

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION II**

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG.II
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REGIONAL HEARING
CLERK

IN THE MATTER OF:

**Commonwealth of Puerto Rico
Department of Housing**

And

Fullana Heavy Works

Respondents

Docket No. CAA-02-2007-1214

In proceeding under
Section 113 (d) of the
Clean Air Act

**FULLANA HEAVY WORKS, CORP. ANSWER TO THE COMPLAINT
AND REQUEST FOR A HEARING**

COMES NOW, Fullana Heavy Works, Corp. (hereafter, "FHW") through the undersigned counsel, who respectfully submits its Answer to the Complaint.

ANSWER TO SPECIFIC ALLEGATIONS

The allegations contained in the first two (2) unnumbered paragraphs of the Complaint state a conclusion of law that requires no answer. To the extent it is deemed to allege facts, those allegations are denied.

FHW's responses to the allegations in the Complaint appear bellow. The paragraphs bellow are numbered to correspond to the numbered paragraphs and sections in the Complaint.

I. Preliminary Statement and Description of Respondents

1. FHW admits the allegations contained in the paragraph 1 of the Complaint.
2. The allegations contained in paragraph 2 of the Complaint are denied as drafted. FHW admits that the Department of Housing of the Commonwealth of Puerto Rico (the "Department") is the owner of blocks 195, 196 and 197

including the housing and commercial structures located in the development known as Santurce Rehabilitation Project (the "Project") at Santurce, Puerto Rico.

3. The allegations contained in paragraph 3 of the Complaint are admitted.
4. Paragraph 4 of the Complaint states a conclusion of law that requires no answer. To the extent it is deemed to allege facts, those allegations are denied.
5. The allegations contained in paragraph 5 are denied as drafted. FHW affirmatively alleges that it was hired by the Department on May 9, 2005, for the demolition of some housing and commercial structures located in blocks 195, 196 and 197 of the Project.

II. General Statutory and Regulatory Authority

6. Paragraph 6 of the Complaint states a conclusion of law that requires no answer. To the extent it is deemed to allege facts, those allegations are denied.
7. Paragraph 7 of the Complaint states a conclusion of law that requires no answer. To the extent it is deemed to allege facts, those allegations are denied.
8. Paragraph 8 of the Complaint states a conclusion of law that requires no answer. To the extent it is deemed to allege facts, those allegations are denied.
9. Paragraph 9 of the Complaint states a conclusion of law that requires no answer. To the extent it is deemed to allege facts, those allegations are denied.
10. Paragraph 10 of the Complaint states a conclusion of law that requires no answer. To the extent it is deemed to allege facts, those allegations are denied.
11. Paragraph 11 of the Complaint states a conclusion of law that requires no answer. To the extent it is deemed to allege facts, those allegations are denied.
12. Paragraph 12 states a conclusion of law that requires no answer. To the extent it is deemed to allege facts, those allegations are denied.

13. Paragraph 13 of the Complaint states a conclusion of law that requires no answer. To the extent it is deemed to allege facts, those allegations are denied.
14. Paragraph 14 of the Complaint states a conclusion of law that requires no answer. To the extent it is deemed to allege facts, those allegations are denied.
15. Paragraph 15 states a conclusion of law that requires no answer. To the extent it is deemed to allege facts, those allegations are denied.
16. Paragraph 16 of the Complaint states a conclusion of law that requires no answer. To the extent it is deemed to allege facts, those allegations are denied.
17. Paragraph 17 states a conclusion of law that requires no answer. To the extent it is deemed to allege facts, those allegations are denied.

III. Findings of Fact and Conclusion of Law

18. FHW incorporates and re-alleges its responses to paragraphs 1 through 17 of the Complaint.
19. The allegations contained in paragraph 19 are denied as drafted. FHW was hired and therefore authorized by the DOH to demolish some residential and commercial structures located in the blocks 195, 196 and 197 of the Project.
20. Paragraph 20 of the Complaint states a conclusion of law that requires no answer. To the extent it is deemed to allege facts, those allegations are denied.
21. The allegations contained in paragraph 21 of the Complaint are denied as drafted. FHW incorporates and re-alleges its response to paragraph 19.
22. Paragraph 22 of the Complaint states a conclusion of law that requires no answer. To the extent it is deemed to allege facts, those allegations are denied.
23. FHW denies to have hired in 2003 any surveyor to conduct an asbestos assessment at the Project. FHW lacks adequate knowledge to determine the truth or falsity of the rest of the allegations contained in paragraph 23 of the Complaint. Hence, they are deemed denied.

24. FHW lacks adequate knowledge to determine the truth or falsity of the allegations contained in paragraph 24 of the Complaint. Hence, they are deemed denied. FHW affirmatively alleges that EPA has not given FHW any notice of violation in relation to the activities of demolition of housing and commercial structures in the Project.
25. FHW lacks adequate knowledge to determine the truth or falsity of the allegations contained in paragraph 25 of the Complaint. Hence, they are deemed denied. In the alternative, to the extent the allegations state a conclusion of law that requires no answer.
26. FHW lacks adequate knowledge to determine the truth or falsity of the allegations contained in paragraph 26 of the Complaint. Hence, they are deemed denied.
27. FHW lacks adequate knowledge to determine the truth or falsity of the allegations contained in paragraph 27 of the Complaint. Hence, they are deemed denied.
28. FHW lacks adequate knowledge to determine the truth or falsity of the allegations contained in paragraph 28 of the Complaint. Hence, they are deemed denied.
29. The allegations contained in the paragraph 29 of the Complaint are denied for lack of sufficient information to form a belief as to its veracity. FHW alleges that it has complied at every moment with all federal regulations regarding the alleged demolition activities in the Project. FHW affirmatively alleges that, in accordance with the 40 C.F.R. section 61.145(b), EPA was duly notified on September 8, 2005, of the demolition of building 196-38 by Notification of Demolition and Renovation, more than ten (10) days before the said activity began.

Furthermore, FHW affirmatively alleges that it did not demolish the building identified as De Diego #303 located in block 195 of the Project, also known as Mimiya Hospital. FHW has never owned the building nor did it participate at any moment and in any way as operator of the renovation or demolition activities performed to it. Therefore, FHW had no obligation to submit a Notification of Demolition and Renovation for demolition of said structure.

COUNT

30. Paragraph 30 states a conclusion of law that requires no answer. To the extent it is deemed to allege facts, those allegations are denied. FHW also incorporates and re-alleges its response to paragraph 29 of the Complaint.

Proposed Civil Penalty

The entire *Proposed Civil Penalty* section of the Complaint states conclusions of law that require no answer. The allegations are otherwise denied.

1. Gravity Component

The entire *Gravity Component* section of the Complaint states conclusions of law that require no answer. To the extent it is deemed to allege facts, those allegations are denied.

A. Count 1:

The entire *Count 1* subsection states conclusions of law that require no answer. To the extent it is deemed to allege facts, those allegations are denied.

B. Size of the Violator:

The entire *Size of Violator* subsection of the Complaint states conclusions of law that require no answer. To the extent it is deemed to allege facts, those allegations are denied.

C. Inflationary Adjustment Rule:

The entire *Inflationary Adjustment Rule* subsection of the Complaint states conclusions of law that require no answer. To the extent it is deemed to allege facts, those allegations are denied.

2. Economical Benefit

The entire *Economical Benefit* section of the Complaint states conclusions of law that require no answer. To the extent it is deemed to allege facts, those allegations are denied.

IV. Notice of Opportunity to Request a Hearing

The *Notice of Opportunity to Request a Hearing* section of the Complaint states conclusions of law that require no answer. The allegations are otherwise denied.

Settlement Conference

FHA will formally request a conference with the EPA to discuss the alleged violations in the Complaint. To the extent this section is deemed to allege facts, those allegations are denied. This request constitutes neither an admission nor a denial of the matters alleged in the Complaint.

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

The entire *Payment of Penalty in lieu of Answer, Hearing and/or Settlement* section of the Complaint states conclusions of law that require no answer. To the extent it is deemed to allege facts, those allegations are denied.

AFFIRMATIVE DEFENSES

FHW states the following defenses, and expressly reserves the right to amend this Answer to raise additional defenses as may rise during the course of the discovery and information exchange in this matter.

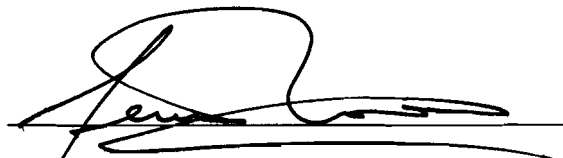
1. The EPA fails to join all indispensable parties to the allegations contained in the Complaint.
2. The EPA is barred, in whole or in part, from asserting the claims it purports to allege in the Complaint under the doctrine of laches.
3. EPA has failed to state a claim in the Complaint upon which a relief may be granted.
4. The EPA's claims for relief are barred in whole or in part by the applicable statutes of limitations.
5. The allegations contained in the Complaint constitute agency action that is arbitrary and capricious, and an abuse of discretion under the Administrative Procedure Act.

6. The Complaint's proposed penalty of \$25,790.00 is not supported by the allegations contained in the Complaint; it is excessive and inappropriate considering the alleged nature, circumstances, extent and gravity of the alleged violation.
7. FHW has complied at every moment with all state and federal regulations regarding the alleged demolition activities in the Project.
8. The allegations contained in the Complaint are vague and lack of clarity.
9. The Complaint does not claim in which specific areas, parcels and/or structures of the Project the alleged asbestos containing materials ("ACM") where found, nor does it specifically state which quantities of the alleged ACM where found in the Project for which a Notification of Demolition and Removal should be required, in accordance with the 40 C.F.R. Section 61.145. Furthermore, EPA does not allege in the Complaint that any ACM was found in the Project during and/or after the Department's hiring of FHW for the demolition of some of the housing and commercial structures.
10. Any responsive allegation and/or affirmative defense contained in this Answer is expressly re-alleged and incorporated herein by reference.
11. FHW is not liable for proposed penalty of \$25,790.00 assessed by the EPA in the Complaint.

OPPOSITION TO PROPOSED PENALTY AND REQUEST FOR HEARING

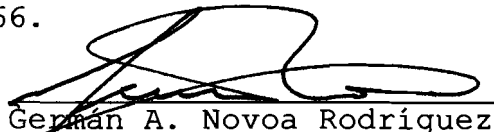
FHW HERE BY denies that it committed the violation alleged in the Complaint, opposes to the proposed penalty, and respectfully requests a hearing before an administrative judge: to contest all the material facts set forth in the Complaint with the exception of the admitted factual allegations, in accordance with the Administrative Procedure Act, 5 U.S.C. Section 552, *et seq.*: to contend that the amount proposed in the Complaint is inappropriate; and, to seek a judgment with respect to the law applicable to this matter.

RESPECTFULLY SUBMITTED, this 19th day of October 2007.



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I HEREBY CERTIFY that on this 19th day of October, 2007, I caused a true and correct copy of the above and foregoing document to be served by certified mail, return receipt requested, on the following: **Mariacté Correa-Cestero, Esq.**, O'Neill & Borges, American International Plaza, 250 Muñoz Rivera Avenue, Suite 800 San Juan, Puerto Rico 00918-1813; and, **Héctor Vélez, Esq.**, Assistant 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. I also certify that on this same date I caused an original of the foregoing document and its copy and an original and one copy by 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.



Germán A. Novoa Rodríguez