

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2

U.S. ENVIRONMENTAL  
PROTECTION AGENCY REGION 2

2009 AUG - 7 AM 9:45

REGIONAL HEARING  
CLERK

IN THE MATTER OF:

WYNDHAM EL CONQUISTADOR  
RESORT AND COUNTRY CLUB  
El Conquistador #1000  
Fajardo, Puerto Rico 00738

CONSENT AGREEMENT  
AND  
FINAL ORDER

DOCKET NUMBER  
CWA- 02- 2007- 3409

**RESPONDENT**

**CONSENT AGREEMENT AND FINAL ORDER**

This Consent Agreement and Final Order ("CA/FO"), dated as of the date set forth below, by and between the United States Environmental Protection Agency (indistinctly, "EPA" or "Complainant") and "El Conquistador Partnership, L.P., S.E.", d/b/a "El Conquistador Golf Resort & Casino" ("Respondent"), formerly doing business as "Wyndham El Conquistador Resort and Country Club".

*GOR*  
Complainant issued the Complaint herein on May 3, 2007, against Wyndham El Conquistador Resort and Country Club; and

Complainant and Respondent have agreed that settlement of this matter is in the public interest, and that entry of this CA/FO without further litigation is the most appropriate means of resolving this matter;


THEREFORE, before the taking of any testimony, upon the pleadings, without adjudication of any issue of fact or law, without the admission of any wrongdoing, 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 (the "Act"), 33 U.S.C. § 1319.
2. On May 3, 2007, EPA issued a Complaint against the Respondent alleging violations of Section 301 (a) of the Act for discharging without a NPDES permit from the Palomino Reverse Osmosis Plant.

3. Respondent filed its Answer to the Complaint and Request for Hearing, dated June 8, 2007 (Answer). In its Answer, Respondent denied various allegations contained in the Complaint, contested the amount of the proposed penalty, alleged certain grounds for defense and requested a hearing. Respondent also notified that its proper name is: "El Conquistador Partnership, L. P., S. E." and its d/b/a is: "El Conquistador Golf Resort & Casino." Respondent appears herein under its proper name, although the heading of the case has not been amended.
4. 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 CFR Part 22.
5. This action was public noticed. No public comment was received.

## II. TERMS OF THE SETTLEMENT

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1. Pursuant to Section 309(g) of the Act and having taken into account the nature, circumstances, extent and gravity of the alleged violations, and any other factors that may be required by the Act, the parties have determined that a civil penalty in the amount of TWENTY FIVE THOUSAND DOLLARS (\$25,000.00), is an appropriate amount to settle this action.
  2. For purposes of settlement, Respondent consents to the issuance of this CA/FO and consents to the payment of the amount cited in the foregoing paragraph.
  3. Respondent shall pay the above stated amount, by cashier's, bank manager's or certified check, payable to the "Treasurer of the United States of America." The check shall be 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. Such check shall be mailed to:

**(Certified Mail)**

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

**(Overnight Mail)**

U.S. Bank  
1005 Convention Plaza  
Mail Station SL-MO-C2GL  
St. Louis, MO 63101  
Contact: Natalie Pearson  
314-418-4087

**In the Matter of Wyndham El Conquistador Resort and Country Club  
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**(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"

**(On Line Payment)**

WWW.PAY.GOV  
Enter SFO 1.1 in the "search public forms" field  
Open form and complete required fields.

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

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

and

Silvia Carreño  
Associate Regional Counsel  
Office of Regional Counsel-Caribbean Team  
U.S. Environmental Protection Agency, Region 2  
Centro Europa Building, Suite 417  
1492 Ponce de León Avenue  
San Juan, Puerto Rico 00907-4127.


4. Payment must be received at the above address on or before forty-five (45) calendar days after the effective date 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").
5. Failure to pay the amount in full according to the above provisions will result in referral of this matter to the United States Department of Justice or the United States Department of the Treasury for collection.
6. 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


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\$15.00 will be assessed for each 30 day period (or any portion thereof) following the due date in which the balance remains unpaid.

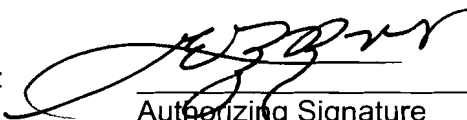
7. In addition, pursuant to Section 309(g)(9) of the Clean Water Act, 33 U.S.C. § 1319(g)(9), if payment is not received by the due date, a quarterly nonpayment penalty will be imposed for each calendar quarter during which such nonpayment persists. The quarterly nonpayment penalty is 20% of the aggregate amount of penalties and quarterly nonpayment penalties which are unpaid as of the beginning of such quarter. Respondent also may be required to pay attorneys fees and costs for collection proceedings in connection with nonpayment.
8. The amount to be paid is a civil penalty assessed by the EPA and shall not be deductible from Respondent's federal or state taxes.

### III. **GENERAL PROVISIONS**

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1. Respondent stipulates that EPA has jurisdiction over the subject matter alleged in the Complaint. Respondent waives any defenses it might have as to jurisdiction and venue, and without admitting or denying the factual allegations contained in the Complaint, beyond the Answer, consents to the terms and conditions of this CA/FO. The fact of entering into this CA/FO or of making the payment of the amount required under it shall not be taken as an admission of any violation.
  2. This CA/FO is being voluntarily entered into by the parties in full and final settlement of Respondent's liability for the violations and facts alleged in the Complaint, those which could have been alleged related to the operation of the Palomino Reverse Osmosis Plant and the discharges therefrom into the waters of the United States and this CA/FO.
  3. Respondent has read the Consent Agreement, understand 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.
  4. Respondent explicitly and knowingly consents to pay the amount set forth above, in accordance with the terms of this Consent Agreement.
  5. 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.
  6. The provisions of this Consent Agreement shall be binding upon Respondent, its successors or assigns, including but not limited to, subsequent purchasers.

7. Respondent knowingly and explicitly waives its right under Section 309(g)(2) and (8) of the Act, 33 U.S.C. § 1319(g)(2) and (8), to request or to seek any administrative or judicial hearing on or judicial review of any of the facts or of law set forth in the Complaint or in this Consent Agreement or in the accompanying Final Order.
8. Respondent waives any right it may have pursuant to 40 CFR § 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.
-  9. Issuance of the CA/FO does not constitute a waiver by EPA of its right to enforce the substantive legal requirements underlying this action, either administratively or judicially pursuant to Section 309(a), (b) and (c) of the Act, 33 U.S.C. §§ 1319(a), (b) and (c) for violations that occur subsequent to the effective 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, or regulations promulgated thereunder or any legal order or permit issued thereunder.
10. 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.
11. Each party hereto agrees to bear its own costs and fees in this matter.
12. Respondent consents to service upon Respondent by an original of the CA/FO by an EPA employee other than the Regional Hearing Clerk; *provided, however*, that the effective date of the CA/FO shall be the date of filing of the same, duly signed by all parties, with the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region 2, New York, New York.
13. In any collection action, the validity, amount, and appropriateness of this CA/FO shall not be subject to review.

**RESPONDENT:** El Conquistador Partnership, L.P., S.E., d/b/a El Conquistador Golf Resort & Casino

BY:   
\_\_\_\_\_  
Authorizing Signature

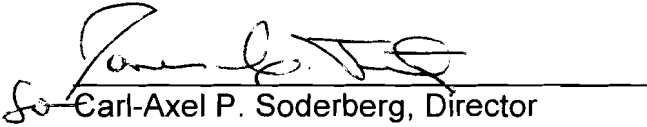
NAME: Ing. Gerardo Ortíz  
El Conquistador Golf Resort & Casino  
El Conquistador Ave. #1000  
Fajardo, Puerto Rico 00738

TITLE: Engineering Director

DATE: 7-28-08



**COMPLAINANT:**

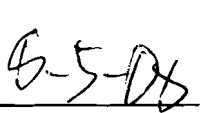
A handwritten signature in black ink, appearing to read "Carl-Axel P. Soderberg", is written over a horizontal line.

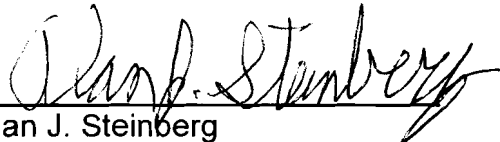
Carl-Axel P. Soderberg, Director  
Caribbean Environmental Protection Division  
U.S. Environmental Protection Agency - Region 2  
Centra Europa Building, Suite 417  
1492 Ponce de León Avenue  
San Juan, Puerto Rico 0090

**FINAL ORDER**

The Regional Administrator of the 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 of the same, with the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region 2, New York, New York.

DATED: 5-5-08



  
Alan J. Steinberg  
Regional Administrator  
U.S. Environmental Protection Agency,  
Region 2  
290 Broadway  
New York, New York 10007-1866



Certificate of Service

This certificate of service is to certify that Consent Agreement and Final Order on CWA 02-2007-3409 Wyndham El Conquistador Resort and Country Club was served as follow:

Original & one copy  
By hand delivery to:

Karen Maples  
Regional Hearing Clerk  
US EPA Region II  
290 Broadway 17<sup>th</sup> floor  
New York, New York 10007

Date 8/7/08

Jacqueline James  
Secretary