



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II
2007 OCT 11 PM 2:36
REGIONAL HEARING
CLERK

OCT 06 2007

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Honorable Javier Vélez Arocho
Secretary
Puerto Rico Department of Natural
and Environmental Resources
P.O. Box 9066600
Pta. de Tierra Station
San Juan, Puerto Rico 00906-6600

Re: In the Matter of Puerto Rico Land Authority
Proceeding to Assess a Class II Civil Administrative Penalty
Under Section 309(g) of the Clean Water Act, 33 U.S.C. § 1319(g)
Docket No. CWA-02-2007-3601

Dear Secretary Vélez:

Enclosed please find a copy of the above-referenced administrative Complaint and Notice of Proposed Assessment for a Class II administrative penalty ("Complaint") which the Division of Environmental Planning and Protection of Region 2 of the United States Environmental Protection Agency ("EPA") has filed against the Puerto Rico Land Authority ("the Land Authority"), pursuant to Section 309(g) of the Clean Water Act ("the Act"), 33 U.S.C. § 1319(g).

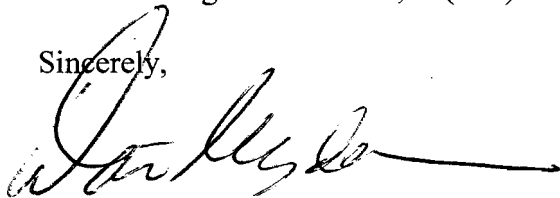
The amount of the proposed penalty is \$157,500. The penalty would be assessed for violation of Section 301(a) of the Act for discharging fill material in navigable waters of the United States without prior authorization from the Department of the Army pursuant to Section 404 of the Act, 33 U.S.C. § 1344.

The location of the violation is in Canóvanas Ward, Municipality of Canóvanas, Puerto Rico, in wetlands situated adjacent to San Isidro Channel. EPA has made findings that the Land Authority is in violation of Section 301 of the Act, 33 U.S.C. § 1311, for discharge of pollutants, consisting of fill, into waters of the United States, related to further expansion of the San Isidro Community in wetlands, without authorization by the Secretary of the Army as provided by Section 404 of the Act, 33 U.S.C. § 1344. Wetlands are areas included under the definition of "waters of the United States" at 33 CFR § 328.3(b), which defines the term "wetlands" to mean "those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions."

Because the violation has occurred in the Commonwealth of Puerto Rico, EPA is offering you an opportunity to confer with us regarding the proposed assessment. You may confer with me on these matters in person or by telephone at (212) 637-3724. A copy of EPA procedures governing the assessment of Class II administrative penalties under the Act is enclosed for your reference.

If you have questions or require additional information, please have your staff contact David Pohle, Wetlands Enforcement Coordinator, at (212) 637-3824, or Eduardo J. Gonzalez, Esq., Assistant Regional Counsel, at (212) 637-3223.

Sincerely,

A handwritten signature in black ink, appearing to read 'Walter Mugdan', with a long horizontal flourish extending to the right.

Walter Mugdan
Director
Division of Environmental Planning and Protection

Enclosures

cc: Karen Maples, Regional Hearing Clerk

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 Broadway
New York, New York 10007

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II
2007 SEP 27 PM 2:45
REGIONAL HEARING
CLERK

In the matter of

Puerto Rico Land Authority
P.O. Box 9745
Santurce, Puerto Rico 00908

Respondent

**Proceeding Pursuant to § 309(g) of the
Clean Water Act, 33 U.S.C. § 1319(g)**

Proceeding to Assess Class II
Civil Penalty Under Section 309(g)
of the Clean Water Act

Docket No. CWA-02-2007-3601

**COMPLAINT
FINDINGS OF VIOLATION, NOTICE OF PROPOSED
ASSESSMENT OF A CIVIL PENALTY, AND
NOTICE OF OPPORTUNITY TO REQUEST A HEARING**

I. Statutory Authority

1. This Findings of Violation, Notice of Proposed Assessment of a Civil Penalty, and Notice of Opportunity to Request a Hearing ("Complaint") is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA") by Section 309(g)(2)(B) of the Clean Water Act ("Act"), 33 U.S.C. § 1319(g)(2)(B). The Administrator has delegated this authority to the Regional Administrator of EPA, Region 2, who in turn has delegated it to the Director, Division of Environmental Planning and Protection of EPA, Region 2 ("Complainant").
2. Pursuant to Section 309(g)(2)(B) of the Act, and in accordance with 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" ("CROP"), 40 CFR Part 22, a copy of which is attached, Complainant hereby requests that the Regional Administrator assess a civil penalty against the Puerto Rico Land Authority for the discharge of pollutants into navigable waters, without authorization by the Secretary of the Army as required by Section 404 of the Act, 33 U.S.C. § 1344, in violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a).

II. Findings of Violation

1. The Puerto Rico Land Authority ("Respondent") is a "person" as defined under Section 502 of the Act, 33 U.S.C. § 1362.
2. Respondent is the owner of a tract of land named *Finca Palmarejo* ("the Parcel"), which is located within the Canóvanas Ward of the Municipality of Canóvanas, Puerto Rico.
3. The Parcel contains areas of wetland within the flood plain of the Loiza River.
4. The areas of wetland within the flood plain of the Loiza River, situated on the Parcel, include two areas located east of San Isidro Channel and west of Route 188, one of which is an approximately circular area of herbaceous, emergent wetland, approximately three-quarters surrounded by limestone hills, with an opening on the western side to the greater portion of the flood plain wetlands along the Loiza River, and the other an approximately tongue-shaped area of herbaceous, emergent wetland, almost completely surrounded by limestone hills, with an opening to the northwest to the greater portion of the flood plain wetlands along the Loiza River. These two areas are hereinafter referred to as "the Wetlands."
5. The Wetlands are located directly adjacent to, and east of, San Isidro Channel. San Isidro Channel flows into Zequiera Channel and Norberto Channel, which flow into the Loiza River which flows into the tidal waters of the Atlantic Ocean.
6. The Wetlands are "navigable waters" within the meaning of 40 CFR § 122.2 and Section 502(7) of the Act, 33 U.S.C. § 1362(7).
7. The Wetlands are waters of the United States which came under the jurisdiction of the EPA and the United States Army Corps of Engineers ("Corps") effective September 1, 1976. The Act's jurisdiction encompasses "navigable waters" which are defined as "waters of the U.S." (33 U.S.C. § 1362(7)).
8. On August 8, 2005, EPA issued two complaints against Respondent pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), seeking to assess penalties for violations of Section 301(a) of the CWA, 33 U.S.C. § 1311 consisting of the discharge of fill material in the Wetlands without authorization pursuant to Section 404 of the CWA, 33 U.S.C. § 1344. Complaint Docket No. CWA-02-2006-3605 sought the maximum statutory Class II penalty of \$137,500 for specific fill material discharged between the dates of November 18, 2000, and November 6, 2003, covering approximately 5 acres of the Wetlands. Complaint Docket No. CWA-02-2006-3606 sought the maximum statutory Class II penalty of \$157,500 for specific fill material discharged between the dates of November 6, 2003, and September 22, 2004, covering approximately 3.5 acres of the Wetlands.

9. On May 26, 2006, EPA issued two Consent Agreement and Final Orders against Respondent pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), assessing penalties for the violations of Section 301(a) of the CWA, 33 U.S.C. § 1311 alleged in the two complaints.
10. An aerial photograph taken on January 26, 2007, reveals that, on that date, approximately 1.8 acres of the Wetlands were covered with additional fill material, including earthen fill, construction and demolition material, and other fill material, which was not present on or before September 22, 2004.
11. The various forms of fill material, referenced in paragraph 24. above, constitute "pollutants" within the meaning of Section 502(6) of the Act, U.S.C. § 1362(6).
12. The discharge of this fill into the Wetlands constitutes a "discharge of pollutants" as defined by Section 502(12) of the Act, 33 U.S.C. § 1362(12).
13. The fill material, referenced in paragraph 24. above, has been discharged into the Wetlands using mechanized construction equipment.
14. Mechanized construction equipment is a "point source" within the meaning of Section 502(14) of the Act, U.S.C. § 1362(14).
15. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants from a point source into waters of the United States except as in compliance with Section 301, 306, 307, 318, 402 and 404 of the Act.
16. Section 404 of the Act, 33 U.S.C. § 1344, authorizes the Secretary of the Army to authorize discharges of fill into navigable waters of the United States.
17. The discharge of pollutants, consisting of fill, into navigable waters of the United States from a point source without authorization from the Secretary of the Army as provided by Section 404 of the Act is unlawful under Section 301(a) of the Act, 33 U.S.C. § 1311(a).
18. The Secretary of the Army has not issued authorization pursuant to Section 404 of the Act, 33 U.S.C. § 1344, for the discharges of fill material described in the paragraphs above.
19. Based on the above Findings, EPA finds Respondents to be in violation of Section 301 of the Act, 33 U.S.C. § 1311, for the discharge of pollutants consisting of fill material into waters of the United States from point sources without authorization by the Secretary of the Army as provided by Section 404 of the Act, 33 U.S.C. § 1344.

20. Further, based on the above Findings, EPA finds Respondents to be liable for the administrative assessment of civil penalties in an amount not to exceed \$11,000.00 per day for each day during which the violation continues, up to a maximum of \$157,500.00, pursuant to Section 309(g)(2)(B) of the Act, 33 U.S.C. § 1319(g)(2)(B), for the discharge of pollutants consisting of fill material into waters of the United States from point sources without authorization by the Secretary of the Army as provided by Section 404 of the Act, 33 U.S.C. § 1344, which occurred during the period between September 22, 2004, and January 26, 2007.
21. Each day that the subject discharges remain unauthorized by the Corps pursuant to Section 404 of the Act, 33 U.S.C. § 1344, constitutes an additional day of violation of Section 301 of the Act, 33 U.S.C. § 1311.
22. EPA has consulted with the Commonwealth of Puerto Rico regarding this proposed action by, at least, mailing a copy of this Complaint and Notice to the appropriate Commonwealth officials, and offering an opportunity for the Commonwealth to consult further with EPA on the proposed penalty assessment.
23. EPA has notified the public of this proposed action by, at least, requesting publication of a Public Notice of this proposed action on the Region 2, water website.

III. Notice of Proposed Order Assessing a Civil Penalty

Based on the foregoing Findings of Violation, and pursuant to the authority of Section 309(g) of the Act, 33 U.S.C. § 1319(g), and the Debt Collection Improvement Act of 1996, EPA, Region 2 hereby proposes to issue a Final Order Assessing Administrative Penalties ("Final Order") to Respondent assessing a penalty of **\$157,500.00**. EPA determined the proposed penalty after taking into account the applicable factors identified at Section 309(g)(3) of the Act, 33 U.S.C. § 1319(g)(3). EPA has taken account of the nature, circumstances, extent and gravity of the violation, Respondent's prior compliance history, degree of culpability, economic benefit or savings accruing to Respondent by virtue of the violations, and Respondent's ability to pay the proposed penalty. Based on the Findings set forth above, Respondent has been found to have violated the Act.

IV. Notice of Opportunity to Request a Hearing

1. Respondent may, within thirty (30) days of receipt of this Complaint and as part of any Answer filed in this matter, request a Hearing on the proposed civil penalty assessment and at the Hearing may contest the factual allegations set forth in the Findings of

Violation contained in Section II above, and the appropriateness of any penalty amount. The procedures for the Hearing, if one is requested, are set out in the CROP.

2. Be aware that should Respondent request a hearing on this proposed penalty assessment, members of the public, to whom EPA is obligated to give notice of this proposed action, will have a right under Section 309(g)(4)(B) of the Act, 33 U.S.C. § 1319(g)(4)(B), to be heard and to present evidence on the appropriateness of the penalty assessment. Should Respondent not request a hearing, EPA will issue a Final Order, and only members of the public who submit timely comment on this proposal will have an additional thirty (30) days to petition EPA to set aside the Final Order and to hold a hearing thereon. EPA will grant the petition and will hold a hearing only if the petitioner's evidence is material and was not considered by EPA in the issuance of the Final Order.

V. Filing an Answer

1. If Respondent wishes to avoid being found in default, Respondent must file a written Answer to this Complaint with the Regional Hearing Clerk no later than thirty (30) days from the date of receipt of this Complaint. EPA may make a motion pursuant to § 22.17 of the CROP seeking a default order thirty (30) days after Respondent's receipt of the Complaint unless Respondent files an Answer within that time. If a default order is entered, the entire proposed penalty may be assessed without further proceedings.
2. The Answer must clearly and directly admit, deny or explain each of the factual allegations contained in the Complaint with respect to which Respondent has knowledge or clearly state that Respondent has no knowledge as to particular factual allegations in the Complaint. The Answer also shall state:
 - (A) The circumstances or arguments which are alleged to constitute grounds of any defense;
 - (B) The facts which Respondent disputes;
 - (C) The basis for opposing the proposed relief;
 - (D) Whether a Hearing is requested.
3. Failure of Respondent to admit, deny, or explain any material factual allegations in this Complaint shall constitute admission of the allegation.

VI. Filing of Documents

1. The Answer and any Hearing Request and all subsequent documents filed in this action should be sent to:

Regional Hearing Clerk
U.S. Environmental Protection Agency
290 Broadway - 16th Floor
New York, New York 10007

2. A copy of the Answer, any Hearing Request and all subsequent documents filed in this action shall be sent to Eduardo J. Gonzalez, Esq., Assistant Regional Counsel, Office of Regional Counsel, U.S. Environmental Protection Agency, 290 Broadway, 16th Floor, New York, NY 10007-1866.

VII. Instructions for Paying Penalty

1. As set forth in § 22.18 of the CROP, Respondent may resolve these proceedings by payment of the proposed penalty in full, and by filing with the Regional Hearing Clerk, at the address provided below, a copy of the check or other instrument of payment. Pursuant to § 22.45(c)(3) of the CROP, opportunity for such resolution of these proceedings is available to Respondent no sooner than 10 days after the close of the 30-day public comment period which commences upon publication of the Public Notice of this proposed action.
2. To pay the proposed penalty in full, Respondent shall send a cashier's check or certified check in the amount of \$157,500.00, payable to the "Treasurer of the United States of America". The check shall 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 document.

Such check shall be mailed to:

US Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000

Respondents shall also send copies of such payment to:

Regional Hearing Clerk
U.S. Environmental Protection Agency
290 Broadway - 16th Floor
New York, New York 10007

and to:

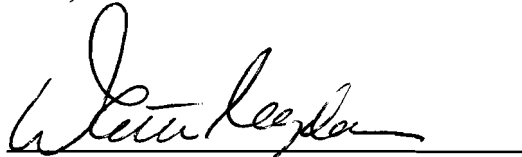
Eduardo J. Gonzalez, Esq.
Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency
290 Broadway, 16th Floor
New York, New York 10007-1866

3. Upon receipt of payment in full, a Final Order shall be issued. Payment by Respondent shall constitute a waiver of Respondent's rights to contest the allegations and to appeal the Final Order.

VIII. General Provisions

1. Respondent has a right to be represented by an attorney at any stage of these proceedings.
2. This Complaint does not constitute a waiver, suspension or modification of the requirements of the Act, regulations promulgated thereunder, or any applicable permit.
3. Neither assessment nor payment of an administrative civil penalty pursuant to Section 309(g) of the Act, 33 U.S.C. § 1319(g), will affect Respondent's continuing obligation to comply with the Act, and with any separate Compliance Order issued under Section 309(a) of the Act, 33 U.S.C. § 1319(a), for the violations alleged herein.

ISSUED THIS 24th DAY OF SEPTEMBER, 2007.



Walter Mugdan
Director
Division of Environmental Planning and Protection
U.S. EPA, Region 2
290 Broadway
New York, New York 10007

Re: In the Matter of Puerto Rico Land Authority
Proceeding to Assess a Class II Civil Administrative Penalty
Under Section 309(g) of the Clean Water Act, 33 U.S.C. §1319(g)
Docket No. CWA-02-2007-3601

**Re: In the Matter of Puerto Rico Land Authority
Proceeding to Assess a Class II Civil Administrative Penalty
Under Section 309(g) of the Clean Water Act, 33 U.S.C. § 1319(g)
Docket No. CWA-02-2007-3601**

CERTIFICATE OF SERVICE

I, David Pohle, Environmental Scientist in the Wetlands Protection Section of Region 2 of the U.S. Environmental Protection Agency, certify that I sent the foregoing Complaint and Notice of Proposed Assessment for a Class II administrative penalty via certified mail, return-receipt requested, on 9/26/07 to:

Luis F. Soto-Rosado
Executive Director
Puerto Rico Land Authority
P.O. Box 9745
Santurce, Puerto Rico 00908

Signature:  Date: 9/26/07

I, David Pohle, Environmental Scientist in the Wetlands Protection Section of Region 2 of the U.S. Environmental Protection Agency certify that I hand-delivered the foregoing Complaint and Notice of Proposed Assessment for a Class II administrative penalty on 9/26/07 to:

Ms. Karen Maples
Regional Hearing Clerk
U.S. EPA, Region 2
290 Broadway - 16th Floor
New York, New York 10007-1866

Signature:  Date: 9/26/07