

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

In the Matter of:

Martex Development, S.E.
P.O. Box 3402,
Carolina, Puerto Rico 00984

RESPONDENT

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

CONSENT AGREEMENT
AND FINAL ORDER

DOCKET NUMBER
CWA-02-2011-3359

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II
2012 APR -14 A 10:35
REGIONAL HEARING
CLERK

Complainant, the United States Environmental Protection Agency (EPA), having issued the Complaint herein on September 26, 2011, against Martex Development, S.E. (Respondent), and

Complainant and Respondent (collectively, the Parties) having agreed that settlement of this matter is in the public interest, and that entry of this Consent Agreement and Final Order (CA/FO) 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(g)(2)(A) of the Clean Water Act (CWA), 33 U.S.C. § 1319(g)(2)(A).
2. On September 26, 2011, EPA issued a Complaint against Respondent alleging that it failed to comply with certain limitations and/or conditions established in National Pollutant Discharge Elimination System (NPDES) permit number PRR10BT64 of the Villas de la Central Victoria Housing Development (the "Project") in violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a)

3. The Complaint was based on a Compliance Evaluation Inspection of the Project that EPA conducted on February 22, 2011, along with a review of Respondent's files. EPA found that Respondent had: (a) failed to apply for NPDES permit coverage prior to commencement of construction activities; (b) allowed illegal discharges of pollutants from its Project without permit coverage; (c) failed to develop a complete and adequate Storm Water Pollution Prevention Plan (SWPPP); (d) failed to design, implement or maintain best management practices; and (e) failed to inspect and/or document inspections.
4. On October 26, 2011, Respondent submitted its Answer to the Complaint, raising several affirmative defenses.
5. Since November, 2011, the Parties worked together in order reach a prompt, amicable resolution to this matter.
6. On December 13, 2011, the Parties reached an agreement, dispositive of all matters asserted in the Complaint.
7. Respondent certified that, as of the date of execution of this CA/FO, it is in compliance with all of the terms and conditions of its NPDES permit and with all other relevant requirements of the Clean Water Act.
8. EPA notified the Commonwealth of Puerto Rico regarding this action and offered an opportunity for the Commonwealth of Puerto Rico to confer with EPA on the proposed penalty assessment, pursuant to 40 C.F.R. Part 22.
9. The Complaint was public noticed. No public comment was received.

II. TERMS OF THE SETTLEMENT

10. This CA/FO shall apply to and be binding upon Respondent, its officers, directors, employees, successors and assigns, including, but not limited to, subsequent purchasers.
11. 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.
12. 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 CA/FO.
13. 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.

III. PAYMENT OF PENALTY

14. Pursuant to Section 309(g) of the Clean Water Act, 33 U.S.C. § 1319(g), based upon the nature of the violations, EPA has determined that an appropriate civil penalty to settle this action is in the amount of NINETEEN THOUSAND DOLLARS (\$19,000.00).
15. For purposes of settlement, Respondent consents to the issuance of this CA/FO, to the payment of the civil penalty cited in the foregoing paragraph.
16. No later than forty-five (45) calendar days after the date signature on the Final Order (at the end of this document), Respondent shall pay the penalty, NINETEEN THOUSAND DOLLARS (\$19,000.00), 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.

CHECK PAYMENTS:

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

WIRE TRANSFERS:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045.

Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency."

OVERNIGHT MAIL:

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
ATTN Box 979077
St. Louis, MO 63101
Contact: Natalie Pearson
Telephone Number: (314) 418-4087.

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

Jaime Lopez
Environmental Scientist
Multimedia Permits and Compliance Branch
Caribbean Environmental Protection Agency
U.S. Environmental Protection Agency, Region 2
City View Plaza II, Suite 7000
48, Road 165, Km. 1.2
Guaynabo, PR 00968-8069

Lourdes del Carmen Rodriguez, Esq.
Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 2
City View Plaza II, Suite 7000
48, Road 165, Km. 1.2
Guaynabo, PR 00968-8069
Fax number: (787) 729-7748,

and

Karen Maples
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th Floor
New York, New York 10007.

17. 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 payments are 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 Act, 33 U.S.C. § 1319(g)(9), if payments are 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 may also be required to pay attorneys fees and costs for collection proceedings in connection with nonpayment.
18. 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.
19. Except as provided in paragraph 16 above, in this section (and except as the parties may in writing agree to otherwise), all documentation, information, notices and reports required to be submitted in accordance with the terms and conditions of this CAFO shall be sent by first class mail or its equivalent to each of the following:

FOR COMPLAINANT:

Jaime Lopez
Environmental Engineer
Multimedia Permits and Compliance Branch
Caribbean Environmental Protection Division
U.S. Environmental Protection Agency, R2
City View Plaza II, Suite 7000
48, Road 165, Km. 1.2
Guaynabo, PR 00968-8069

and

Lourdes del Carmen Rodriguez, Esq.
Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 2
Office of Regional Counsel—Caribbean Team
City View Plaza II, Suite 7000
48, Road 165, Km. 1.2
Guaynabo, PR 00968-8069

FOR RESPONDENT:

Rafael Rivera Yankovich
Toro, Mullet, Rivera, Sifre, P.S.C.
PO Box 195383
San Juan, Puerto Rico 00919-5383
(787)751-8999
rryanko@tcmrslaw.com


V. GENERAL PROVISIONS

20. This CA/FO is being voluntarily entered into by the parties in full and final settlement of Respondent's liability for federal civil penalties for the violations and facts alleged in the Complaint and this CA/FO.
21. Respondent has read the Consent Agreement, understands its terms, finds it to be reasonable and consents to its issuance and its terms. Respondent consents to the issuance of the accompanying Final Order. Respondent agrees that all terms of settlement are set forth herein.
22. Respondent explicitly and knowingly consents to the assessment of the civil penalty as set forth in this Consent Agreement and agrees to pay the penalty in accordance with the terms of this Consent Agreement.
23. In computing any period of time under this Consent Agreement, where the last day would fall on a Saturday, Sunday, federal or Commonwealth holiday, the period shall run until the close of business of the next working day.
24. The provisions of this Consent Agreement shall be binding upon Respondent, its officials, authorized representatives and successors or assigns, including but not limited to, subsequent purchasers.
25. Respondent knowingly and explicitly waives its right under Section 309(g)(2), (8) of the Act, 33 U.S.C. § 1319(g)(2), (8), to request or to seek any hearing on or judicial review of any of the allegations herein asserted, on this Consent Agreement or the Findings of Fact and Conclusions of Law herein, or on the accompanying Final Order.
26. 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 Regional Administrator of EPA, or the Director of CEPD 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.

27. Issuance of the CA/FO does not constitute a waiver by EPA of its right to enforce the substantive legal requirements underlying this penalty assessment, either administratively or judicially pursuant to Section 309(a)–(c) of the Act, 33 U.S.C. §§ 1319(a)–(c) for violations that occur subsequent to the date of this Final Order. Pursuant to Section 309(g)(7) of the Act, 33 U.S.C. § 1319(g)(7), issuance or compliance with this CA/FO does not waive, extinguish or otherwise affect Respondent’s obligation to comply with all applicable requirements of the Act, of regulations promulgated thereunder, and of any legal order or permit issued thereunder.
28. Each undersigned signatory to this Consent Agreement certifies that he or she is duly and fully authorized to enter into and ratify this Consent Agreement and all the terms and conditions set forth in this Consent Agreement.
29. Each party hereto agrees to bear its own costs and fees in this matter.
30. Respondent consents to service upon Respondent by a copy of the CA/FO by an EPA employee other than the Regional Hearing Clerk.
31. In any collection action, the validity, amount, and appropriateness of the penalty and of this CA/FO shall not be subject to review.

FOR RESPONDENT:

BY: 
Authorized Signature
Counsel for Respondent
Martex Development, S.E.

NAME: Rafael Rivera Yankovich, Esq.
Toro, Mullet, Rivera, Sifre, P.S.C.

TITLE: Counsel for Respondent

DATE: 16 March 2012

FOR COMPLAINANT:

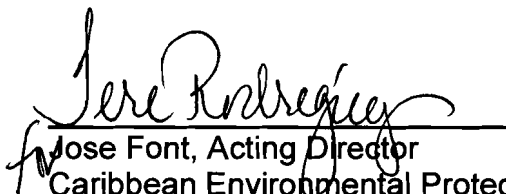
A handwritten signature in black ink, appearing to read "Jose Font", written over a horizontal line. The signature is fluid and cursive.

for Jose Font, Acting Director
Caribbean Environmental Protection Division
U.S. Environmental Protection Agency, R2
City View Plaza II, Suite 7000
48, Road 165, Km. 1.2
Guaynabo, PR 00968-8069

FINAL ORDER

The Division Director 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. Environmental Protection Agency, Region 2, New York, New York.

DATED: 04/02/2012

A handwritten signature in black ink, appearing to read "Jose Font", written over a horizontal line.

Jose Font, Acting Director
Caribbean Environmental Protection Division
U.S. Environmental Protection Agency, R2
City View Plaza II, Suite 7000
48, Road 165, Km. 1.2
Guaynabo, PR 00968-8069

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 2

In The Matter of

Martex Development, S.E.

Respondent

DOCKET NO. CWA-02-2011-3359

CERTIFICATE OF SERVICE

I certify that, on the date noted below, I served the foregoing fully executed Consent Agreement and Final Order, bearing the above-referenced docket number, in the following manner.

Copy by Certified Mail

Return Receipt Requested:

Rafael Rivera Yankovich, Esq.
Toro, Mullet, Rivera, Sifre, P.S.C.
PO Box 195383
San Juan, Puerto Rico 00919-5383

Original and One Copy
By Federal Express:

Regional Hearing Clerk
U.S. Environmental Protection Agency
290 Broadway, 16th floor
New York, New York 10007-1866

Date: 4/3/2012



ORC/CT Administrative Assistant