

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
Region 2

U.S. Environmental
Protection Agency-Reg 2
2014 APR 29 PM 2:33
REGIONAL HEARINGS
CLERK

IN THE MATTER OF:

Estancias de Cerro Mar, Inc.

RESPONDENT

CONSENT AGREEMENT
AND
FINAL ORDER

DOCKET NUMBER CWA-02-2011-3356

CONSENT AGREEMENT AND ORDER

Complainant, the United States Environmental Protection Agency (EPA), having issued on September 23, 2011 the Complaint above-captioned against Estancias de Cerro Mar, Inc. (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 (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 of the Clean Water Act, 33 U.S.C. § 1319.
2. In the Complaint, EPA alleges that Respondent violated Sections 301 and 402 of the Act, 33 U.S.C. §§ 1311 and 1342, by discharging pollutants from its Palmas de Cerro Gordo Pump Station (located in Vega Alta, Puerto Rico) into waters of the United States without authorization of a National Pollutant Discharge Elimination System (NPDES) permit.
3. 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.

4. This action was public noticed on October 28, 2011. No public comment was received.
5. Respondent never filed an answer to the complaint admitting or denying the factual allegations contained in the Complaint neither requested the opportunity for a hearing.
6. This CAFO 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 CAFO.
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 Section 309(g) of the Clean Water Act, 33 U.S.C. § 1319(g), the nature of the violations and other relevant factors, EPA has determined that an appropriate civil penalty to settle this action is in the amount of FOUR THOUSAND (\$4,000.00) 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 thirty (30) days after the Effective Date of this Order, as defined in the Final Order (at the end of this document), Respondent shall pay the amount of FOUR THOUSAND (\$4,000.00) DOLLARS.
12. Respondent shall pay the penalty of FOUR THOUSAND (\$4,000.00) DOLLARS by cashiers' or certified checks, payable to the "Treasurer of the United States of America" or by wire transfers.

13. Respondent shall clearly identify, with either form of payment, the name and docket number of this case, set forth in the caption on the first page of this document.

a. Respondent shall mail the checks to:

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
ATTN Box 979077
St. Louis, MO 63101
Contact: Natalie Pearson
314-418-4087.

b. Alternatively, Respondent shall make wire transfers to:

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."

ACH (also known as REX or remittance express)
Automated Clearinghouse (ACH) for receiving US currency
PNC Bank
808 17th Street, NW
Washington, DC 20074
Contact – Jesse White 301-887-6548
ABA = 051036706
Transaction Code 22 - checking
Environmental Protection Agency
Account 310006—CTX Format

ON LINE PAYMENT:

There is now an On Line Payment Option, available through the Dept. of Treasury. This payment option can be accessed from the information below: WWW.PAY.GOV. Enter sfo 1.1 in the search field. Open form and complete required fields.

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

Jaime López
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 RD. 165 km 1.2
Guaynabo, PR 00968-8069
Fax number: (787) 289-7104;

Evelyn Rivera-Ocasio, Esq.
Assistant Regional Counsel
Office of Regional Counsel, Caribbean Team
US Environmental Protection Agency, Region 2
City View Plaza II, Suite 7000
#48 RD. 165 km 1.2
Guaynabo, PR 00968-8069
Fax number: (787) 289-7104;

and

Karen Maples
Regional Hearing Clerk
U.S. Environmental Protection Agency
Office of the Regional Counsel
290 Broadway, 16th Floor
New York, NY 10007
Fax number: (212) 637-3115.

Payment must be received at the above address in the amount specified in paragraph 11, above.

- c. 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.

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

II. B. General Provisions

15. 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.
16. 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.
17. This CA/FO shall not relieve Respondent 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.
18. This CA/FO 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 CA/FO is intended to nor shall be construed to operate in any way to resolve any criminal liability of the Respondent. Compliance with this CA/FO 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.

19. 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.
20. Each party shall bear its own costs and attorney fees in connection with the action resolved by this CA/FO.

RESPONDENT ESTANCIAS DE CERRO MAR, INC.:

BY: 

Michael Spector, President
Estancias de Cerro Mar, Inc.

DATE: 4/4/2014

to

COMPLAINANT:

BY:  _____

José C. Font, Director
Caribbean Environmental Protection Division
U.S. Environmental Protection Agency - Region 2
City View Plaza II, Suite 7000
#48 RD. 165 km 1.2
Guaynabo, PR 00968-8069

DATE: 4-25-14

III. FINAL ORDER

The Director of the Caribbean Environmental Protection Division 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 with the Regional Hearing Clerk, U.S. EPA Region 2, New York, NY.

4-25-14

Date



José C. Font, Director
Caribbean Environmental Protection
Division
U.S. Environmental Protection Agency -
Region 2
City View Plaza II, Suite 7000
#48 RD. 165 km 1.2
Guaynabo, PR 00968-8069

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
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CERTIFICATE OF SERVICE

I certify that I have this day caused to be sent the foregoing **Consent Agreement and Final Order**, dated April 28, 2014, and bearing the above-reference docket number, in the following manner to the respective addressees below:

ORIGINAL AND COPY BY ELECTRONIC MAIL AND UPS TO:

COPY BY ELECTRONIC MAIL AND UPS TO:

Karen Maples, Regional Hearing Clerk
Region 2
U.S. Environmental Protection Agency
290 Broadway, 16th Floor
New York, NY 10007-1866
maples.karen@epa.gov

Helen S. Ferrara, Presiding Officer
Region 2
U.S. Environmental Protection Agency
290 Broadway, 16th Floor
New York, NY 10007-1866
ferrara.helen@epa.gov

COPY TO RESPONDENT BY ELECTRONIC MAIL AND CERTIFIED MAIL, RETURN RECEIPT TO:

Edwin R. Cruz, Esq.
Pietrantoní Méndez & Alvarez LLC
Attorneys for Respondent
Popular Center – 19th Floor
208 Ponce de León Avenue
San Juan, PR 000918
(787) 274-1212
ecruz@pmaalaw.com

Doira Díaz, Esq.
Pietrantoní Méndez & Alvarez LLC
Attorneys for Respondent
Popular Center – 19th Floor
208 Ponce de León Avenue
San Juan, PR 000918
(787) 274-1212
ddiaz@pmaalaw.com

April 28, 2014

Date

Rebecca Say

NAME