




UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
CARIBBEAN ENVIRONMENTAL PROTECTION DIVISION
CITY VIEW PLAZA II, SUITE 7000
GUAYNABO, PUERTO RICO 00968-8069

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG.11
2013 JUL 23 A 10: 26
REGIONAL HEARING
CLERK

DATE: June 09, 2013

SUBJECT: **In the Matter of Autonomous Municipality of Guaynabo-Hato Nuevo
Construction Project
Docket No. CWA-02-2013-3352
NPDES Storm Water Construction General Permit -Unpermitted**

FROM: Héctor Ortiz 
Environmental Engineer
Multimedia Permits and Compliance Branch

THROUGH: Carlos Villafañe, P.E. 
Acting Chief
Multimedia Permits & Compliance Branch

TO: José C. Font
Director
Caribbean Environmental Protection Division

Attached for your review and concurrence is a copy of the Expedited Storm water Settlement Agreement ("ESA") which assesses the Administrative Penalties in the above-referenced matter, and which has been agreed upon by Autonomous Municipality of Guaynabo ("Respondent").

Highlights of the ESA

The Order assesses a penalty of \$14,700.00.

Background

The Region applied the Expedited Settlement Offer ("ESO") criteria, in this case for sites that are ESO-eligible. Sites which meet all of the following criteria can be ESO-eligible: (1) construction sites up to fifty acres; (2) sites where the penalty calculated via the ESO worksheet is no more than \$15,000; (3) sites where there is no evidence of significant environmental impact (e.g., turbidity observed in receiving water); (4) sites where the operator is a first-time violator; and (5) sites where there is no evidence of non-allowable storm water discharges (e.g., process wastewater discharge, such as truck washing or discharge from a concrete batch plant operation).

On May 22, 2012, the United States Environmental Protection Agency ("EPA") performed a Compliance Evaluation Inspection ("CEI") of the referenced project. The purpose of the CEI was to evaluate the operator's compliance with the NPDES storm water permit application regulations for construction sites and the Clean Water Act (the "Act").

The findings of the CEI revealed that Respondent violated Sections 301 and 402(p)(4)(A) of the Act, 33 U.S.C. §1311(a) and 33 U.S.C. §1342(p)(4)(A), respectively, for its failure to apply for a NPDES permit and discharges of pollutants into the Atlantic Ocean through storm water runoff associated with construction activities without a NPDES storm water permit during active construction project in Guaynabo, P.R. An ESO assessing an Administrative Penalty was mailed to Respondent, Docket No. EPA-CWA-02-2013-3352. On May 28, 2013 Respondent responded to the ESO, agreeing to the terms. The ESO proposed the assessment of a \$14,700.00 penalty.

This ESO was public noticed on May 31, 2013. The public notice period closed on July 01, 2013. No Comments from were received.

Penalty Justification

The attached ESO for Autonomous Municipality of Guaynabo imposes a penalty of \$14,700. This penalty is based upon the NPDES Industrial Storm Water Worksheet for Construction (ESO Worksheet).

Recommendation

The penalty addresses the violations under Section 301 of the Clean Water Act, 33 U.S.C. §1342. The violations have been remedied. The Compliance Evaluation Inspection Report required the Respondent to, prepare and implement a satisfactory Best Management Practices, and certify that it meets all federal requirements, along with temporary and final stabilization of the site. Since these requirements were satisfied, the Agency is proceeding to use an expedited storm water settlement agreement to streamline the settlement for permitted facilities.

Attachments

cc: John Ciorciari, OPM/FMB
Blake Edwards, OCFO/OFS/CFC

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY – REGION 2
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U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II
2013 JUL 23 A 10:26
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EXPEDITED STORM WATER SETTLEMENT AGREEMENT
Autonomous Municipality of Guaynabo- Hato Nuevo Ward Construction Project
Docket Number: CWA-02-2013-3352

Autonomous Municipality of Guaynabo (herein the "Respondent") is a "person," within the meaning of § 502(5) of the Clean Water Act ("the Act" or "CWA"), 33 U.S.C. § 1362(5), and 40 C.F.R. § 122.2.

Attached is an "Expedited Settlement Offer Deficiencies Form" (herein the "Form"), which is hereby incorporated by reference. By its signature, Complainant ("EPA") finds that Respondent is responsible for the deficiencies specified in the Form.

Respondent operated in violation of Section 301(a) of the Act, 33 U.S.C. §1311, and failed to apply to the National Pollutant Discharge Elimination System ("NPDES") storm water permit (CGP) authorized under Section 402 of the Act, 33 U.S.C. § 1342, as noted on the attached Form.

EPA finds, and Respondent admits, that Respondent is subject to Section 301(a) of the Act, 33 U.S.C. § 1311, and that EPA has jurisdiction over the allegations and any "person" who "discharges pollutants" from a "point source" to "waters of the United States". Respondent neither admits nor denies the allegation(s) specified in the Form.

EPA is authorized to enter into this Consent Agreement and Final Order ("Agreement") under the authority vested in the Administrator of EPA by Section 309(g)(2)(A) of the Act, 33 U.S.C. §1319(g)(2)(A), and by 40 C.F.R. § 22.13(b). The parties enter into this Agreement in order to settle the civil violation(s) specified in the Form for a penalty of \$14,700. Respondent consents to the assessment of this penalty, and waives the right to: (1) contest the finding(s); (2) a hearing pursuant to Section 309(g)(2) of the Act, 33 U.S.C. §1319(g)(2); and (3) appeal pursuant to Section 309(g)(8) of the Act, 33 U.S.C. §1319(g)(8).

Additionally, Respondent certifies, subject to civil and criminal penalties for making a false statement to the United States Government, that it has corrected any deficiencies identified in the Form, and to the best of its knowledge, is in compliance with the NPDES permitting program.

Respondent certifies that within 10 days of receiving notice from EPA that the Agreement is effective ("SO ORDERED") it will sent a bank, cashiers or certified check for the amount specified above, payable to the "Treasurer, United States of America" to:

Regional Hearing Clerk
U.S. EPA, Region 2
In the Matter of Autonomous Municipality
of Guaynabo- Hato Nuevo Ward Construction Project
Docket No.: CWA-02-2013-3352
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000

This Agreement settles EPA's civil penalty claims against Respondent for the CWA violation(s) specified in this Agreement. However, EPA does not waive its rights to take any enforcement action against Respondent for any other past, present, or future civil or criminal violation of the Act or of any other federal statute or regulation. EPA does not waive its right to issue a compliance order for any uncorrected deficiencies or violation(s) described in the Form. EPA has determined this Agreement to be in the public interest.

This Agreement is binding on the parties signing below and effective thirty (30) days from the date it is signed ("APPROVED") by the Director of the Caribbean Environmental Protection Division unless a petition to set aside the Order is filed by a commenter pursuant to § 309(g)(4)(C) of the Act, 33 U.S.C. § 1319(g)(4)(C) and Part 22.

If Respondent does not sign and return this Agreement as presented within 30 days of the date of its receipt, the proposed Agreement is withdrawn without prejudice to EPA's ability to issue any order or file any enforcement action for the violation(s) identified in the Form.

APPROVED BY EPA:


Jose Font
Director
Caribbean Environmental Protection Division

Date: 7-16-13

APPROVED BY RESPONDENT in accordance with 40 C.F.R. § 122.22:

Name:

Title:


Signature:


Date: 22/5/2013

More than 40 days have elapsed since the issuance of public notice pursuant to Section 309(g)(4)(A) of the Act, 33 U.S.C. §1319(g)(4)(A), and EPA has received no comments concerning this matter.

Having determined that this CAFO is authorized by law and is in the public interest,

IT IS SO ORDERED:


Jose C. Font
Director
Caribbean Environmental Protection Division

Date: 7-16-13