

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
Region 2

U.S. Environmental
Protection Agency
2017 MAY 31 PM 3: 21
REGIONAL HEARING
CLERK

IN THE MATTER OF:

Marina PDR Operations, LLC
4900 State Road PR-3
Fajardo, PR 00738-4067

Marina Puerto Del Rey
NPDES MSGP Tracking Number
PRR053171

**CONSENT AGREEMENT
AND
FINAL ORDER**

DOCKET NUMBER CWA-02-2017-3452

RESPONDENT

CONSENT AGREEMENT AND FINAL ORDER

Complainant, the United States Environmental Protection Agency ("EPA"), having issued the Complaint referenced herein on October 12, 2016, against Marina PDR Operations, LLC (hereinafter referred as "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 ("Consent Agreement") 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(a) and 402(p) of the Clean Water Act, 33 U.S.C. §§ 1311(a) and 1342(p), for failure to apply for and obtain National Pollutant Discharge Elimination System ("NPDES") permit coverage for storm water discharges associated with industrial activities from the Marina Puerto Del Rey ("Marina PDR") located in Fajardo, Puerto Rico,

and for discharges of pollutants (storm water runoff associated with industrial activities) from industrial activities within Marina PDR (including contractor industrial activities) into waters of the United States without NPDES permit coverage.

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. No public comment was received.
5. On December 2, 2016, Respondent filed an answer to the Complaint, denying certain facts, admitting others, raising affirmative defenses and requesting a hearing in this matter. The Parties subsequently commenced settlement negotiations to address the violations alleged in the Complaint.
6. This Consent Agreement 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.
8. 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.
9. 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

10. 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 and Respondent have agreed to settle this action for the amount of **SEVENTY-SEVEN THOUSAND FIVE HUNDRED DOLLARS (\$77,500.00)**.
11. For purposes of settlement, Respondent consents to the issuance of this Consent Agreement and consents to the payment of the civil penalty cited in Paragraph 10.

III. Penalty

12. Respondent shall pay the amount of **SEVENTY-SEVEN THOUSAND FIVE HUNDRED DOLLARS (\$77,500.00)**.
13. No later than thirty (30) calendar days from the Effective Date of this Consent Agreement, Respondent shall pay in full the amount cited in Paragraph 12.
14. Pursuant to Part V of this Consent Agreement, 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.
15. Respondent shall pay the amount cited in Paragraph 12, either by check payable to the "*Treasurer of the United States of America*", electronically (i.e., wire or automated clearinghouse) or on line payment
16. Respondent shall clearly identify, regardless of the form of payment, the name and docket number of the case, set forth in the caption on the first page of this document. Payment methods are described below:

- a. If Respondent chooses to pay by cashiers' or certified check, the check shall be mailed to:

BY U.S. POSTAL SERVICE

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

BY 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. If Respondent chooses to pay electronically, the transfer shall be made to:

BY WIRE TRANSFER

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."

BY AUTOMATED CLEARINGHOUSE (ACH) (also known as REX or remittance express)

ACH for receiving US currency
PNC Bank
808 17th Street, NW
Washington, DC 20074
ABA = 051036706
Transaction Code 22 - checking
Environmental Protection Agency
Account 310006—CTX Format
Contact: Jesse White 301-887-6548

- c. OnLine Payment Option is available through the Department of Treasury. This payment option can be accessed through WWW.PAY.GOV. Enter sfo 1.1 in the search field. Open form and complete required fields.
17. Respondent shall send proof of payments made in accordance to the instructions in the preceding paragraph 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;

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;

and

Karen Maples
Regional Hearing Clerk
U.S. Environmental Protection Agency
Office of the Regional Counsel
290 Broadway, 16th Floor
New York, NY 10007.

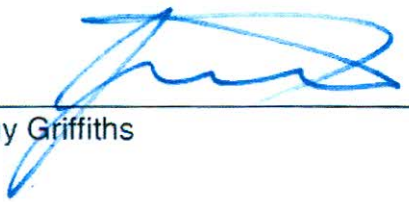
18. Failure to pay the amount indicated in Paragraph 12, above, in full, according to the provisions of this Consent Agreement will result in a referral of this matter to the United States Department of Justice or the United States Department of the Treasury for collection.
19. Further, if the payment 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.
20. 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.
21. Respondent also may be required to pay attorney's fees and costs for collection proceedings in connection with nonpayment.
22. The penalty to be paid is a civil penalty assessed by the EPA and shall not be deductible from the Respondent's federal or Commonwealth of Puerto Rico taxes.

IV. General Provisions

23. 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.
24. Nothing in this Consent 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.

25. This Consent Agreement 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.
26. This Consent Agreement 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 is intended to, nor shall be construed to, operate in any way to resolve any criminal liability of the Respondent.
27. Respondent's full compliance with this Consent Agreement shall not in any case affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. Respondent's full compliance with this Consent Agreement shall only resolve Respondent's liability for federal civil penalties for the violations and facts alleged in the Complaint.
28. 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.
29. Each party shall bear its own costs and attorneys' fees in connection with the action resolved by this Consent Agreement.

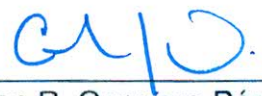
RESPONDENT: MARINA PDR OPERATIONS, LLC

BY: 

Jeremy Griffiths

DATE: May 18, 2017

COMPLAINANT: U.S. ENVIRONMENTAL PROTECTION AGENCY

BY: 

Carmen R. Guerrero-Pérez, Director
Caribbean Environmental Protection
Division
United States Environmental Protection
Agency - Region 2
City View Plaza II, Suite 7000
#48 RD. 165 km 1.2
Guaynabo, PR 00968-8069

DATE: MAY 18, 2017

V. Final Order

The Regional Administrator for the U.S. Environmental Protection Agency Region 2 ratifies the foregoing Consent Agreement. The Consent 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.



Catherine R. McCabe
Acting Regional Administrator
United States Environmental Protection
Agency - Region 2
290 Broadway
New York, NY 10007-1866

DATE: 5/22/17

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION II

IN THE MATTER OF:

Marina PDR Operations, LLC
4900 State Road PR-3
Fajardo, PR 00738-4067

Marina Puerto Del Rey
NPDES MSGP Tracking Number
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RESPONDENT

DOCKET NUMBER
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Proceeding pursuant to Section
309(g) of the Clean Water Act,
33 U.S.C. § 1319(g), to assess a
Class II Civil Penalty

CERTIFICATE OF SERVICE

I certify that I have this day caused to be sent the foregoing **Consent Agreement and Final Order**, dated May 22, 2017, and bearing the above-referenced docket number, in the following manner to the respective addressees below:

ORIGINAL AND COPY DELIVERED VIA UPS OVERNIGHT MAIL TO:

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

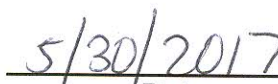
AND

COPY TO RESPONDENT BY CERTIFIED MAIL, RETURN RECEIPT TO:

Mr. Jeremy Griffiths
Vice-Chairman
Marina PDR Operations, LLC
4900 State Road PR-3
Fajardo, PR 00738-4067



Evelyn Rivera-Ocasio



Date