respondent's entering into a settlement does not extinguish, waive, satisfy or otherwise affect its obligation and responsibility to comply with all applicable statutory and regulatory requirements, and to maintain such compliance.

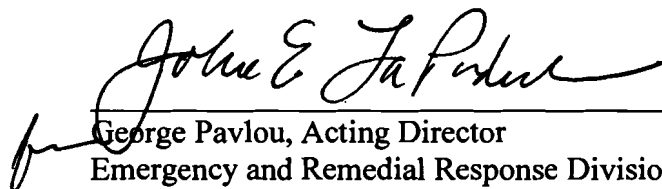
VIII. RESOLUTION OF THIS PROCEEDING WITHOUT HEARING OR CONFERENCE

Instead of filing an Answer, Respondent may choose to pay the total amount of the proposed penalty within 30 days after receipt of the Complaint, provided that Respondent files with the Regional Hearing Clerk, Region 2 (at the address provided in Section VI.A., above), a copy of the check or other instrument of payment, as provided in 40 C.F.R. § 22.18(a). A copy of the check or other instrument of payment should be provided to the EPA Assistant Regional Counsel identified in Section VI.A., above. Payment of the penalty assessed should be made by sending a cashier's or certified check payable to the "Treasurer, United States of America," in the full amount of the penalty assessed in this Complaint to the following addressee:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

The check must be identified with a notation of the name and docket number of this case, set forth in the caption on the first page of this Complaint. Pursuant to 40 C.F.R. § 22.18(a)(3), upon EPA's receipt of such payment, a Final Order shall be issued. Furthermore, as provided in 40 C.F.R. § 22.18(a)(3), the making of such payment by Respondent shall constitute a waiver of Respondent's rights to contest the allegations made in the Complaint and to appeal the Final Order. Such payment does not extinguish, waive, satisfy or otherwise affect Respondent's obligation and responsibility to comply with all applicable regulations and requirements, and to maintain such compliance.

Dated: September 29, 2008


George Pavlou, Acting Director
Emergency and Remedial Response Division
U.S. Environmental Protection Agency
Region 2
290 Broadway
New York, NY 10007-1866

TO: Puerto Rico Aqueduct and Sewer Authority
P.O. Box 7066
San Juan, PR 00916-9990
Attn: Eng. José Ortíz, President

Attachments

cc: Karen Maples, Region 2 Hearing Clerk

ATTACHMENT 1

PRASA RMPs included in 2008 ERRD Administrative Complaint

	EPA FacilityID	Facility Name	Facility Street	City	Chlorine Quantity	Postmark Date	DeReg Date
Initial:		Arecibo Wastewater Treatment Plant	Carr. 681, Km 3.0	Arecibo		6/21/1999	
Current:	100000119524	Arecibo Regional Wastewater Treatment Plant	PR Road 681, Km. 4.0	Arecibo	30,000	11/26/2007	
Initial:		Betances Water Filter Plant	Km. 13.1 Camino Radi	Barrio Llanos		7/19/2001	
Current:	100000176249	Betances Cabo Rojo Filtration Plant	Carretera 103 Km. 13.0 Interior	Cabo Rojo	10,000	2/9/2008	
Initial:		Caguas Wastewater Treatment Plant	Carr. 796, Km 6.6	Caguas		6/21/1999	
Current:	100000122324	Caguas Wastewater Treatment Plant	PR Road #796 Km. 6.6	Caguas	18,000	12/27/2007	
Initial:		Canóvanas Filtration Plant	Carr. 3, Km 17.4	Canóvanas		6/21/1999	
Current:	100000121414	Canóvanas Filtration Plant	Carr. 3, Km 17.4	Canóvanas	8,000		10/22/2007
Initial:		Carolina Regional Wastewater Treatment Plant	Carr. 187, Km 16.5	Loiza		6/21/1999	
Current:	100000119551	Carolina Regional Wastewater Treatment Plant	PR Road 187 Km. 16.5 Bo. Torrecilla	Loiza	80,000	12/27/2007	
Initial:		Cayey Filtration Plant	Carr. 1, Km 59.9	Cayey		6/21/1999	
Current:	100000120237	Cayey Filtration Plant	Carretera PR-1 Km. 59.5	Cayey	10,000	1/8/2008	
Initial:		Ceiba Sur - Juncos Filtration Plant	Carr. 934, Km 1.4	Juncos		6/21/1999	
Current:	100000099831	Ceiba Sur-Juncos Filtration Plant	Road PR 9934 Km. 1.5	Juncos	14,000	2/7/2008	
Initial:		Ciales Wastewater Treatment Plant	Carr. 149, Km 12.1	Ciales		6/21/1999	
Current:	100000121441	Ciales Wastewater Treatment Plant	Carr. 149, Km 12.1	Ciales	10,000		10/24/2007
Initial:		Cotto Laurel-Ponce Filtration Plant	Carr. 14, Km 8.2	Ponce		6/21/1999	
Current:	100000125438	Cotto Laurel-Ponce Filtration Plant	Carr. 14, Km 8.2	Ponce	12,000		10/24/2007
Initial:		Guayama Regional Wastewater Treatment Plant	Carr. 710, Km 1	Guayama		6/21/1999	
Current:	100000120754	Guayama Regional Wastewater Treatment Plant	Road PR #-3 Int. 710 Km 2.2	Guayama	24,000	1/8/2008	
Initial:		Isabela Wastewater Treatment Plant	Villa Pespuera	Isabela		6/21/1999	
Current:	100000123038	Isabela Wastewater Treatment Plant	Carretera PR-4466 Km 1.9 Interior	Isabela	12,000	1/14/2008	
Initial:		Jayuya Filtration Plant	Carr. 144, Km 21.4	Jayuya		6/21/1999	
Current:	100000120102	Jayuya Filtration Plant	Carr. 144, Km 21.4	Jayuya	3,000		11/30/2007
Initial:		La Plata-Aibonito Filtration Plant	Carr. 173, Km 0.4	Aibonito		1/4/2000	
Current:	100000161503	La Plata-Aibonito Filtration Plant	Road PR # 173, Km 1.21 Interior	Aibonito	12,000	1/10/2008	
Initial:		La Plata-Aibonito Filtration Plant	Carr. 173, Km 0.4	Aibonito		9/2/1999	
Current:	100000161503	La Plata-Aibonito Filtration Plant	Road PR # 173, Km 1.21 Interior	Aibonito	12,000	1/10/2008	
Initial:		La Plata-Toa Alta Filtration Plant	Carr. 827, Km 5.6	Toa Alta		6/21/1999	
Current:	100000125223	La PlataToa Alta Filtration Plant (Enrique Ortega)	Carr. 827, Km 5.6	Toa Alta	86,000	4/8/2008	
Initial:		Los Filtros Filtration Plant	Carr. 833, Km 14.8	Guaynabo		6/21/1999	
Current:	100000125214	Los Filtros Filtration Plant	Carr. 833, Km 14.8	Guaynabo	60,000	12/12/2007	

ATTACHMENT 2

Penalty Calculation

Prepared by: Ellen Banner, Environmental Scientist/OSC
ERRD - Response & Prevention Branch

The proposed penalty was calculated using EPA's Combined Enforcement Policy for Section 112(r) of the Clean Air Act, dated August 15, 2001 (the "Penalty Policy").

Gravity Component

1. Seriousness of the violation: Moderate

Puerto Rico Aqueduct and Sewer Authority (Respondent) failed to timely review and update the risk management plans ("RMPs") and submit such updated RMPs to EPA for the thirty facilities listed in the Complaint. All thirty facilities are Program 3 facilities.

The failure to timely review and updated the RMPs and submit such updated RMPs to EPA in accordance with 40 C.F.R. Part 68 undermines the purpose of the regulations, which is to ensure proper development and implementation of a risk management program to prevent or respond to releases.

The "extent of deviation" from the risk management program requirements for the violations at the thirty facilities is "Moderate." Because the facilities are Program 3 facilities, the applicable cell in Table I, the "Penalty Assessment Matrix," in the Penalty Policy is the "Moderate, Program 3" cell, corresponding to a penalty of \$12,001 to \$50,000. A penalty of \$40,000 was chosen.

2. Adjustment based on actual or potential environmental consequences

Consistent with the Penalty Policy, the \$40,000 penalty was then adjusted upward to reflect the actual or potential environmental consequences of a potential worst-case release. Many of the facilities listed are located in towns and adjacent to both homes and businesses. A "major impact" upward adjustment of 25%, or \$10,000, was selected, in consideration of the effect that a release would have on nearby residents and the environment around the facilities. This adjustment raises the penalty figure to \$50,000.

3. Duration of violation

The updated RMPs for the facilities listed in the Complaint were due beginning in June 2004. PRASA submitted the updated RMPs for these facilities beginning in November 2007, and the last one was submitted in April 2008. June 2004 to April 2008 is 46 months. Pursuant to the Penalty Policy, for months 0 - 12, the penalty is \$500/month, for a total of \$6,000, for months 13 - 24 the penalty is \$1,000/month, for a total of \$12,000, for months 25 - 36, the penalty is \$1,500/month, for a total of \$18,000, and for months 37 - 46, the penalty is \$2,000/month, for a total of \$20,000. This would result in a duration component of \$56,000, which increases the penalty to \$106,000.

4. Size of violator

Consistent with the Penalty Policy, EPA scales the penalty to the “size of the violator” by calculating the violator’s net worth. In cases where EPA is unable to determine a company’s net worth, the Penalty Policy establishes that the size of violator may be based on gross revenues from all revenue sources. EPA was unable to find information showing Respondent’s net worth, but did find information showing that for FY 2009, in Respondent’s recommended Budget, amounts equivalent to gross revenues are \$1,115,037,000; including self-revenues of \$624,973,000, \$414,804,000 in loans and bonds, \$8,639,000 in federal funds and \$66,621,000 reported as “other.” Using these amounts would result in a Size of the Violator figure which is much larger than the rest of the penalty. Therefore, pursuant to the Penalty Policy, EPA is reducing the Size of the Violator figure to an amount equal to the rest of the penalty without the size of violator figure included, which is \$106,000. This brings the total penalty to \$212,000.

Economic Benefit

“Economic benefit” is the financial gain that a violator accrues by delaying and/or avoiding the costs of compliance. In this case, EPA estimated the cost of submitting the 5-year update to be \$2,500 per facility. The BEN model (ver. 4.4) was run and the economic benefit was found to be \$266 per facility. That number was multiplied by 30 for the number of facilities and the total economic benefit was determined to be \$7,980. This brings the total penalty to \$219,980.

Adjustment to Penalty for Inflation

Pursuant to 40 C.F.R. Part 19, Adjustment of Civil Monetary Penalties for Inflation, and the September 21, 2004 memorandum from Thomas V. Skinner, Acting Assistant Administrator, to the Regional Administrators entitled “Modifications to EPA Penalty Policies to Implement the Civil Monetary Penalty Inflation Adjustment Rule (Pursuant to the Debt Collection Improvement Act of 1996, Effective October 1, 2004),” the gravity-based penalty was increased by 17.23% or \$37,903, bringing the total penalty to \$257,883.

Adjustments to Gravity Component

EPA considered all relevant factors as enumerated in the Penalty Policy in calculation of the proposed penalty. There were no adjustments made for willfulness or negligence, history of noncompliance, environmental damage, or inability to pay. A reduction for cooperation of approximately 15% was allowed due to Respondent’s cooperation during EPA’s pre-filing investigation, bringing the total penalty to \$219,200.

TOTAL PENALTY: \$219,200