

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2

In the Matter of:

**MUNICIPALITY OF RÍO GRANDE**  
P. O. Box 847  
Rio Grande, Puerto Rico 00745

**RESPONDENT**

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

**PROCEEDING TO ASSESS A  
CLASS II CIVIL PENALTY**

**DOCKET NUMBER  
CWA-02-2009-3458**

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REGION 2  
2009 MAR -9 AM 9:59  
REGIONAL HEARINGS  
CLERK

**CONSENT AGREEMENT AND FINAL ORDER**

Complainant, the United States Environmental Protection Agency (EPA), having issued the Complaint herein on March 30, 2009, against the Municipality of Río Grande (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)(B) of the Clean Water Act (the Act), 33 U.S.C. § 1319(g)(2)(B).
2. On March 30, 2009, EPA issued a Complaint against Respondent alleging violations of Sections 308 and 402 of the Act, 33 U.S.C. §§ 1318 and 1342, for its failure to submit a Notice of Intent (NOI) requesting permit coverage under the National Pollutant Discharge Elimination System General Permit for Discharges from Small Municipal Separate Storm Sewer Systems (NPDES MS4 General Permit) from the Municipality of Río Grande's Small MS4 into the Espiritu Santo River and the Atlantic Ocean, both waters of the United States.

3. The Complaint was based on Administrative Compliance Order (ACO), Docket Number CWA-02-2008-3131, which was issued on February 5, 2008, and required Respondent to, among others: (a) submit a NOI within ten (10) days from the receipt of the ACO; (b) develop, submit and implement a Storm Water Management Plan (SWMP) within ninety five (95) calendar days from the receipt of the ACO; and (c) submit a compliance cost report.
4. On August 14, 2009, Respondent submitted a NOI requesting coverage under the NPDES MS4 General Permit.
5. On November 9, 2009, EPA, Region 2, assigned NPDES MS4 General Permit tracking number PRR040050 to Respondent.
6. Since November, 2009, the Parties worked together in order reach a prompt, amicable resolution to this matter.
7. 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.
8. The Complaint was public noticed. No public comment was received.

## **II. TERMS OF THE SETTLEMENT**

9. 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.
10. 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.
11. 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.
12. 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**

13. Pursuant to Section 309(g) of the Clean Water Act, 33 U.S.C. § 1319(g), based upon the nature of the violations, Respondent's agreement to perform a Supplemental Environmental Project (SEP) and other relevant factors, EPA has determined that an appropriate civil penalty to settle this action is in the amount of FIFTEEN THOUSAND DOLLARS (\$15,000.00).

14. Respondent agrees to pay the above stated amount in *five payments*. The effective date of this Consent Agreement shall be the date the Regional Administrator signs the Final Order (due date) accompanying this CA/FO:
- a. an initial payment of THREE THOUSAND DOLLARS (\$3,000.00) shall be made within one hundred and thirty five (135) calendar days from the due date of this CA/FO;
  - b. a second payment of THREE THOUSAND DOLLARS (\$3,000.00) shall be made within hundred and eighty (180) calendar days from the due date of this CA/FO;
  - c. a third payment of THREE THOUSAND DOLLARS (\$3,000.00) shall be made within two hundred and forty (240) calendar days from the due date of this CA/FO;
  - d. a fourth payment of THREE THOUSAND DOLLARS (\$3,000.00) shall be made within three hundred (300) calendar days from the due date of this CA/FO; and
  - e. a fifth and final payment of THREE THOUSAND DOLLARS (\$3,000.00) shall be made within three hundred and sixty (360) calendar days from the due date of this CA/FO.
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, and to the performance of the SEP.

III. A. Penalty

16. Respondent shall pay the penalty, FIFTEEN THOUSAND DOLLARS (\$15,000.00), 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:

Yolianne Maclay  
Environmental Engineer  
Multimedia Permits and Compliance Branch  
Caribbean Environmental Protection Agency  
U.S. Environmental Protection Agency, Region 2  
Centro Europa Building, Suite 417  
1492 Ponce de León Ave.  
San Juan, PR 00907-4127  
Fax number: (787) 289-7104,

Roberto M. Durango, Esq.  
Assistant Regional Counsel  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 2  
Centro Europa Building, Suite 417  
1492 Ponce de León Ave.  
San Juan, PR 00907-4127  
Fax number: (787) 729-7748,

and

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

17. Payments must be received at the above address in accordance with the payment schedule established in paragraph 14. 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 CA/FO shall be sent by first class mail or its equivalent to each of the following:

**FOR COMPLAINANT:**

Yolianne Maclay  
Environmental Engineer  
Multimedia Permits and Compliance Branch  
U.S. Environmental Protection Agency, Region 2  
Caribbean Environmental Protection Division  
Centro Europa Building, Suite 417  
1492 Ponce de León Avenue  
San Juan, PR 00907-4127;

and

Roberto M. Durango, Esq.  
Assistant Regional Counsel  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 2  
Office of Regional Counsel—Caribbean Team  
Centro Europa Building, Suite 417  
1492 Ponce de León Avenue  
San Juan, PR 00907-4127.

**FOR RESPONDENT:**

Honorable Eduard Rivera Correa  
Mayor  
Municipality of Río Grande  
P. O. Box 847  
Río Grande, Puerto Rico 00745;

and

Alejandro Carrasco-Castillo, Esq.  
Legal Representative  
Parana 1684  
Urb. El Cerezal  
San Juan, Puerto Rico 00926-3144

**IV. Supplemental Environmental Project**

20. Respondent agrees to implement a SEP that consists of the performance of a environmental quality assessment of the impacts to the Malpica watershed by conducting a Hydrologic and Hydraulic Study (H-H Study) of an unnamed creek tributary to the Río Herrera, a water of the United States. The unnamed creek is located at the Malpica Community, a rural area of the Municipality in Río Grande, Puerto Rico. The implementation of the SEP also includes a one-time public outreach meeting in the Community to present the results of the environmental quality assessment.
21. The total expenditure for the SEP shall not be less than FIFTY EIGHT THOUSAND THREE HUNDRED DOLLARS (\$58,300.00). This estimated amount is itemized as follows: (1) \$11,300 for a Topographical and Boundary Survey; (2) \$33,300 for the H-H Study; (3) \$13,700 for Public Outreach meeting

and other tasks relating to the SEP, in accordance with the specifications in Attachment 1 of this CAFO.

22. Respondent shall implement the SEP in accordance with the following schedule and action items:
- a. Respondent shall approve a proposal and issue a contract for environmental quality assessment within one hundred and thirty five (135) calendar days after the date of signature of the Final Order at the end of this document.
  - b. Respondent shall submit a copy of the contract to EPA and commence the environmental quality assessment within one hundred and forty five (145) calendar days after the date of signature of the Final Order at the end of this document.
  - c. Respondent shall complete the Topographical and Boundary Survey and H-H Study within two hundred (200) calendar days after the date of signature of the Final Order at the end of this document.
  - d. Within two hundred thirty (230) calendar days after the date of signature of the Final Order at the end of this document, Respondent shall submit to EPA of a written Technical Report (Report). The Report shall include at a minimum, the following information:
    - i. the flood hydro graphs for 2, 5, 10, 25, 50 and 100-year storm;
    - ii. the Hydraulic Evaluation of the unnamed creek (from its headwater to the point of discharge into Río Herrera) to estimate a 100-year flood elevation and velocity profiles;
    - iii. the computation of the floodway boundary;
    - iv. the identification and mapping of jurisdictional wetlands;
    - v. the identification of structures and properties within the floodway;  
and
    - vi. the conclusions and recommendations resulting from the study to address the flood conditions raised by Community's residents, including recommendations for flood mitigation, modifications, and emergency response strategies.
  - e. Within two hundred sixty (260) calendar days after the date of signature of the Final Order at the end of this document, Respondent shall perform a one-time Public Outreach Meeting with Community's residents to present the results of the environmental quality assessment.

- f. Within two hundred ninety (290) calendar days after the date of signature of the Final Order at the end of this document, Respondent shall submit to EPA a SEP Completion Cost Report.

23. All materials to be developed and distributed as well as any public statement, oral or written, in print, film, or other media, made by Respondent describing this SEP, including any made at, during and/or in a compliance assistance meeting, lecture, presentation, seminar, mailing or other outreach effort, must display in a prominent manner the statement: **"This Project was funded by Respondent, the Municipality of Río Grande, as part of its settlement of an enforcement action taken by the United States Environmental Protection Agency for violations of the Federal Clean Water Act."**

#### IV. A SEP Reports

24. Respondent shall submit Monthly Status Reports (Status Reports) by the 15th day of the following month providing general information about the progress of implementation of the SEP. The Status Reports shall continue to be submitted until the completion of the SEP. The first report is due within one hundred and forty five (145) days of the date of signature of the Final Order at the end of this document.
25. The Final Status Report or "SEP Final Report" shall be submitted within thirty (30) calendar days after the completion of all activities that are part of the SEP. The SEP Final Report shall contain the following information:
  - a. a detailed description of the environmental quality assessment;
  - b. copy of the contract for the performance of the Topographical and Boundary Survey and H-H Study;
  - c. a description of the methods used to develop the Topographical and Boundary Survey and H-H Study;
  - d. a certification that the SEP has been fully performed pursuant to the provisions of this CA/FO;
  - e. a certification that no federal grants, low-interest federal loans, federal contracts, or other forms of federal financial assistance or non-financial assistance (e.g., loan guarantees) were used, in whole or in part, to carry out the work required to implement or complete the SEP;
  - f. a description of the environmental, public health benefits, and emergency response strategies resulting from implementation of the SEP; and



- g. documentation of the expenditures made in connection with the SEP as part of the SEP Final Report.

#### IV. B Stipulated Penalties

26. In the event that Respondent fails to comply with any of the terms or provisions of this CA/FO, including those related to the performance of the SEP described in paragraph 22 above and/or to the extent that the actual expenditures for the SEP do not equal or exceed the cost of the SEP described in paragraph 21. above, Respondents shall be liable for stipulated penalties according to the provisions set forth below:
- a. Respondent shall pay a stipulated penalty of thirty three thousand dollars (\$33,000.00) for failure to conduct the Topographical and Boundary Survey and H-H Study, no later than two hundred and thirty (230) days of the date of signature of the Final Order at the end of this document.
  - b. Respondent shall pay a stipulated penalty of eleven thousand three hundred dollars (\$11,300.00) for failure to conduct the Public Outreach meeting with Community's residents to present the results of the environmental quality assessment, no later than two hundred and sixty (260) days of the date of signature of the Final Order at the end of this document.
27. For failure to submit the Monthly Status Report required by paragraph 24 above, or to submit a SEP Final Report pursuant to paragraph 25, Respondent shall pay a stipulated penalty in the amount of two hundred and fifty dollars (\$250.00) for each day after the respective due dates established at paragraphs 24 and 25, until the report, or an amended report, is submitted.
28. Stipulated penalties for paragraph 26 above shall begin to accrue on the day after performance is due, and shall continue to accrue through the final day of the completion of the activity.
29. Unless Respondent provides EPA with a written explanation pursuant to paragraph 35, below, Respondent shall pay stipulated penalties within thirty (30) calendar days after receipt of written demand by EPA for such penalties. Respondent agrees that such demand may be mailed to Respondent, through its representative, designated in paragraph 19, above. Payment of stipulated penalties shall be made payable to the "**Treasurer of the United States of America**," and shall be mailed, as described in paragraph 16. The instrument of payment shall be identified with a notation thereon listing the following: *In the Matter of Municipality of Rio Grande*, Docket Number CWA-02-2009-3458 stipulated penalties. A copy of any payment of stipulated penalties shall be mailed to the EPA officials mentioned in paragraph 19, above.

Late charges on stipulated penalties shall be paid as stated in paragraph 17.b, above.

30. After receipt of a demand from EPA for stipulated penalties pursuant to the preceding paragraph, Respondent shall have twenty (20) calendar days in which to provide Complainant with a written explanation of why it believes that a stipulated penalty is not appropriate for the cited violation(s) of this Consent Agreement (including any technical, financial or other information that Respondents deem relevant). Where Respondent has submitted a written explanation to EPA pursuant to this paragraph and have disputed in good faith that it has failed to perform the obligation(s) cited by EPA in its demand for payment of stipulated penalties, the amount of the stipulated penalty to be paid to EPA for the cited violation(s) shall not continue to accrue during the period of time the Director (or delegate) reviews Respondent's explanation and responds in writing to Respondent pursuant to paragraph 31, below.
31. The Director of CEPD, Region 2 may, in his sole discretion, reduce or eliminate any stipulated penalty due if Respondent has, in writing, demonstrated to EPA's satisfaction good cause for such action by EPA. If, after review of Respondent's submission pursuant to the preceding paragraph, Complainant determines that Respondent has failed to comply with the provisions of this Consent Agreement, and Complainant does not, in its sole discretion, eliminate the stipulated penalties demanded by EPA, Complainant will notify Respondent, in writing, that either the full stipulated penalty or a reduced stipulated penalty must be paid by Respondent. Respondent shall pay the stipulated penalty amount indicated in EPA's notice within twenty (20) calendar days of their receipt of such written notice from EPA.
32. Failure of Respondent to pay any stipulated penalty demanded by EPA pursuant to this Consent Agreement may result in referral of this matter to the United States Department of Justice or the Department or the United States Department of the Treasury for collection.
33. Nothing in this CA/FO 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 CA/FO or of the statutes and regulations upon which this Agreement is based, or for Respondent's violation of any applicable provision of law.
34. This CA/FO 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, nor shall it be construed to constitute EPA approval of the equipment or technology used by Respondent in connection with the SEP undertaken pursuant to this Agreement.

#### **IV. C Delays in the Completion of the SEP**

35. If any event occurs which causes or may cause delays in the completion of the SEP or submittal of reports or notices as required under this CA/FO, Respondent shall notify Complainant, in writing, not more than ten (10) calendar days after the delay or upon Respondent's knowledge of the anticipated delay, whichever is earlier. The notice shall describe in detail the anticipated length of the delay, the precise cause or causes of the delay, the measures taken and to be taken by Respondent to prevent or minimize the delay, and the timetable by which those measures will be implemented. Respondent shall adopt all reasonable measures to avoid or minimize any such delay. Failure by Respondent to comply with the notice requirements of this paragraph shall render this paragraph void and of no effect as to the particular incident involved and constitute a waiver of Respondent's right to request an extension of its obligation under this CA/FO based on such incident.
36. If EPA determines that the delay or anticipated delay identified by Respondent pursuant to paragraph 35 has been or will be caused by circumstances beyond the control of Respondent, or Respondent's consultants or contractors, the time for performance hereunder may be extended for a period no longer than the delay resulting from such circumstances. In such event, the parties shall stipulate to such extension of time.
37. In the event that the EPA does not determine that a reasonable delay in achieving compliance with the requirements of this CA/FO has been or will be caused by circumstances beyond the control of Respondent, EPA will notify Respondent in writing of its decision and any delays in the completion of the SEP shall not be excused.
38. The burden of proving that any delay is caused by circumstances beyond the control of Respondent shall rest with the Respondent. Increased costs or expenses associated with the implementation of actions called for by this CA/FO shall not, in any event, be a basis for changes in this CA/FO or extensions of time. Delay in achievement of one interim step shall not necessarily justify or excuse delay in achievement of subsequent steps.

#### **IV. D General Provisions Regarding the SEP**

39. Respondent agrees that EPA, or its duly authorized representative, may be present during the implementation of the SEP at any time in order to confirm that the SEP is being undertaken in conformity with the representations made herein.

40. Respondent shall maintain at their offices legible copies of documentation concerning the development, implementation and financing of the SEP, and documentation supporting information in reports submitted to EPA pursuant to this CA/FO for a term of three (3) years after the implementation of the SEP. Respondent shall grant EPA, and its authorized representatives, access to such documentation and shall provide copies of such documentation to EPA within ten (10) calendar days of Respondent's receipt of a request by EPA for such information or within such additional time as approved by EPA, in writing. In all documents or reports, including, without limitation, any SEP reports, submitted to EPA pursuant to this CA/FO, Respondent shall, by their officers, sign and certify under penalty of law that the information contained in such document or report is true, accurate, and complete by signing the following statement:

I certify that the information contained in this written notice and the accompanying documents is true, accurate and complete. As to the identified portions of this response for which I cannot personally verify their accuracy, I certify under penalty of law that this response and all attachments were prepared in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

41. Respondent agrees that failure to submit any report required by this Consent Agreement in a timely manner shall be deemed a violation of this CA/FO and Respondent shall become liable for stipulated penalties for such violation pursuant to the provisions set forth above.
42. Nothing in this document is intended or construed to waive, prejudice or otherwise affect the right of EPA, or the United States, from pursuing any appropriate remedy, sanction or penalty prescribed by law against Respondent for Respondent having made any material misrepresentations or for providing materially false information in any document submitted in compliance with the terms and conditions of this Consent Agreement:
43. The SEP to be implemented by Respondent has been accepted by Complainant solely for purposes of settlement of this civil administrative proceeding. Nothing in this document is intended or shall be construed to be a ruling on or determination of any issue related to a federal, state or local permit.
44. Respondent hereby certifies that, as of the date of its signature on this Consent Agreement, it is not required to implement or complete the aforementioned SEP

pursuant to any federal, state or local law, regulation or other requirement; that with the exception of this Consent Agreement, Respondent is not required to implement or complete the SEP described in this section by any agreement, grant, or as injunctive relief in this or any other case; and that Respondent has not planned before February 16, 2008, to perform any of the work that is part of the SEP.

45. Respondent further certifies that it has not received and is not presently negotiating to receive, credit in any other enforcement action for either of the aforementioned SEP, and that Respondent in good faith believes that the SEP is in accordance with EPA's 1998 Final Supplemental Environmental Projects policy set forth at 63 Fed. Reg. 24,796 (May 5, 1998).
46. Respondent certifies that it will not deduct nor capitalize SEP costs for federal income tax purposes.
47. If Respondent submits a request for extension, such request shall be accompanied by supporting documentation and shall be submitted to EPA no later than ten (10) calendar days prior to any due date set forth in this Consent Agreement, or other deadline established pursuant to this Consent Agreement. Such extension, if any, shall be approved in writing and shall not unreasonably be withheld.
48. The determination of whether the SEP has been satisfactorily completed, whether Respondent has made a good faith, timely effort to implement the SEP, whether the Respondent has complied with all the terms of the CA/FO and whether costs are creditable to the SEP shall be in the sole discretion of EPA. Should EPA have any concerns about the satisfactory completion of the SEP, EPA will communicate those concerns to Respondent and will provide it with an opportunity to respond. If EPA makes a determination that the SEP has been satisfactorily completed, it will provide Respondent with written confirmation of the determination within a reasonable amount of time. Such determination by EPA shall not be unreasonably withheld.


## **V. GENERAL PROVISIONS**

49. 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.
50. 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.

51. 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.
52. 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.
53. 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.
54. 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.
55. 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.
56. 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.
57. 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.
58. Each party hereto agrees to bear its own costs and fees in this matter.
59. Respondent consents to service upon Respondent by a copy of the CA/FO by an EPA employee other than the Regional Hearing Clerk.
60. 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

NAME: Honorable Eduard Rivera Correa  
Mayor  
Municipality of Río Grande  
P. O. Box 847  
Río Grande, Puerto Rico 00745

TITLE: Mayor

DATE: 1 Nov 10

FOR COMPLAINANT:



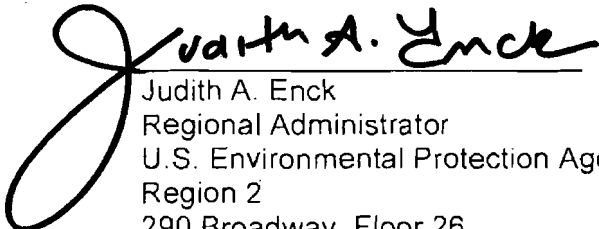
Carl-Axel P. Soderberg, Director  
Caribbean Environmental Protection Division  
U.S. Environmental Protection Agency,  
Region 2  
Centro Europa Building, Suite 417  
1492 Ponce de León Avenue  
San Juan, PR 00907-4127



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

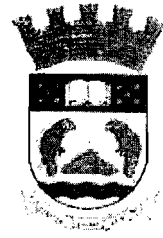
DATED: 3/8/10



Judith A. Enck

Judith A. Enck  
Regional Administrator  
U.S. Environmental Protection Agency  
Region 2  
290 Broadway, Floor 26  
New York, NY 10007-1866

Estado Libre Asociado de Puerto Rico  
**Municipio de Río Grande**



Hon. Eduard Rivera Correa  
ALCALDE

February 24, 2010

Roberto M. Durango, Esq.  
Office of Regional Counsel  
Centro Europa Building, Suite 417  
1492 Ponce de León Avenue  
San Juan, Puerto Rico 00907

**Re: The Malpica Community SEP Proposal  
In the Matter of Municipality of Río Grande  
Docket Number CWA-02-2009-3454**

Dear Mr. Durango:

The Municipality of Río Grande (Municipality) proposes to implement a Supplemental Environmental Project (SEP) as part of a settlement for a Complaint issued by the Environmental Protection Agency (EPA) pursuant to Section 309(g) of the Clean Water Act. The SEP follows the guidelines and objectives of the EPA SEP Policy, dated May 1, 1998. The SEP involves the performance an environmental quality assessment, which comprises of a Hydrologic and Hydraulic Study of an unnamed creek located in the Malpica Community (Community), a rural area of the Municipality in Rio Grande, Puerto Rico. **Figure 1** includes: a map depicting the unnamed creek, the Malpica Community, and Lambert Coordinates, which identify the location of the headwater of the unnamed creek and the point of discharge of the unnamed creek into Río Herrera.

**Background**

The Municipality has received several notifications from the residents of the Community, in which they indicated that several residential units of the Community are flooded during significant storm events. The creek formation has been inspected by our environmental consultants and personnel, which found the unnamed creek with significant accumulation of silt and sediments, waste and debris. In addition to environmental, health and safety problems caused by the floods and storm events, the Municipality has activated the emergency teams to evacuate residents. The sector of the Community near the unnamed creek has a mix of medium and low income residents. Section D.5 of the SEP provides examples of acceptable SEPs, which includes the assessment and/or investigations of ecosystems that are not owned or operated by defendants or respondents. The Municipality is not the owner or operator of the unnamed creek, as such pertains to the Puerto Rico Department of Natural Resources and the Environment.

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Consent Agreement and Final Order  
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**- Ciudad de El Yunque - Patrimonio Natural del Mundo -**

Apartado 247, Río Grande Puerto Rico 00745 • Tel (787) 887-2370 • Fax (787) 888-1515

### **Scope of Work Under the SEP**

As a first step in addressing this situation, the Municipality proposes to conduct an environmental quality assessment, which comprises a Hydrologic and Hydraulic Study (H-H Study) of the unnamed creek referenced above. The H-H Study involves the following activities and will be performed with the degree of ordinary care and skill of a reputable professional, legally practicing in Puerto Rico.

- ❖ A hydrologic study under the existing conditions to estimate the 2, 5, 10, 25, 50 and 100-year storm flood hydro graphs;
- ❖ Hydraulic evaluation of the unnamed creek (from its headwater to the point of discharge into Río Herrera), to estimate a 100-year flood elevation and velocity profiles;
- ❖ Computation of the floodway boundary;
- ❖ Identification and mapping of jurisdictional wetlands;
- ❖ Identification of structures and properties within the floodway; and
- ❖ Conclusions and Recommendations resulting from the study to address the flood conditions raised by Community's residents.

### **Tasks to be Performed for the Implementation of the SEP**

The Municipality proposes to develop and implement the SEP in accordance with the following activities.

- ❖ Request for Proposals for the performance of the H-H Study;
- ❖ Issuance of contract for the performance of the H-H Study;
- ❖ Collection and evaluation of Community available and pertinent data from the regulatory agencies and site visits observations;
- ❖ Collection of the unnamed creek survey data, which includes: Request for Proposals (RFP) for Topographical and Boundary Survey, and Performance of Topographical and Boundary Survey;
- ❖ Development of a Hydraulic Model, which is divided into the development of the Hydraulic Model and evaluation of the existing conditions. The Hydraulic Model involves the determination of hydraulic parameters required by the hydraulic model such as cross sections and flow control structures geometry, variations of Manning's (N) values within a cross section, contraction and expansion coefficients; and boundary condition. The evaluation of the existing conditions involve the estimation of flood

elevations and velocities along the unnamed creek reach under study assuming existing conditions at the community;

- ❖ Submission to EPA of a written H-H Technical Report, including but not limited to conclusions and recommendations, should include recommendations of flood mitigation actions, modifications, and emergency response strategies;
- ❖ Performance of a Public Meeting with Community's residents to provide the results of the H-H Study; and
- ❖ Submission to EPA a SEP Completion Cost Report.

**Estimated Cost of SEP**

Below, please find an estimate of the costs for implementing the SEP.

<i>Task</i>	<i>Description of Works</i>	<i>Amount</i>
1	RFP Topographical and Boundary Survey	\$1,800.00
2	Topographical and Boundary Survey	\$9,500.00
3	RFP Hydrologic and Hydraulic Study	\$1,800.00
4, 5 & 6	Hydrologic and Hydraulic Study, including evaluation of Community available and pertinent data from the regulatory agencies and site visits observations and the Development of a Hydraulic Model	\$29,000.00
7	Submission of HH Study to the USEPA for evaluation including the reproduction of 10 copies of the report	\$2,500.00
8	Submission of HH Study to the PRNDER for evaluation including the reproduction of 10 copies of the report	\$2,500.00
9	Public Outreach Meeting - Including coordination with residents	\$5,000.00
10	SEP Final Report	\$3,200.00
11	Meetings and Conference Call with EPA	\$3,000.00
<b>TOTAL ESTIMATED EXPENDITURES</b>		<b><u>\$58,300.00</u></b>

**Implementation Schedule for the SEP**

The Municipality proposes the following schedule for the implementation of the SEP.

<i>Task</i>	<i>Days from Effective Date of Agreement</i>
Request for Proposals	80 days
Issuance of Contract for Topographical and Boundary Survey and H-H Study	135 days
Commencement of Topographical and Boundary Survey and H-H Study	145 days
Completion of Topographical and Boundary Survey and H-H Study	200 days
Report Preparation	220 days
Submittal of Technical Report	230 days
Community Meeting	260 days

We look forward to EPA's acceptance of this settlement proposal. If you have any questions, please contact Alejandro Carrasco, Esq. at (787) 756-8748 and/or Juan Carlos Mercado at (787) 473-3344.

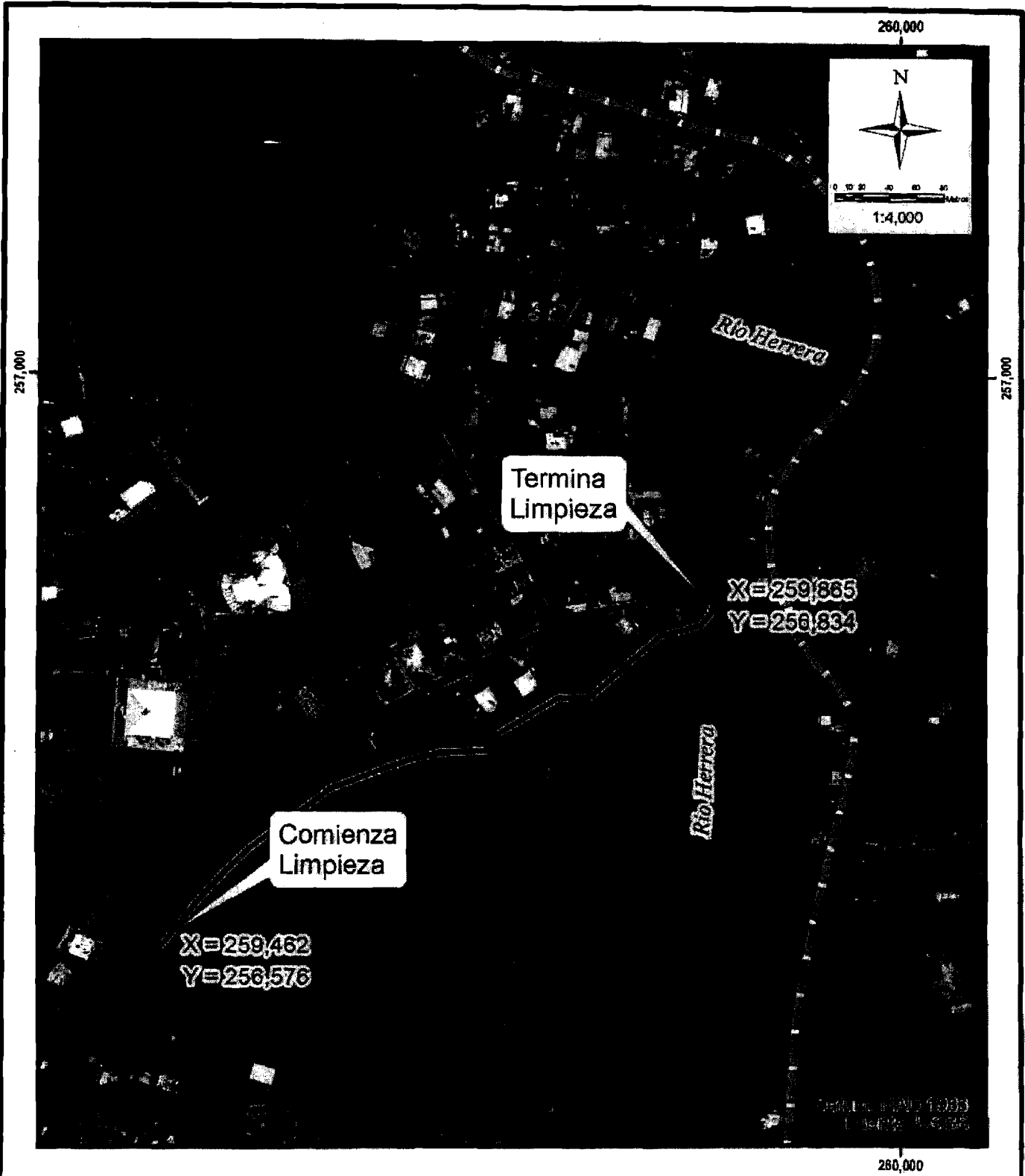
Cordially,



Honorable Eduard Rivera Correa  
Mayor  
Municipality of Río Grande  
P. O. Box 847  
Río Grande, Puerto Rico 00745

Enclosures:

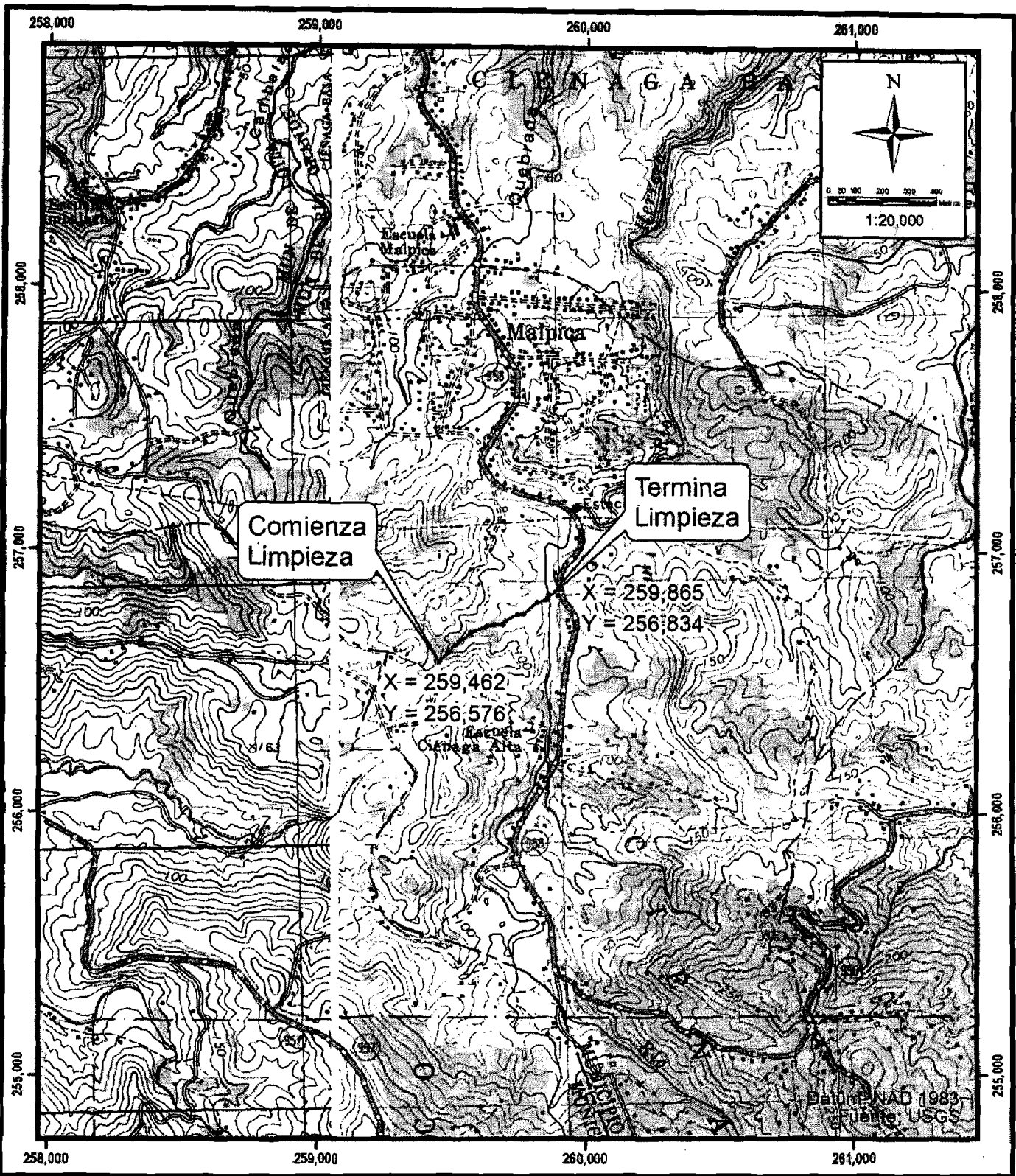
Figure 1



**FOTO AEREA**




Proyecto  
Limpieza de Drenaje  
Municipio de Río Grande  
Hon. Eduard Rivera Correa



# LOCALIZACION

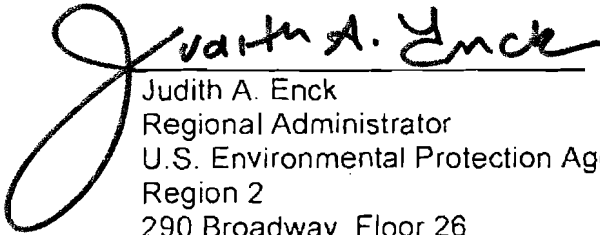



 Proyecto:  
**Limpieza de Drenaje**  
 Municipio de Rio Grande  
 Hon. Eduard Rivera Correa

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

DATED: 3/8/10

A large, stylized handwritten signature in black ink that reads "Judith A. Enck". The signature is written over a horizontal line.

Judith A. Enck  
Regional Administrator  
U.S. Environmental Protection Agency  
Region 2  
290 Broadway, Floor 26  
New York, NY 10007-1866



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2

In the Matter of:

**MUNICIPALITY OF RÍO GRANDE**  
P. O. BOX 847  
RÍO GRANDE, PUERTO RICO 00745

**RESPONDENT**

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

**PROCEEDING TO ASSESS A  
CLASS II CIVIL PENALTY**

**DOCKET NUMBER  
CWA-02-2009-3458**

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing **Consent Agreement and Final Order** was  
sent in the following manner to the addresses listed below:

Copy by **Overnight and  
Facsimile:**

Honorable Susan L. Biro  
Chief Administrative Law Judge  
U.S. Environmental Protection Agency  
Office of Administrative Law Judges  
1099 14<sup>th</sup> Street, N.W., Suite 350  
Washington, D.C. 20005

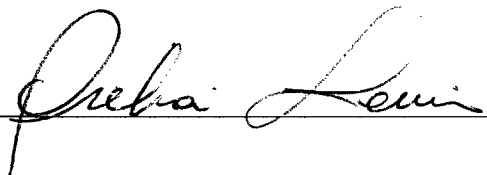
Original and  
Copy by **Hand:**

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

Copy by **Certified Mail:**

Alejandro Carrasco-Castillo, Esq.  
Legal Counsel  
Parana 1684  
Urb. El Cerezal  
San Juan, Puerto Rico 00926-3144

Date: 3-F-2010

  
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