



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

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG.II
2007 SEP 28 PM 3:33
REGIONAL HEARING
CLERK

September 28, 2007

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr Ramon Torres
Executive Director
Authority for the Port of the Americas
355 FD Roosevelt Avenue
San Juan PR 00918

RE: Notice of Proposed Assessment of a Civil Penalty
Docket Number MPRSA-02-2007-6002
Authority for the Port of the Americas

Dear Mr. Torres:

Enclosed is a copy of an Administrative Complaint which the U.S. Environmental Protection Agency, Region 2 (EPA), is issuing to the Authority for the Port of the Americas (PAA). EPA has made findings that PAA is in violation of Section 101(a) of the Marine Protection, Research and Sanctuaries Act of 1972 (MPRSA), as amended, 33 U.S.C. §§ 1401 *et. seq.* by discharging dredged material into ocean waters in violation of MPRSA and its implementing regulations.

Based upon a review of automated disposal surveillance reports that PAA submitted to the U.S. Army Corps of Engineers, in accordance with the Site Management and Monitoring Plan for the Ponce Harbor, PR Ocean Dredged Material Disposal Site (ODMDS), EPA has determined that project dredged material was discharged outside the Ponce ODMDS on April 19, 2006 without authorization. The unauthorized placement of these materials constitutes a violation of MPRSA.

Special significance is attached to this violation because of the presence of ecological resources (coral reefs) in the area of the Ponce ODMDS that are very important for local fisheries, already threatened due to anthropogenic stressors, and extremely sensitive to increased sedimentation. It is impossible to assess the actual harm to these habitats that may have resulted from this violation.

For these reasons, EPA is issuing a Complaint to assess administratively a penalty of \$65,000 against PAA for its violation of MPRSA.

By law, you have a right to request a hearing regarding the violations alleged in the Complaint and the proposed penalty. A request for a hearing must be contained in a written Answer to the Complaint. Pursuant to 40 C.F.R. Part 22 (a copy of which is enclosed), you must file a written Answer with the Regional Hearing Clerk within twenty (20) days of receipt of this Complaint if you contest any material fact upon which the Complaint is based, contend that the proposed penalty is inappropriate or contend that you are entitled to judgment as a matter of law. If you do not file a timely Answer in accordance with the requirements specified in 40 C.F.R. §22.18, you may be found in default and the proposed penalty will be assessed without further proceedings. You have the right to be represented by an attorney, or to represent yourself at any stage of these proceedings.

EPA encourages all parties against whom it files a Complaint to pursue settlement discussions with the Agency. Whether or not you request a formal hearing, you may request an informal conference with EPA to discuss the alleged violations and the proposed penalty. You may represent yourself or be represented by an attorney at any conference, whether in person or by telephone. An attorney from the Agency's Office of Regional Counsel (ORC) will normally be present at any informal conference. Please be advised that any informal conferences conducted in person with Agency officials will be held in New York City. Please also be advised that a request for an informal conference does not substitute for a written Answer nor does it extend the period of time (twenty days) within which you must file an Answer and request a hearing.

If a mutually satisfactory settlement can be reached, it will be formalized by the issuance of a Consent Agreement and Final Order signed by you and by the Regional Administrator, EPA Region 2. The issuance of such a Consent Agreement and Final Order shall constitute a waiver by you of your right to a hearing on, and to a judicial appeal of, the agreed upon civil penalty. If you have any questions or wish to discuss the possibility of settlement of this matter, please contact:

Ms. Phyllis Feinmark
Branch Chief
Water and General Law Branch
Office of Regional Counsel - 16th Floor
United States Environmental Protection Agency
290 Broadway
New York, New York 10007
(212) 637-3232

A copy of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation of Suspension of Permits, 40 C.F.R. Part 22, is enclosed for your reference.

I urge your prompt attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Walter Mugdan", written in a cursive style.

Walter Mugdan
Director
Division of Environmental Planning and Protection
Enclosures

cc: Sindulfo Castillo, USACE

MPRSA-02-2004-6003

New York City Economic Development Corporation, Respondent

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 2**

-----X
IN THE MATTER OF :
 :
Authority for the Port of the Americas : Proceeding to Assess Civil
 : Penalty
Ponce, Puerto Rico : under Section 105(a)
 : of the Marine, Protection, Research
Respondent. : and Sanctuaries Act
 :
Proceeding Pursuant to §105(a) of the : Docket No.
Marine Protection, Research and : MPRSA-02-2007-6002
Sanctuaries Act, 33 U.S.C. §1415(a) :
-----X

CERTIFICATE OF SERVICE


I certify that, on the date noted below, I caused to be mailed, by certified mail, return receipt requested, a copy of the foregoing "ADMINISTRATIVE COMPLAINT" and a copy of the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits," (40 Code of Federal Regulations Part 22 (July 1, 2000)) to the following person at the address listed below:

Mr. Ramon Torres
Executive Director
Authority for the Port of the Americas
355 FD Roosevelt Avenue
San Juan, PR 00918

I hand carried the original and a copy of the foregoing Complaint to the office of

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

Date: SEP 28 2007
New York, New York


[Signature of Sender]
[NOTE: must be over 18]

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 2

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II
2007 SEP 28 PM 3:33
REGIONAL HEARING
CLERK

-----X
IN THE MATTER OF :
: Authority for the Port of the Americas : Proceeding to Assess Civil
Ponce, Puerto Rico : Penalty under Section 105(a)
: of the Marine, Protection, Research
Respondent. : and Sanctuaries Act
: Proceeding Pursuant to §105(a) of the : Docket No.
Marine Protection, Research and : MPRSA-02-2007-6002
Sanctuaries Act, 33 U.S.C. §1415(a) :
-----X

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 105(a) of the Marine Protection, Research and Sanctuaries Act ("MPRSA" or "Act"), 33 U.S.C. §1415(a). 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 ("DEPP") of EPA, Region 2 ("Complainant").

2. Pursuant to Section 105(a) of MPRSA, 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 Code of Federal Regulations ("C.F.R.") Part 22 (July 1, 2000), a copy of which is attached, Complainant hereby requests that the Regional Administrator assess a civil penalty against the Authority for the Port of the Americas ("Respondent") for violating Section 101(a) of MPRSA, as amended, 33 U.S.C. §§ 1411(a) by the

unauthorized discharge of dredged material in the Atlantic Ocean in violation of Section 101 of MPRSA and in violation of Department of the Army Permit Number SAJ-2002-6525 (IP-JER).

II. Findings of Violation

1. Respondent is a “person” as defined in Section 3 of the Act, 33 U.S.C. §1402.
2. On March 26, 2004, the Respondent received a Department of the Army Permit (SAJ-2002-6525 (IP-JER)) to perform improvement dredging in and around the Port of Ponce and in specific areas of the Bahia de Ponce. Specifically, the activity authorized is as follows:

“To construct a deep draft port at the Municipality of Ponce, to harbor simultaneously Post-Panamax vessels to handle cargo transshipment. The project includes the construction of an inland navigation channel of approximately 3,000 feet in length and 600 feet wide in average, with its entrance between piers 7 and 8. Approximately 59 acres of mangroves and wetlands adjacent to the inland channel and docking site are to be filled. The dredge of approximately 5.5 million cubic meters of material from about a bottom area of approximately 248 acres are authorized to be dredged from the harbor bottom and turning basin area. Approximately 97 acres of seagrasses are to be impacted by the dredge work. The dredged material is to be disposed at the EPA’s Designated Ocean Dredged Material Disposal Site (ODMDS) located at 4.5 nautical miles south of the entrance of the Ponce Harbor south of Ponce. To minimize impacts to the shelf edge resources, disposal activity would be restricted to the bottom half of the ODMDS (i.e., south of 17° 53' 30"N.)”

3. As required by the USACE authorization, Respondent submitted barge tracking reports for all disposal events. These reports reflected that project dredged material was disposed outside the ODMDS on two occasions as noted in paragraphs 4 and 5 below.
4. At 0317 on March 12, 2006, Respondent’s dredging contractor, Weeks Marine, Inc (hereinafter referred to as Weeks), discharged approximately 4000 cubic yards of dredged material from Scow 259 outside the ODMDS during Trip 1218 of the project. This incident was the subject of a previous complaint (MPRSA-02-2007-6001)
5. At 0745 on April 19, 2006, Weeks discharged approximately 3500 cubic yards of dredged material from Scow 259 outside the ODMDS during Trip 1449 of the

project.

6. EPA has reviewed the explanations provided by the Respondent and its contractor and finds that the violation resulted from an attention lapse on the part of the tug operator following some difficulty in getting the scow doors to open.
6. Based on the above findings, EPA finds Respondent to be in violation of Section 101(a) of the Act, 33 U.S.C. §1411(a) for the discharge of material into ocean waters without authorization by the Secretary of the Army as provided by Section 103(a) of the Act, 33 U.S.C. §1413(a).
7. Under Section 105(a) of the Act, 33 U.S.C. §1415(a), Respondent is liable for the administrative assessment of civil penalties in an amount not to exceed \$65,000 for each violation or a maximum penalty (cap) of \$157,500.00 for a single administrative enforcement action.

III. Notice of Proposed Order Assessing a Civil Penalty

Based on the foregoing Findings of Violation, and pursuant to the authority of Section 105 of MPRSA, 33 U.S.C. 1415(a), 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 **\$65,000** for unlawful disposal of materials in ocean waters. EPA determined the proposed penalty after taking into account the applicable factors identified at Section 105(a) of the Act, 33 U.S.C. § 1415. EPA has considered the gravity of the violation, prior violations and the demonstrated good faith of the person charged in attempting to achieve rapid compliance after notification of a violation. Based on the Findings set forth above, the Respondent has been found to have violated the Act in this instance. The Respondent did not follow the operational requirements necessary to ensure compliance with all terms and conditions of the authorization.

IV. Procedures Governing This Administrative Litigation

The rules of procedure governing this civil administrative litigation have been set forth in the CROP, which have been codified at 40 C.F.R. Part 22. A copy of these rules accompanies this Complaint.

A. Answering The Complaint

Where Respondent intends to contest any material fact upon which the Complaint is based, to contend that the proposed penalty is inappropriate or to contend that Respondent is entitled to judgment as a matter of law, 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, and such Answer must be filed within thirty (30) days after service of the Complaint. 40 C.F.R. § 22.15(a). 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 then 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).

Respondent's Answer to the Complaint must clearly and directly admit, deny, or explain each of the factual allegations that are contained in the Complaint and with regard to which Respondent has any knowledge. 40 C.F.R. § 22.15(b). Where Respondent lacks knowledge of a particular factual allegation and so states in its Answer, the allegation is deemed denied. 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 that Respondent disputes (and thus intends to place at issue in the proceeding), (3) the basis for opposing the proposed relief and (4) whether Respondent requests a hearing. 40 C.F.R. §22.15(b).

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.

B. Opportunity To Request A Hearing

If requested by Respondent in its Answer, a hearing upon the issues raised by the Complaint and Answer may be held. 40 C.F.R. §22.15(c). If, however, Respondent does not request a hearing, the Presiding Officer (as defined in 40 C.F.R. §22.3) may hold a hearing if the Answer raises issues appropriate for adjudication. 40 C.F.R. §22.15(c).

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 applicable 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.

C. Failure To Answer

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. 40 C.F.R. § 22.15(d). If Respondent fails to file a timely [i.e. in accordance with the 30-day period set forth in 40 C.F.R. § 22.15(a)] Answer to the Complaint, Respondent may be found in default upon motion. 40 C.F.R. § 22.17(a). Default by Respondent constitutes, for purposes of the pending proceeding only, an admission of all facts alleged in the Complaint and a waiver of Respondent's right to contest such factual allegations. 40 C.F.R. § 22.17(a). Following a default by Respondent for a failure to timely file an Answer to the Complaint, any order issued therefore shall be issued pursuant to 40 C.F.R. § 22.17(c).

Any penalty assessed in the default order shall become due and payable by Respondent without further proceedings thirty (30) days after the Default Order becomes final pursuant to 40 C.F.R. § 22.27(c). 40 C.F.R. § 22.17(d). 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.

V. Informal Settlement Conference

Whether or not Respondent requests a formal hearing, EPA encourages settlement of this proceeding consistent with the provisions of the Act and its 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. Respondent is referred to 40 C.F.R. §22.18.

Any request for an informal conference or any questions that Respondent may have regarding this Complaint should be directed to:

Ms. Phyllis Kaplan Feinmark
Branch Chief
Water and General Law Branch
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th floor
New York, New York 10007-1866
(212) 637-3232

The parties may engage in settlement discussions irrespective of whether Respondent has requested a hearing. 40 C.F.R. §22.18(b)(1). Respondent's requesting 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 as specified in 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, however, will be made simply because an informal settlement conference is held.

Any settlement that may be reached as a result of an informal settlement conference shall be embodied in a written Consent Agreement. 40 C.F.R. §22.18(b)(2). In accepting the Consent Agreement, Respondent waives its right to contest the allegations in the Complaint and waives its right to appeal the Final Order that is to accompany the Consent Agreement. 40 C.F.R. §22.18(b)(2). In order to conclude the proceeding, a Final Order ratifying the parties' agreement to settle will be executed. 40 C.F.R. §22.18(b)(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 the 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.

VI. 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 noted above), a copy of the check or other instrument of payment. 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 on the previous page. 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:

**Regional Hearing Clerk
U. S. Environmental Protection Agency, Region 2
P.O. Box 360188M
Pittsburgh, Pennsylvania 15251**

Pursuant to 40 C.F.R. §22.18(a)(3), if Respondent elects to pay the full amount of the penalty proposed in the Complaint within thirty (30) days of receiving the Complaint, then, upon EPA's receipt of such payment, the Regional Administrator of EPA, Region 2 (or, if designated, the Regional Judicial Officer), shall issue a Final Order in accordance with 40 C.F.R. §22.18(a)(3). Issuance of a Final Order terminates this administrative litigation and the civil proceedings arising out of the allegations made in the Complaint. Further, pursuant to 40 C.F.R. §22.18(a)(3), the making of such payment by Respondent shall constitute a waiver of Respondent's right both to contest the allegations made in the Complaint and to appeal said Final Order to federal court. Such payment does not extinguish, waive, satisfy or otherwise affect Respondent's obligation and responsibility to comply with all applicable statutory and regulatory requirements, and to maintain such compliance.

VII. 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 - 17th Floor
New York, New York 10007-1866**

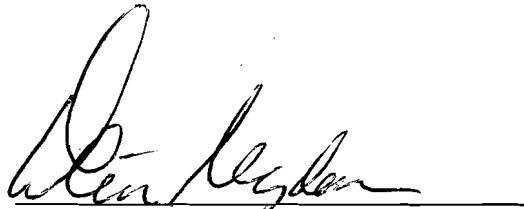
2 A copy of the Answer, any Hearing Request and all subsequent documents filed in this action shall be sent to

Ms. Phyllis Kaplan Feinmark
Branch Chief
Water and General Law Branch, Office of Regional Counsel
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th floor
New York, New York 10007-1866
(212) 637-3232

VII. 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 105(a) of the Act will affect Respondent's continuing obligation to comply with the Act.

ISSUED THIS 28th DAY OF September, 2007.



WALTER MUGDAN
Director, Division of Environmental Planning and Protection
United States Environmental Protection Agency - Region 2
290 Broadway
New York, New York 10007-1866