

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION II**

IN THE MATTER OF:

**SHELL CHEMICAL YABUCOA, INC.**  
State Road 901, Km. 2.7 Barrio Camino Nuevo,  
Yabucoa, Puerto Rico 00767

**RESPONDENT**

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

PROCEEDING TO ASSESS A  
CLASS II PENALTY

**DOCKET NO.**  
**CWA-02-2009-3461**

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REGION II  
2009 AUG 12 PM 1:11  
REGIONAL HEARING  
CLERMONT

**ANSWER TO THE COMPLAINT AND REQUEST FOR HEARING**

TO THE HONORABLE ADMINISTRATIVE LAW JUDGE:

COMES NOW, Shell Chemical Yabucoa, Inc. ("SCYI"), and through the undersigned counsels respectfully states, alleges and prays as follows:

1. By letter dated July 10, 2009, the U.S. Environmental Protection Agency, Region II ("EPA"), issued a Complaint, Findings of Violation, Notice of Proposed Assessment of a Civil Penalty, and Notice of Opportunity to Request a Hearing to SCYI ("Complaint"). SCYI received the Complaint on July 13, 2009.

2. The Complaint makes certain findings of facts, conclusions of law and proposes that a penalty in the amount of \$153,227.00 be assessed against SCYI.

3. SCYI hereby provides its answer to the Complaint ("Answer") and respectfully requests a hearing upon the issues raised in the Complaint and this Answer pursuant to 40 C.F.R. § 22.15(c).

4. For easy cross-reference, SCYI follows the same order and paragraph number in the Complaint in this Answer.

**A. ANSWER TO COMPLAINT**

**I. STATUTORY AND REGULATORY AUTHORITY**

1. Paragraph 1 of the Complaint contains a preliminary statement regarding the statutory authority and delegations of authority to issue the Complaint. These are statements and/or conclusions of law to which no response is required. To the extent a response is required, SCYI hereby denies it.
2. Paragraph 2 of the Complaint contains only a petition to the Regional Administrator to assess a civil penalty against SCYI and/or conclusion of law, to which no response is required. To the extent a response is required, SCYI hereby denies it.
3. Paragraph 3 of the Complaint contains only a restatement or conclusion of law, to which no response is required. To the extent a response is required, SCYI hereby denies it.
4. Paragraph 4 of the Complaint contains only a restatement or conclusion of law, to which no response is required. To the extent a response is required, SCYI hereby denies it.
5. Paragraph 5 of the Complaint contains only a restatement or conclusion of law, to which no response is required. To the extent a response is required, SCYI hereby denies it.
6. Paragraph 6(a) through 6(f) of the Complaint contains only several terms as they are defined by the Clean Water Act, as amended, ("CWA"), to which no response is required. To the extent a response is required, SCYI hereby denies it.
7. SCYI admits Paragraph 7 of the Complaint.

8. Paragraph 8 of the Complaint restates an excerpt of Special Condition 26 of the NPDES permit No. PR0000400 issued to SCYI (“Permit”), to which no response is required.
9. Paragraph 9 of the Complaint restates an excerpt of Special Condition 4 of the Permit, to which no response is required.
10. Paragraph 10 of the Complaint restates an excerpt of Special Condition 26.u of the Permit, to which no response is required.
11. Paragraph 11 of the Complaint restates an excerpt of Part I.B.2.b of the Permit, to which no response is required.
12. Paragraph 12 of the Complaint restates an excerpt of General Condition 1.a of the Permit, to which no response is required.
13. Paragraph 13 of the Complaint restates an excerpt of General Condition 3 of the Permit, to which no response is required.
14. Paragraph 14 of the Complaint restates an excerpt of general condition 4 of the Permit, to which no response is required.
15. Paragraph 15 of the Complaint restates an excerpt of General Condition 5 of the Permit, to which no response is required.

## **II. JURISDICTIONAL FINDINGS**

16. Paragraph 16 of the Complaint contains only a conclusion of law, to which no response is required, and in the alternative, it is denied.
17. SCYI denies Paragraph 17 as drafted in the Complaint. SCYI has been the owner of the facility identified in Paragraph 18 of the Complaint since December 31, 2001.
18. SCYI admits Paragraph 18 of the Complaint.
19. SCYI admits Paragraph 19 of the Complaint. We wish to clarify that in July 2008, SCYI ceased operations of its petrochemical production facilities: in other words, it shut down the petroleum refinery process units and related equipment. Thus, the treatment plant does not receive and/or treat wastewater associated with petrochemical processes.
20. Paragraph 20 of the Complaint contains only a conclusion of law, to which no response is required, and in the alternative, it is denied.

21. SCYI admits Paragraph 21 of the Complaint.
22. SCYI admits Paragraph 22 of the Complaint.
23. SCYI admits that on March 10, 2003, the EPA modified Table A-1 of the Permit to reflect that SCYI 's cooling system is a "cooling system blow down" and to delete the term "ballast water" as a wastewater stream from the Permit.
24. SCYI admits Paragraph 24 of the Complaint.
25. SCYI admits Paragraph 25 of the Complaint.
26. Paragraph 26 of the Complaint contains only a conclusion of law, to which no response is required, and in the alternative, it is denied.
27. SCYI admits Paragraph 27 of the Complaint.
28. Paragraph 28 of the Complaint contains only a conclusion of law, to which no response is required, and in the alternative, it is denied.

### **III. FINDINGS OF VIOLATIONS**

#### **CLAIM I – UNPERMITTED DISCHARGE**

29. SCYI reiterates Paragraphs 16-28 of the Answer.
30. SCYI admits Paragraph 30 of the Complaint.
31. SCYI admits Paragraph 31 of the Complaint.
32. SCYI admits Paragraph 32 of the Complaint, but wish to clarify that it confirmed a pipeline rupture.
33. SCYI denies Paragraph 33 of the Complaint as drafted. SCYI did not admit in the letter dated March 6, 2009 that a leak began on or about February 25, 2009. SCYI only made a good faith, speculative, and preliminary statement which cannot be construed as an admission. The incident allegedly discovered on February 25, 2009 and reported to the Puerto Rico Environmental Quality Board, Humacao's Office ("EQB"), was based on a complaint filed with EQB alleging dead fish and suspended oil in the area of Guayanés beach. It was not until February 27, 2009 that the EQB conducted a field inspection to act in response to the complaint. During its inspection, the EQB did not observe anything uncommon throughout the area. In other words, no dead fish or suspended oil was found in the area. It was not until March 2, 2009 that, upon notification by a local fisherman, SCYI carried out an

inspection of the area and for the first time it was observed that a potential rupture was possible. SCYI immediately informed the EPA and EQB about the potential rupture.

34. SCYI admits that the February Daily Monitoring Report (“DMR”), submitted to EPA on March 24, 2009, reflects that discharges occurred on February 27 and February 28.
35. SCYI admits that the March 2009 DMR, submitted to EPA on April 27, 2009, reflects that discharges occurred on the dates contained in Paragraph 35. Nonetheless, certain discharges occurred during and after March 3, 2009 were made to facilitate and expedite the procedure to find the location and damages of the pipeline given that the personnel of Commercial Divers, Inc. could not determine the location of the possible rupture due to the poor visibility and amount of sand in the pipeline area. These sporadic discharges were necessary to locate the rupture and were verbally informed to the EPA. Some other minimal discharges occurred because the gate valve did not properly seal as expected. Nonetheless, SCYI immediately secured and sealed the gate valve as soon as the problem was detected. Except for the foregoing discharges, SCYI ceased all treated wastewater discharges on March 2, 2009. After said date, SCYI has been re-routing the treated wastewater to a storage tank at the tank farm preventing therefore additional discharges through the outfall 001 pipeline.

**CLAIM II – FAILURE TO OPERATE AND MAINTAIN OUTFALL 001 DEEP SEAWATER PIPELINE MULTI-PORT DIFFUSER**

36. SCYI reiterates Paragraphs 16-28 of the Answer.
37. SCYI admits Paragraph 37 of the Complaint.
38. SCYI admits Paragraph 38 of the Complaint, but wishes to clarify that when no discharge of treated wastewater is occurring, sand and silt and debris accumulate on the underwater outfall pipeline area. This is mainly caused by natural effects in the area such as sea currents, tidal conditions and presence of the Guayanés River and Santiago Creek discharges into the ocean, which locations are near the underwater outfall pipeline location.
39. SCYI admits that on March 27, 2009, the EPA issued the Administrative Order (“ACO”), Docket Number CWA-02-2009-3121. SCYI did not admit the allegations, averments and conclusions of law contained in the ACO, and hereby denies them.
40. SCYI admits Paragraph 40 of the Complaint, but the repairs are aimed to repair the rupture and not a leak as the treated wastewater is being sent to an above storage tank at the facility tank farm.

41. SCYI admits Paragraph 41 of the Complaint. By letter dated March 6, 2009, SCYI informed to the EPA that on March 2, 2009, SCYI immediately proceeded to stop discharges through outfall 001 by closing the gate valve.
42. SCYI admits Paragraph 42 of the Complaint as drafted. SCYI admits that it submitted a so called Compliance Plan to EPA to repair the rupture.
43. SCYI admits that on May 15, 2009, it received a second ACO requiring it to implement the above mentioned Compliance Plan. SCYI did not admit the allegations, averments and conclusions of law contained in the second ACO, and hereby denies them.
44. SCYI denies Paragraph 44 of the Complaint. SCYI is without knowledge or information sufficient to form a belief as to the facts supporting such a conclusion of law in Paragraph 44. The fact that two ports of the diffuser (out of twenty two) were found "covered by sand" is not sufficient to establish that SCYI failed to properly operate and maintain the diffuser or the system. Furthermore, Special Condition 26.u of the Permit establishes that at "least once a year, the discharge system shall be inspected to determine if some repairs, replacing, etc. on the discharges system is required." On December 31, 2008, well within the time period in the Permit and other document, SCYI conducted an inspection of the underwater outfall pipeline, which revealed that two or three ports of the diffuser were covered by sand. SCYI informed of these findings to the EPA. Eventually, SCYI proceeded to schedule the maintenance work necessary to uncover the sand covered ports. The work was postponed due to weather and visibility conditions in the sea. Nonetheless, the maintenance work was completed pursuant to the maintenance schedule plan. It must be noted that the other ports of the diffuser (about 20) were not covered by sand and were operating adequately. All the foregoing is an integral part of maintenance practices and evidence that SCYI took the necessary steps and made every reasonable and practical measure to have the sand covered ports uncovered. Therefore, SCYI denies any allegation regarding its alleged failure to properly maintain and operate the multi-port diffuser or system.
45. Paragraph 45 of the Complaint only contains a conclusion of law, to which no response is required, and in the alternative, it is denied.

#### **IV. NOTICE OF PROPOSED ORDER ASSESSING AN ADMINISTRATIVE ORDER**

SCYI hereby objects the proposed penalty of \$153,227. SCYI is without sufficient knowledge to form a belief as to whether EPA determined the proposed classification and penalty amount

after taking into account all applicable and pertinent factors identified in Section 309(g)(3) of the CWA. Therefore, the allegations of this section are denied.

Sections V, VI, VII, VII and VIII of the Complaint do not require and answer; insofar as an answer is required, they are denied. Any facts alleged in the Complaint not expressly admitted are hereby denied.

**B. AFFIRMATIVE DEFENSES**

1. SCYI incorporates hereto by reference, all denials and averments in the preceding Answer and makes them part of these affirmative defenses.

2. The Complaint fails to state a claim upon which a Class II Civil Penalty can be levied.

3. The alleged violations contained in the Complaint are vague, speculative and/or based on subjective and exploratory analysis and, thus, an enforcement action is unwarranted.

4. The proposed penalty of \$153,227 is excessive and contrary to applicable law and EPA's Clean Water Act Penalty Policy.

5. The alleged facts and resulting alleged violations did not cause any harm or threat to human health or to the environment. And SCYI did not or is not deriving any economic benefit was derived.

6. The proposed penalty is excessive and contrary to law given that most of the alleged violations are the result of unforeseeable events or force majeure beyond SCYI's reasonable control.

7. SCYI has complied and is in compliance with its Permit and the CWA.

8. Alleged violations are barred by the applicable statute of limitations.

**C. REQUEST FOR A HEARING**

1. Pursuant to, *inter alia*, Section 309(g) of the Clean Water Act, 33 U.S.C. § 1319(g), and 40 C.F.R. § 22.15(c), SCYI hereby requests a hearing on the issues set forth in the Complaint and the Answer.
2. SCYI's basis for contesting the Complaint and the proposed penalty are set forth in this Answer and its affirmative defenses above.
3. SCYI reserves the right to allege additional facts and assert additional defenses, upon discovery or learning of new information.

**WHEREFORE**, in view of the foregoing, SCYI respectfully requests, that after the appropriate proceedings, including the hearing requested herein, that the Administrative Law Judge dismiss the Complaint in its entirety.

**RESPECTFULLY SUBMITTED.**

On this 11<sup>th</sup> day of August 2009, in San Juan, Puerto Rico.


**I HEREBY CERTIFY** that on this same date, I have caused the original and a copy of the foregoing to be sent to the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region 2, 290 Broadway, 16<sup>th</sup> Floor, New York, New York 10007-1866; and, a true and exact copy of the foregoing is being sent via certified mail - return receipt requested - to **Nina Dale**, Esq., Assistant Regional Counsel, Office of Regional Counsel, U.S. Environmental Protection Agency, Region 2, 290 Broadway, 16<sup>th</sup> Floor, New York, New York 10007-1866 and to **Mr. José A. Rivera**, Caribbean



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