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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
CARIBBEAN ENVIRONMENTAL PROTECTION DIVISION
CITY VIEW PLAZA, SUITE 7000
#48 165 RD. KM 1.2
GUAYNABO, PR 00968-8069

VIA EMAIL & OVERNIGHT MAIL

Ms. Helena Wooden-Aguilar
Assistant Director
External Affairs
Office of Civil Rights
USEPA Headquarters
Ariel Rios Building
1200 Pennsylvania Avenue, N. W.
Mail Code: 1201A
Washington, DC 20460

Re: Title VI Complaint Received from (b)(6) Privacy
Representing the La Montalva, Ensenada Community,
Guanica, Puerto Rico

Dear Ms. Wooden-Aguilar:

The purpose of this letter is to refer to the Office of Civil Rights for your review and action, should you deem appropriate, a Title VI Complaint filed by (b)(6) Privacy, on behalf of the La Montalva Ensenada Community (the "Community"), in Guanica, Puerto Rico (the "Complaint").

The Community sent a letter dated June 24, 2011, to EPA Region 2's Caribbean Environmental Protection Division (CEPD). In the letter (b)(6) Privacy alleges that the Puerto Rico Aqueduct and Sewer Authority ("PRASA") and Costa Mar Construction, S.E. ("CMC") used discriminatory practices regarding the EPA-funded and approved Pollution Control Project C-72-105-02, for the construction of a Sanitary Sewer System (the "Project") in La Montalva, Ensenada Ward, in the Municipality of Guánica, Puerto Rico.

The delay in referring the Complaint to OCR occurred because the CEPD did not realize (b)(6) Privacy letter was a Title VI complaint. On or about March 15, 2012, after consulting with Phyllis Feinmark, Acting Deputy Regional Counsel, and Melva J. Hayden, Regional Title VI Coordinator in the Office of Regional Counsel, it was determined that (b)(6) Privacy letter satisfies the requirements of a Title VI complaint, pursuant to 40. C.F.R. § 7.120. The letter is a writing. It

alleges a discriminatory action taken by PRASA, a Recipient of federal funding, which occurred within the 180 days statute of limitations.¹

Background Information:

Mr. (b)(6) Privacy alleges in his Complaint that PRASA and CMC used discriminatory practices when they did not connect approximately eight residences, including (b)(6) Privacy residence, to the Sanitary Sewer System constructed in Ensenada Ward. The Complaint also states that CMC did not conduct a site survey for the Project. As a result of this, the Project was constructed without taking into account that in La Montalva there is a storm sewer channel between (b)(6) Privacy and residences parallel to the channel. The residences along the sewer channel were not connected to the sewer system, since it was not cost effective. Mr. (b)(6) Privacy indicates that the Community presented a possible solution to PRASA and CMC, that would have allowed their residences to be connected to the sewer system. However, they were always told it was not cost-effective.

Mr. (b)(6) Privacy alleges further that the Project received \$14,453,000 in federal funding, which was not used equitably to benefit the Community. He adds that the value of their residences will decrease, and that by not being connected to a sewer system, Mr. (b)(6) Privacy and the affected residences, could be penalized in the future by the Puerto Rico Environmental Quality Board ("PREQB"), because they did not meet federal regulations.

In summary, Mr. (b)(6) Privacy requests that EPA investigate this discriminatory action by PRASA and CMC with respect to the disparate impact this project has had and will have on the La Montalvo and Ensenada Community.

If your office needs additional information concerning the (b)(6) Privacy Complaint, please contact Lourdes del Carmen Rodriguez, Assistant Regional Counsel, of my staff, at (787) 977-5819. We thank you in advance for your assistance in this matter.

Sincerely,



Jose Font, Acting Director

cc: Rafael Deleon, Director - EPA Office of Civil Rights

Enclosure

¹ The initial planning for the sewer project dated back to 2009. But, upon further reading, (b)(6) Privacy, (b)(7)(C) letter alleges that between May 10 - July 10, 2011, Costa Mar determined the project to be completed and turned it back over to PRASA. This time frame could put the discriminatory action within or close to the 180 days of the discriminatory action and the date the complaint was filed with the EPA Region 2 CEPD.

bcc: G. Pavlou, Deputy Regional Administrator
D. Vizian, Associate Regional Administrator
E. Schaaf, Regional Counsel
P. Feinmark, Acting Deputy Regional Counsel
M.Hayden, ORC/Region 2 TVI Coordinator
T. Wesley, ORA/Region 2 EJ Coordinator

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Date: June 24, 2011

ATTN: JAZMIN LAGUER, Enforcement Unit

REF PROJECT #: C-72-105-02 EPA
AAA PROJECT #: PMC-4-29-5016

Ms. Jazmin Laguer,

I am writing this document as a recourse based on the orientation you provided me on November 15, 2010 at approx. 11:25am, via telephone. I called your office because of discrepancies noted in the EPA approved Pollution Control Project Number C-72-105-02, Guanica Sanitary Sewer System for Ensenada Community, Guanica, Puerto Rico.

We the "Community" (neighbors of La Montalva, Ensenada) would like to start the "**Complaint**" process with your agency/and or other federal agencies, including the Inspection General office (I.G.), because of the discriminatory and non-compliance with EPA approved project requirements by the **Puerto Rico Aqueduct and Sewer Authority** (from here on known as AAA) and **Costa Mar Construction, S.E.** By this means we the "Community" are requesting an investigation into this project by AAA.

AAA has/is employing *discriminatory practices* in this project by leaving out approximately 7-8 residences that **WILL NOT** be connected to the sewer system in the [REDACTED] La Montalva, Ensenada area, where I live. This is not to mention many other residences which also will not be connected to the sewer services.

I would like to point out that this project was probably approved by AAA and passed on to Costa Mar Construction, S.E. **without conducting a site survey**. Engineers from AAA and Costa Mar Construction S.E., apparently accepted the project without taking into account, before initiating the project, that in La Montalva there is a STORM SEWER CHANNEL between the road [REDACTED] and residences parallel to the channel.

Apparently, its AAA who has refused to comply with the connectivity of our residences, saying we would not be connected because there is no solution to the problem.

We have in our possession documents, obtained by a local member of the Municipal Legislature, that clearly shows the discriminatory actions by AAA, such as an e-mail document sent by **CDM Caribbean Engineers, PSC**, Ing. José L. Capre Martínez and Ing. Angel Feliberty, also of CDM. Reference is made by Ing. Angel Feliberty on communications from December 10, 2009, Feliberty informs that "Ing. Cancel (Carlos.Cancel@acueductospr.com) (PRASA) through Ing. Capre (CDM), indicated that

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the residences along the sewer channel on [REDACTED] (Sector Montalva) will be without sewer connection being that the work to be performed in the sewer connections are not cost effective." Close matter.

In this same e-mail Ing. [REDACTED] indicates that the costs for the sewer connections to these residences along the storm sewer channel for 9 units (residences) would cost approximately \$133,000.00 or \$14,700.00 per residence. He states that even though Cancel (ref. Ing. [REDACTED] of AAA) had revealed in advance that he did not want to connect these residences, and they should confirm these instructions.

Also with the above e-mail are documents from that show that a solution to the connectivity problem of our residences along the SEWER STORM CHANNEL were presented by CSA Architects and Engineers, LLP on July 23, 2009. This document had a two page shop drawing of a suggested solution for the installation of the sewer pipes leading into the residences that are along the SEWER STORM CHANNEL.

In addition, in various conversations with Costa Mar Construction engineers by some of our neighbors and myself, we were told that they could not go under the SEWER STORM CHANNEL, because the depth would be below the level of the pipes they were placing. We responded that the height of the SEWER STORM CHANNEL was equal or less in depth and that it was feasible to go under the channel and into our backyards, where we would assume the connections from our septic tanks.

Why are we refuting their allegations as to why they cannot connect us to this sewer system?

- From the moment the project was initiated in our community, we noticed that they were not taking into account the SEWER STORM CHANNEL, and how were they going to connect our residences to this sewer system.
- This being a Federally funded project under federal environmental law, they had to comply with all regulations, including knowing ahead of time that a sewer storm channel existed.
- AAA will charge us down the line, even though we are not connected. We know how local government agencies operate. There are no guarantees that this will not happen. Why should we pay an additional amount for a service that we won't have.
- Our residences will depreciate in value. If in the future any of the residents decides to sell his house, we will not get a fair market value because our residences lack sewer system.
- Those residences not connected to the sewer system can be penalized in the future by the local government or by the local **Puerto Rico Environmental Quality Board (JCA – Junta de Calidad Ambiental**, from here on known as JCA) or even by EPA, for failure to comply with environmental requirements and in non-compliance with Federal laws.
- AAA or local authorities can later demand from the residents not connected that we assume all costs for connection into the sewer system.

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We urge you (EPA) to look into this matter and investigate the issues, but not only in this project in Ensenada, but many other sewer projects approved by EPA under the National Pollutant Discharge Elimination System (NPDES) permit program (Construction General Permit # PRR100000) to AAA in Puerto Rico. EPA is the permitting authority for these types of projects and needs to play a more active role in monitoring, auditing and inspection process to make sure that compliance is adhered to by AAA according to the Clean Water Act (33USC 1251 (1972)).

In this project we have not seen the involvement of the local EPA, nor the assigned Municipal person responsible for the oversight of the project, to ensure that the project comply with federal environmental laws and regulations. If not the Federal Agencies, then who can we rely on to defend our communities from being discriminated in projects like these?

Unfortunately, Puerto Rico has been in the limelight of U.S. and international news for major corruption cases, including public corruption. Most of the citizens in Puerto Rico are not cognizant to these issues and simply they accept these types of projects in their communities without asking questions.

In this particular case, its absurd and a mockery to our intelligence as 21st century citizens, as if we have no education. Some of us in our community are professionals and we know what we are talking about.

From the posted visual billboards on this project, it shows that Federal funding for this project is \$14,453,040.00. We, as United States citizens demand that these funds be used for the purpose it was granted in an effective and satisfactory manner in benefit of our community. Not only in this project, but in other projects in the Ensenada area, AAA seems to be circumventing compliance in fulfilling the projects purpose in order to save money, as mentioned in the e-mail in question on page one of this document.

In taking your advise on this issue, on **November 16, 2010** we were granted a hearing at the **Guanica Municipal Legislature** to get the municipal government involved in this situation, since they are suppose to monitor all projects taking place within their municipality in benefit of its communities.

In this assembly, myself and other neighbors we were able to voice our preoccupation of the neighbors and community and requested the assistance of the Mayor and Municipal Legislature to look into this issue which they (Municipal Government) will have to deal with in the future.

The President of the Municipal Legislature encouraged us to get others involved. We suggested why doesn't the Municipal Legislature make arrangements for an assembly an invite PR government environmental agency and EPA representatives, so they can hear the citizens and their concerns in this project.

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To date, we have not heard anything nor will we hear anything from the President of the Municipal Legislature (due to politics), nor a meeting with representatives from JCA, EPA, etc., with the community to further discuss this issue.

This project was initiated in our community of La Montalva (road (b)(6) Privacy, (b)(7)(C) Ensenada in 2009. The company Costa Mar Construction, S.E., is in charge of this project.

Through out this project we (neighbors) have made contact (via telephone and personal) with Costa Mar Construction, S.E., engineers, personnel, and at meetings set by AAA in the Ensenada community and personal contact with AAA administrators and engineers.

During the month of May 2011, my neighbor has made contact with the AAA regional director in Ponce, who only answered by telephone, and again was told that it was not cost effective to connect us to the sewer system.

Based on other attempts in getting an answer from AAA, earlier this month (June) my neighbor sent a letter to the AAA Director in San Juan requesting a meeting to discuss and get an explanation why it is not cost-effective for AAA to connect the 7-8 residences that have been left out from being connected to the sewer system. To date we have not received an answer.

As of May 10, 2011, the contracting company, Costa Mar Construction, communicated via a flyer, that they would be applying asphalt to the streets in La Montalva and the town area of Ensenada. Through other contacts, we were told that Costa Mar Construction was turning over the project as finished to AAA, within a 2-month period (May 10-July 10, 2011).

We are willing to take legal action against AAA and the contracting company in the federal forum, to stop this discriminatory action against our community.

Just put yourself in our position, and you will understand our concern.

Thank you for your time, and we appreciated your assistance in this matter.
Hope to hear from you shortly.

Sincerely,

(b)(6) Privacy, (b)(7)(C) Enf. Privacy

ENSENADA, P.R. 00647

(b)(6) Privacy, (b)(7)(C) Enf. Privacy