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October 11, 2007

BY OVERNIGHT SERVICE AND
CERTIFIED MAIL RETURN RECEIPT REQUESTED

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

Re: Answer to the Administrative Complaint, Findings of Violation, Notice of Proposed Assessment of a Civil Penalty, and Notice of Opportunity to Request a Hearing (the "Complaint")
Docket Number CAA-02-2007-1214
In the Matter of Commonwealth of Puerto Rico, Housing Department, Fullana Heavy Works, Inc.

Dear Ms. Maples:

On behalf of the Housing Department of the Commonwealth of Puerto Rico ("Department"), we hereby file its Answer to the Complaint (the "Answer") pursuant to 40 C.F.R. sec. 22.15 and Section IV of the Complaint, and to the Order Granting an Extension of Time to File an Answer to the Complaint, signed on September 17, 2007, in connection with the referenced case.

Please be advise that under separate cover, the Department is requesting from the EPA an informal settlement conference pursuant to the terms of Section IV of the Complaint and to 40 C.F.R. Section 22.18(b)(1).

If you have any questions or need further information regarding this matter, please contact the undersigned at your convenience.

Cordially,

O'NEILL & BORGES

Mariacté Correa-Cestero

Attachments (2)

c: Héctor L. Vélez Cruz, Esq. (EPA)
Germán A. Novoa Rodríguez, Esq. (FHW)
Bernardo Hernández Berríos, Esq. (DOH)
Jorge L. San Miguel, Esq.
Nynorsha C. Lugo Sánchez, Esq.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION II

IN THE MATTER OF: **COMMONWEALTH OF PUERTO RICO HOUSING DEPARTMENT** and **FULLANA HEAVY WORKS, INC.** Respondents	**DOCKET NUMBER CAA-02-2007-1214** PROCEEDING PURSUANT TO SECTION 113(D) OF THE CLEAN AIR ACT

HOUSING DEPARTMENT OF PUERT RICO'S ANSWER TO THE U.S. ENVIRONMENTAL PROTECTION AGENCY COMPLAINT AND NOTICE OF OPPORTUNITY TO REQUEST A HEARING

TO THE ENVIRONMENTAL PROTECTION AGENCY ("EPA"):

COMES NOW, the Housing Department of Puerto Rico (hereafter, the "Department"), through its undersigned counsel, and respectfully submits its Answer to the Complaint issued on August 17, 2007 by the EPA for alleged violations of Sections 112 and/or 114 of the Clean Air Act, 42 U.S.C. sec. 7412 and/or 7414; and of the National Emission Standards of Hazardous Air Pollutant for Asbestos, 40 C.F.R. Part 61 Subpart M.

A. Response to the Complaint

The two (2) introductory paragraphs contained in page 1 of the Complaint do not allege factual contentions, but legal conclusions that do not require an affirmative response by the Department. In the event that EPA requires an answer regarding these two paragraphs, the same are hereby denied.

I. Preliminary Statement and Description of Respondents

1. The allegations contained in paragraph 1 of the Complaint are admitted.

2. The allegations contained in paragraph 2 of the Complaint are denied as drafted. It is affirmatively alleged that the Department is the owner of blocks 195, 196 and 197 of the housing and commercial development known as the Santurce

Rehabilitation Project (the "Project"), at Santurce, Puerto Rico.

3. The allegations contained in paragraph 3 of the Complaint are denied for lack of sufficient information to form a belief as to its veracity.

4. To the extent the allegations contained in paragraph 4 of the Complaint purport to state a legal conclusion, they do not require an answer. The allegations are otherwise denied.

5. The allegations contained in paragraph 5 of the Complaint are denied as drafted. It is affirmatively alleged that the Department hired Fullana Heavy Works, Inc. ("FHW") as a demolition contractor for the demolition of some parcels of blocks 195, 196 and 197 of the Project, pursuant to a government bidding procedure (Bid No. ADMV-04-094).

II. General Statutory and Regulatory Authority

6. To the extent the allegations contained in paragraph 6 of the Complaint purport to state a legal conclusion, they do not require an answer. The allegations are otherwise denied.

7. To the extent the allegations contained in paragraph 7 of the Complaint purport to state a legal conclusion, they do not require an answer. The allegations are otherwise denied.

8. To the extent the allegations contained in paragraph 8 of the Complaint purport to state a legal conclusion, they do not require an answer. The allegations are otherwise denied.

9. To the extent the allegations contained in paragraph 9 of the Complaint purport to state a legal conclusion, they do not require an answer. The allegations are otherwise denied.

10. To the extent the allegations contained in paragraph 10 of the Complaint purport to state a legal conclusion, they do not require an answer. The allegations are otherwise denied.

11. To the extent the allegations contained in paragraph 11 of the Complaint purport to state a legal conclusion, they do not require an answer. The allegations are otherwise denied.

12. To the extent the allegations contained in paragraph 12 of the Complaint purport to state a legal conclusion, they do not require an answer. The allegations are otherwise denied.

13. To the extent the allegations contained in paragraph 13 of the Complaint purport to state a legal conclusion, they do not require an answer. The allegations are otherwise denied.

14. To the extent the allegations contained in paragraph 14 of the Complaint purport to state a legal conclusion, they do not require an answer. The allegations are otherwise denied.

15. To the extent the allegations contained in paragraph 15 of the Complaint purport to state a legal conclusion, they do not require an answer. The allegations are otherwise denied.

16. To the extent the allegations contained in paragraph 16 of the Complaint purport to state a legal conclusion, they do not require an answer. The allegations are otherwise denied.

17. To the extent the allegations contained in paragraph 17 of the Complaint purport to state a legal conclusion, they do not require an answer. The allegations are otherwise denied.

III. Findings of Facts and Conclusions of Law

18. The Department expressly re-alleges and incorporates herein by reference any responsive allegation or affirmative defense contained in paragraphs 1 through 17 above.

19. The allegations contained in paragraph 19 of the Complaint are denied as drafted. To the extent the allegations contained in said paragraph purport to state a legal conclusion, they do not require an answer.

20. To the extent the allegations contained in paragraph 20 of the Complaint purport to state a legal conclusion, they do not require an answer. The allegations are otherwise denied.

21. Regarding the allegations contained in paragraph 21 of the Complaint, it is admitted that the Department hired FHW as a demolition contractor. However, it is affirmative alleged that FHW was contracted by the Department for the demolition of some parcels of blocks 195, 196 and 197 the Project.

22. To the extent the allegations contained in paragraph 22 of the Complaint purport to state a legal conclusion, they do not require an answer. The allegations are otherwise denied.

23. The allegations contained in paragraph 23 of the Complaint are denied as drafted.

24. The allegations contained in paragraph 24 of the Complaint are denied for lack of sufficient information to form a belief as to its veracity.

25. The allegations contained in paragraph 25 of the Complaint are denied for lack of sufficient information to form a belief as to its veracity. In the alternative, to the extent the allegations contained in paragraph 25 purports to state a legal conclusion, they do not require an answer from the Department. The allegations are otherwise denied.

26. The allegations contained in paragraph 26 of the Complaint are denied for lack of sufficient information to form a belief as to its veracity.

27. The allegations contained in paragraph 27 of the Complaint are denied for lack of sufficient information to form a belief as to its veracity.

28. The allegations contained in paragraph 28 of the Complaint are denied for lack of sufficient information to form a belief as to its veracity. In the alternative, to the extent the allegations contained in paragraph 28 purports to state a legal conclusion, they do not require an answer from the Department. The allegations are otherwise denied.

29. The allegations contained in paragraph 29 of the Complaint are denied for lack of sufficient information to form a belief as to its veracity.

30. The allegations contained in paragraph 30 of the Complaint are denied for lack of sufficient information to form a belief as to its veracity. In the alternative, to the extent the allegations contained in paragraph 30 purports to state a legal conclusion, they do not require an answer from the Department. The allegations are otherwise denied.

31. Any and all allegations in the Complaint or in its prayer for relief or other sections, other than those expressly admitted shall be deemed as expressly denied.

Proposed Civil Penalty

The entire section purports to state legal conclusions, or otherwise re-states existing legal/regulatory provisions allegedly applicable to this case and, as such, it does not require an answer from the Department. The allegations are otherwise denied.

1. Gravity Component

A. Count 1

The entire subsection 1(A) of Part III of the Complaint purports to state legal conclusions and, as such, it does not require an answer from the Department. The allegations are otherwise denied.

B. Size of the violator

The entire subsection 1(B) of Part III of the Complaint purports to state legal conclusions and, as such, it does not require an answer from the Department. The allegations are otherwise denied.

C. Inflationary Adjustment Rule

The entire subsection 1(C) of Part III of the Complaint purports to state legal conclusions and, as such, it does not require an answer from the Department. The allegations are otherwise denied.

2. Economical benefit

This entire section purports to state legal conclusions and, as such, it does not require an answer from the Department. The allegations are otherwise denied.

IV. Notice of Opportunity to Request a Hearing

This entire section purports to state legal conclusions and, as such, it does not require and answer from the Department. The allegations are otherwise denied.

Settlement Conference

The allegations and or statements contained in this section do not require an answer. If the EPA determines that an answer is required, the same are denied.

Payment of Penalty in lieu of Answer, Hearing and/or Settlement

This entire section purports to state legal conclusions and as such, it does not require an answer from the Department. The allegations are otherwise denied.

B. Affirmative Defenses

1. Any responsive allegation or affirmative defense contained in this Answer to the Complaint is expressly re-alleged and incorporated herein by reference.

2. The facts presented herein by the Department, which have been provided as affirmative allegations in response to the allegations contained in the Complaint, are solely intended to respond to EPA's factual allegations. The Department reserves its right to provide further allegations and submit demonstrative evidence of other facts in support of its affirmative defenses, by either actual evidence in its possession, or obtained as a result of discovery procedures to be held as part of this administrative proceeding or any other administrative proceeding before EPA.

3. The Complaint fails to set out in whole or in part a claim upon which the granting of relief is justified.

4. The penalty sought in the Complaint in the amount of $25,790.00 is not justified by the facts alleged in the Compliant and the applicable law, and should be eliminated or significantly reduced.

5. The Complaint lacks a basis in law and in fact to assess the penalty proposed of $25,790.00; the penalty should be eliminated or at minimum substantially reduced.

6. The allegations contained in the Complaint are vague or lack clarity and specificity.

7. All indispensable parties to the allegations contained in the Complaint have not been joined to the administrative proceeding in this case.

8. The Complaint does not contain sufficient facts to establish and substantiate the imposition of the proposed penalty.

9. EPA's claims are barred, in whole or in part, by the doctrine of laches.

10. EPA's claims are barred, in whole or in part, by the applicable statutes of limitations.

11. The Department complied at all relevant times with the applicable local and federal environmental laws and regulations.

12. The Department is not liable for the amount of $25,790.00 in civil penalties assessed by EPA in the Complaint.

13. The Department reserves its right to raise any other factual or legal defenses that are revealed by further discovery of evidence during this proceeding or investigation.

C. Basis to Oppose Proposed Civil Penalty

Based on the totality of the Answer set forth herein, the Department respectfully opposes the proposed civil penalty amount and the basis, if any therefore, and requests that EPA desist from attributing any violations of legal and/or regulatory provisions to the Department, and/or imposing any type of penalties upon the same.

D. Request for an EPA Hearing

The Department hereby request that EPA hold, in due course, a hearing on the allegations raised in the Complaint and this Answer. This request is made pursuant to the provisions of Title 40 of the Code of Federal Regulations, sec. 22.15(c), and as stated in Section IV of the Complaint.

The above notwithstanding, under separate cover, the Department will be requesting EPA for an informal settlement conference, as stated in the Complaint and in 40 C.F.R. Section

22.18(b)(1). This request constitutes neither an admission nor a denial of any of the matters alleged in the Compliant.

CERTIFICATE OF SERVICE

I HEARBY CERTIFY, that on this same date a true and exact copy of this answer was notified by certified mail, return receipt requested, to **Héctor Vélez Cruz, Esq.**, Office of Regional Counsel, U.S. Environmental Protection Agency, Region 2, Centro Europa Building, Suite 417, 1492 Ponce de León Avenue, San Juan, Puerto Rico 00907-4127; **Germán A. Novoa Rodríguez, Esq.**, P.O. Box 8672, Bayamón, Puerto Rico 00960-8036. Further, on this same date, an original and one copy of this answer was notified by overnight service and certified mail, return receipt requested, to **Ms. Karen Maples**, Regional Hearing Clerk, U.S. Environmental Protection Agency, Region 2, 290 Broadway, 16th Floor, New York, New York 10007-1866.

RESPECTFULLY SUBMITTED.

At San Juan, Puerto Rico, this 11th of October 2007.

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