

MARÍA DEL CARMEN GITANY ALONSO, ESQ.
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U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II
2010 OCT 28 P 3 25
REGIONAL HEARING
CLERK

October 25th, 2010

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

**Re: Notice of Proposed Assessment of a Class II Civil Penalty
Docket Number CWA-02-2010-3454
In the Matter of Municipality of Añasco**

To whom it may concern:

Enclosed please find the Municipality of Añasco's Answer to the Administrative Complaint, Findings of Violations, Notice of Proposed Assessment of a Civil Penalty, and Notice of Opportunity to Request a Hearing.

Per the instruction given in the Complaint, I am serving copy of this Answer on Héctor L. Vélez Cruz, Esq., Assistant Regional Counsel for U.S. EPA, Region 2. Please file the original copy of this Answer of record, and return the time stamped copy to me in the enclosed envelope.

We also inform you that we are requesting a hearing in the Answer and that the Municipality of Añasco will request a settlement conference with Mr. Vélez Cruz when it serves a copy to the Answer on his office.

Thank you for your time and attention to this matter. Please contact me if you have any questions regarding this letter.

Cordially


MARÍA DEL CARMEN GITANY ALONSO, ESQ.
Attorney for Respondent

Enclosures

Cc: Hon. Jorge Estévez Martínez, Mayor
Municipality of Añasco

Héctor L. Vélez Cruz, Esq.
Office of the Regional Counsel, U.S. EPA, Region 2

Roberto Ayala, Director
Water Quality Area
PR Environmental Quality Board

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
290 Broadway – 16th Floor
New York, NY 10007-1866

In the Matter of:

**MUNICIPALITY OF AÑASCO
RESPONDENT**

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

**DOCKET NUMBER
CWA-02-2010-3454**

CERTIFICATE OF SERVICE

This is to certify that Respondent's Answer to the Administrative Complaint in the above referenced case was sent to the following persons, as follow:

Original & Copy by USPS:

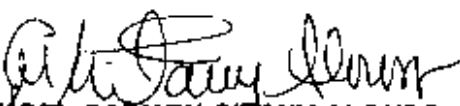
Karen Maples, Regional Hearing Clerk
U.S. Environmental Protection Agency
290 Broadway – 16th Floor
New York, NY 10007-1866

Copy by Certified Mail & Return Receipt:

Héctor L. Vélez Cruz, Esq.
Office of the Regional Counsel
U.S. Environmental Protection Agency and
Region 2
1492 Ponce de León Ave. Suite 417
San Juan, PR 00907-4127

Roberto Ayala, Director
Water Quality Area
P.O. Box 11488
PR Environmental Quality Board
San Juan, PR 00910

DATED this 25th day of October, 2010.


MARIA DEL CARMEN GITANY ALONSO, ESQ.
Attorney for Respondent
PR Bar No. 12,019
BQX 3898, Mayagüez, PR 00681
Phone: 787-832-7068
Fax: 787-805-8877

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
290 Broadway – 16th Floor
New York, NY 10007-1866

In the Matter of

MUNICIPALITY OF AÑASCO
P.O. Box 1385
Añasco, Puerto Rico 00610-1385

RESPONDENT

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

**PROCEEDING TO ASSESS A
CLASS II CIVIL PENALTY**

**DOCKET NUMBER
CWA-02-2010-3454**

**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 Municipality of Añasco ("Respondent") for its Answer and affirmative defenses, to the Administrative Complaint hereby admits, denies and alleges as follows:

1. Respondent states that the statute speaks for itself and that no further answer to Paragraphs 1 to 13 of the Administrative Complaint are required.
2. Respondent admits Paragraph 14 to 18 of the Administrative Complaint.
3. Respondent states that Paragraph 19 of the Administrative Complaint speaks for itself and that no further answer is required.
4. Respondent presently has insufficient knowledge or information from which to form a belief as to the truth or falsity of the allegations contained in Paragraphs 20 to 23 of the Administrative Complaint. Respondent expressly states that prior January 2009 the Municipality of Añasco was under the past Administration. Thus, all letters regarding this Administrative Complaint notified before that date were made to that Administration.

5. Respondent admits Paragraph 27 of the Administrative Complaint. Respondent specifically states that soon after EPA's letter dated March 19, 2009 was received by the new Administration, an extensive investigation was ordered to find out what was going on, regarding this matter, since the Municipality of Añasco's past administration did not notify anything nor produce any documentation about this to the Transition Committee.
6. In reference to Paragraphs 24 to 26, Respondent admits that, after conducting the above mentioned investigation, found the following:
 - a. That a Compliance Order was received under the past Administration, requesting the Municipality of Añasco to:
 - file a NOI form seeking coverage under the Small MS4 Permit;
 - prepare, implement and enforce a SWMP; and
 - submit to EPA the Compliance Cost Report.
 - b. Under the past Administration the NOI form was submitted to EPA. However, it was not until **October 6, 2010**, that the Consulting Agency contracted by the past Administration (J. Cajigas & Associates, P.S.C.) provided the Respondent with the referenced document and its date of filing. **See Exhibit I.**
7. Respondent admits Paragraph 28 of the Administrative Complaint. Respondent expressly states that it is in its best interest to cooperate with EPA and to fully comply with all relevant federal regulation regarding this matter. Accordingly, Respondent has contracted the professional services of an environmental consulting firm to implement and enforce, without delay, the SWMP.
8. Paragraphs 29 to 32 of the Administrative Complaint, contains legal assertions or conclusions to which no responsive pleading is required. Therefore, except as expressly admitted herein, Respondent denies the rest and remainder of these Paragraphs.

PROPOSED CIVIL PENALTY

Respondent respectfully believes that the proposed penalty of \$64,628.00 for non-compliance is excessive, unreasonable and will cause an undue burden to the Respondent for the following reasons:

- a. Respondent does not have a prior history of violations under the NPDES program.
- b. Respondent does not have sufficient economic resources to implement and enforce the SWMP and also pay the proposed penalty.

OPPORTUNITY TO REQUEST A HEARING

Respondent hereby requests a hearing on the proposed civil penalty associated with the Administrative Complaint.

AFFIRMATIVE DEFENSES

Respondent presently has insufficient knowledge or information on which to form a belief as to whether they may have additional, as yet unstated, defenses available.

Respondent reserves the right to assert additional defenses that are revealed by further investigation or by discovery.

PRAYER

Respondent expressly states that it is in its best interest to cooperate with EPA and to fully comply with all relevant federal regulation regarding this matter. However, even though the Respondent wishes to resolve this matter without ulterior proceedings, believes that EPA's proposed penalty is excessive and unreasonable. The Respondent does not have the economic resources necessary to pay the proposed penalty.

WHEREFORE, the Respondent prays for judgment as follows:

1. That the Complainant dismisses the charges with prejudice against the Respondent, since the Respondent has invested and will keep investing a significant amount of resources in contracting the services of a professional environmental consulting firm to implement and enforce, without delay, the SWMP; or in the alternative,

2. That the Complainant agrees to substantially reduce the amount of the proposed penalty and allow the Respondent to enter into a payment plan.

RESPECTFULLY SUBMITTED.

DATED this 25th day of October, 2010.


MARIA DEL CARMEN GITANY ALONSO
Attorney for Respondent

PR Bar No. 12,019
BOX 3898, Mayagüez, PR 0068
Phone: 787-832-7069 Fax: 787-805-8877

~~J~~ Cajigas & Associates, P.S.C.

Calle Coidin #127
PO Box 1028
Aguada, PR 00602

Tel (787) 868-8111
Fax (787) 252-8111

23 de julio de 2008

Environmenta Protection Agency
Edificio Centro Europa
1492 Ave. Ponce De León
Suite 417
San Juan, PR 00907

CORREO CERTIFICADO CON ACUSE DE RECIBO: 7005 0390 0002 4797 5431

RE: Permiso General "NPDES"
Fase II - MS4 (Municipal Separate Strom Sewer Systems)
para el Municipio de Añasco

Estimado ingeniero Bosques:

De conformidad con las instrucciones del Honorable Pablo Crespo Torres, Alcalde del Municipio de Añasco, estamos incluyendo para su atención lo siguientes:

- Disco digital con copia del documento en formato .pdf
- Notice of Intent (NOI)
- Permiso General "NPDES"

Sin ntro particular por el momento, y en espera de su atención al asunto quedo de usted

Atentamente,


J. Cajigas & Associates, P.S.C.
Ingenieros Consultores
r/p Ing. Jorge Cajigas

U.S. Postal Service
CERTIFIED MAIL™ RECEIPT
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Postmark
JUL 23 2008

Send To: **JPA**
Street, Apt. No. or PO Box No.: **Edificio Centro Europa 1492 Ave Ponce De León**
City, State, ZIP+4: **Suite 417, San Juan PR 00907**

PS Form 3800, July 27, 02 See Reverse for Instructions

nal Land Surveyor, & Professional Real Estate Appraiser

Nancy Rodriguez

From: Jorge Cajigas <jcajigas@gmail.com>
Sent: Wednesday, October 08, 2008 4:10 PM
To: Nancy Rodriguez
Subject: NPDS-MS4 Atlasco

Saludos!

El documento radicado en EPA se encuentra en la dirección adjunta. Cualquier duda favor comunicarse a nuestra oficina.

Gracias.

<http://www.megaupload.com/?d=U2YWYJLK>

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J.Cajigas & Associates, P.S.C.
Ingenieros Consultores