



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

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REG.11  
2008 SEP 25 AM 8:49  
REGIONAL HEARING  
CLERK

**Certified Mail, Return Receipt Requested**

September 25, 2008

Daniel Fernandez  
Ferrovia Agroman SA  
Ave. Ponce de Leon 1250  
San Jose Building, Suite 711  
Santurce, Puerto Rico 00907

RE: In the Matter of Ferrovia Agroman, SA  
Docket No. CWA-02-2008-3312

Dear Daniel:

Enclosed is a Consent Agreement and Final Order (CA/FO) in the above-referenced matter. This CA/FO was fully executed on September 24, 2008. Please note that the penalty of \$27,500 is required to be paid in full and received by EPA no later than forty-five (45) days from the date of final order, as set forth in paragraph 11 of the CA/FO.

Please do not hesitate to contact me should you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "Diane".

Diane T. Gomes, Esq.

Enclosure

cc: Karen Maples  
Regional Hearing Clerk (w/enclosures)

**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
Region 2**

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REGION 2  
2008 SEP 25 AM 8:14 9  
REGIONAL HEARING

**IN THE MATTER OF:**

Ferrovia Agroman SA  
Ponce de Leon 1250  
San Jose Building  
Santurce, Puerto Rico 00907,

Respondent.

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

**CONSENT AGREEMENT  
AND  
FINAL ORDER**

DOCKET NO. CWA-02-2008-3312

NPDES TRACKING NO. PRR10B424

**CONSENT AGREEMENT AND ORDER**

Complainant, the United States Environmental Protection Agency ("EPA"), having issued the Complaint herein on April 15, 2008, against Respondent, Ferrovia Agroman SA ("Respondent"), and

Complainant and Respondent having agreed that settlement of this matter is in the public interest, and that entry of this Consent Agreement and Final Order without further litigation is the most appropriate means of resolving this matter;

NOW, THEREFORE, before the taking of any testimony, upon the pleadings, without adjudication of any issue of fact or law, and upon consent and agreement of the Parties, it is hereby agreed, and ordered as follows:

**I. PRELIMINARY STATEMENT**

1. EPA initiated this proceeding for the assessment of a civil penalty, pursuant to Section 309 of the Clean Water Act, 33 U.S.C. § 1319.
2. The Complaint alleges that Respondent failed to comply with the terms of an NPDES Permit, No. PRR100000, which is the duly issued NPDES permit for Respondent's

construction project located at PR-10, Section 1A, PR-123, Km 50.9, Utuado, Puerto Rico (the "Site").

3. EPA notified the public regarding this action and offered an opportunity to confer with EPA on the proposed penalty assessment, pursuant to 40 CFR Part 22.
4. This action was public noticed on May 5, 2008. The public comment period closed on June 5, 2008. No public comment was received.
5. The parties reached settlement of this matter before the filing of an Answer or a hearing in this matter.
6. This Consent Agreement and Final Order shall apply to and be binding upon Respondent, its officers, directors, employees, successors and assigns, including, but not limited to, subsequent purchasers.
7. Respondent stipulates that EPA has jurisdiction over the subject matter alleged in the Complaint and that the Complaint states a claim upon which relief can be granted against Respondent. Respondent waives any defenses it might have as to jurisdiction and venue, and, without admitting or denying the factual or legal allegations contained in the Complaint, consents to the terms of this Consent Agreement and Final Order.
8. Respondent hereby waives its right to a judicial or administrative hearing or appeal on any issue of law or fact set forth in the Complaint.

## **II. TERMS OF SETTLEMENT**

9. Pursuant to § 309(g) of the Clean Water Act, 33 U.S.C. § 1319(g), the nature of the violations, and other relevant factors, including the good faith cooperation of the Respondent and its compliance efforts, EPA has determined that an appropriate civil penalty to settle this action is in the amount of TWENTY-SEVEN THOUSAND FIVE HUNDRED (\$27,500.00) DOLLARS.
10. For purposes of settlement, Respondent consents to the issuance of this Consent Agreement and consents to the payment of the civil penalty cited in the foregoing Paragraph.

### **II. A. Penalty**

11. No later than forty-five (45) calendar days after the date of signature on the Final Order (at the end of this document), Respondent shall pay the penalty of TWENTY-

SEVEN THOUSAND FIVE HUNDRED (\$27,500.00) DOLLARS by cashier's or certified check, payable to the "Treasurer of the United States of America", identified with a notation of the name and docket number of this case, set forth in the caption on the first page of this document. This check shall be mailed to:

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000

Respondents shall also send copies of this payment to each of the following:

Henry Mazzucca, P.E., Chief  
Compliance Section  
Water Compliance Branch  
U.S. EPA, Region 2  
290 Broadway, 20<sup>th</sup> Floor  
New York, NY 10007

and

Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 2  
290 Broadway, 16<sup>th</sup> Floor  
New York, New York 10007

Payment must be received at the above address no later than forty-five (45) calendar days after the date of signature of the Final Order (at the end of this document). The date by which payment must be received shall hereafter be referred to as the "due date."

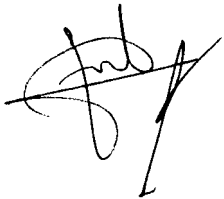
- a. Failure to pay the penalty in full according to the above provisions will result in a referral of this matter to the United States Department of Justice or the United States Department of the Treasury for collection;
- b. Further, if the payment is not received on or before the due date, interest will be assessed at the annual rate established by the Secretary of Treasury pursuant to the Debt Collection Act, 31 U.S.C. § 3717, on the overdue amount from the due date through the date of payment. In addition, a late payment handling charge of \$15.00 will be assessed for each 30 day period (or any portion thereof) following the due date in which the balance remains unpaid. A 6% per annum penalty also will be applied on any principal amount not paid within 90 days of the due date;
- c. In addition, pursuant to Section 309(g)(9) of the Clean Water Act, 33 U.S.C. § 1319(g)(9), if payment is not received by the due date, a quarterly nonpayment penalty will be imposed for each calendar quarter during which such nonpayment

persists. The quarterly nonpayment penalty is 20% of the aggregate amount of penalties and quarterly nonpayment penalties which are unpaid as of the beginning of such quarter;

- d. Respondent also may be required to pay attorneys fees and costs for collection proceedings in connection with nonpayment.
12. The penalty to be paid is a civil penalty assessed by the EPA and shall not be deductible from the Respondent's federal or state taxes.

### II. B. General Provisions

13. Respondent shall submit all notices and reports required by this Consent Agreement and Final Order by first class mail to:



Henry Mazzucca, P.E., Chief  
Compliance Section  
Water Compliance Branch  
U.S. EPA, Region 2  
290 Broadway, 20<sup>th</sup> Floor  
New York, NY 10007

14. The Respondent waives any right it may have pursuant to 40 C.F.R. § 22.8 to be present during discussions with or to be served with and to reply to any memorandum or communication addressed to the Director or the Regional Administrator where the purpose of such discussion, memorandum, or communication is to discuss a proposed settlement of this matter or to recommend that such official accept this Consent Agreement and issue the accompanying Final Order.
15. Nothing in this agreement shall be construed as prohibiting, altering or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this agreement or of the statutes and regulations upon which this agreement is based, or for Respondent's violation of any applicable provision of law.
16. This Consent Agreement and Order shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit, nor shall it be construed to constitute EPA approval of the equipment or technology installed by Respondent, if any, in connection with the SEP undertaken pursuant to this Agreement.
17. This Consent Agreement and Final Order constitutes a settlement by EPA of all claims for civil penalties pursuant to the Clean Water Act for the violations alleged in the Complaint. Nothing in this Consent Agreement and Final Order is intended to nor shall be construed to operate in any way to resolve any criminal liability of the Respondent.

Compliance with this Consent Agreement and Final Order shall not be a defense to any actions subsequently commenced pursuant to Federal laws and regulations administered by EPA, and it is the responsibility of Respondent to comply with such laws and regulations.

18. Each undersigned representative of the parties to this Consent Agreement certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this Consent Agreement and to execute and legally bind that party to it.
19. Each party shall bear its own costs and attorneys fees in connection with the action resolved by this Consent Agreement and Order.

RESPONDENT:

BY: 

Manuel Costa  
General Manager, Puerto Rico  
Ferrovial Agroman SA  
Ave. Ponce de Leon 1250  
San Jose Building, Suite 711  
Santurce, Puerto Rico 00907

DATE: Sept. 17. 2008

COMPLAINANT:

BY: 

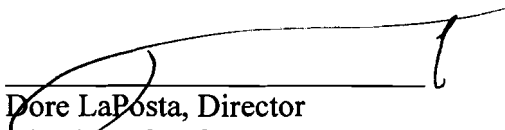
Dore LaPosta, Director  
Division of Enforcement and  
Compliance Assistance  
U.S. EPA, Region 2  
290 Broadway, 21<sup>st</sup> Floor  
New York, New York 10007-1866

DATE: September 24 2008

**III. FINAL ORDER**

The Director of the Division of Enforcement and Compliance Assistant, U.S. Environmental Protection Agency Region 2, ratifies the foregoing Consent Agreement. The Agreement entered into by the parties is hereby approved, incorporated herein, and issued as an Order. The effective date of this Order shall be the date of filing with the Regional Hearing Clerk, U.S. EPA Region 2, New York, NY.

SEPTEMBER 24, 2003  
Date

  
Dore LaPosta, Director  
Division of Enforcement and  
Compliance Assistance  
U.S. EPA, Region 2  
290 Broadway, 21<sup>st</sup> Floor  
New York, New York 10007-1866

