

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2

In the Matter of:

Ben-Mald Corp.  
d/b/a Cinderella Poultry Farm

**Respondent**

CONSENT AGREEMENT  
AND FINAL ORDER

DOCKET NUMBER  
CWA-02-2011-3357

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REG. II  
2012 JUL 27 A 11:38  
REGIONAL HEARING  
CLERK

Complainant, the United States Environmental Protection Agency (EPA), having issued the Complaint herein on September 29, 2011, against Ben-Mald Corp. d/b/a Cinderella Poultry Farm (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)(A) of the Clean Water Act (CWA or the Act), 33 U.S.C. § 1319(g)(2)(A).
2. On September 29, 2011, EPA issued a Complaint against Respondent alleging that it was discharging pollutants from its facility located at Carr 800, Km. 4.5, Palmarito Ward, in Corozal, PR (the Facility) to navigable waters of the United States without a National Pollutant Discharge Elimination System (NPDES) permit, in violation of Section 301(a) of the Act.

3. The Complaint was based on a Compliance Evaluation Inspection of Respondent's Facility, conducted by EPA on March 24, 2011. The Inspection revealed that Respondent's Facility is an animal feeding operation (AFO) as that term is defined in 40 C.F.R. 122.23(b)(1) and as that phrase is used in Section 502(14) of the Act. Respondent did not have an NPDES permit; discharges of animal manure runoff from the Facility (a "point source") occurred at least during the time of the Inspection; the "animal manure" is considered a "pollutant"; and the discharges were occurring directly into Quebrada Riachuelo, then flowing to Rio Manati and eventually reaching the Atlantic Ocean.
4. Respondent asked for an extension of time to file its Answer to the Complaint.
5. On January 3, 2012, Respondent submitted its answer to the complaint.
6. Since February, 2012, the Parties worked together in order reach a prompt, amicable resolution to this matter.
7. In May 2012, the Parties reached an agreement, dispositive of all matters asserted in the Complaint.
8. Respondent certified that, as of the date of execution of this CA/FO, it is in compliance with all the applicable regulations cited herein and in the Complaint.
9. 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.
10. The Complaint was public noticed. No public comment was received.

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

11. 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.
12. 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.
13. 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.

14. 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

15. Pursuant to Section 309(g) of the Clean Water Act, 33 U.S.C. § 1319(g), based upon the nature of the violations, EPA has determined that an appropriate civil penalty to settle this action is in the amount of SIX THOUSAND DOLLARS (\$6,000.00).
16. 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 in the following manner:
- a. Within sixty days (60) from the date the final Order is signed Respondent shall pay **\$2,000**,
  - b. Within ninety days (90) from the date the Final Order is signed, Respondent shall pay **\$2,000** and
  - c. Within one hundred and twenty days (120) from the date the Final Order is signed, Respondent shall make the final payment of **\$2,000**.
17. Respondent shall make the three payments of \$2,000, 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 each payment to each of the following:

Jaime Lopez  
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 Road 165, Km. 1.2  
Guaynabo, PR 00968-8069

Lourdes del Carmen Rodriguez, Esq.  
Assistant Regional Counsel  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 2  
City View Plaza II, Suite 7000  
48 Road 165, Km. 1.2  
Guaynabo, PR 00968-8069  
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.

18. Payments must be received at the above address no later than the dates agreed by the Parties in paragraph 16, above. The dates by which each payment must be received shall hereafter be referred to as the "due dates".
- 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 dates, 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.
19. 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.
20. Except as provided in paragraph 17 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 CAFO shall be sent by first class mail or its equivalent to each of the following:

**FOR COMPLAINANT:**

Jaime Lopez  
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 Road 165, Km. 1.2  
Guaynabo, PR 00968-8069

Lourdes del Carmen Rodriguez, Esq.  
Assistant Regional Counsel  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 2  
City View Plaza II, Suite 7000  
48 Road 165, Km. 1.2  
Guaynabo, PR 00968-8069

**FOR RESPONDENT:**

Aracelis Colon Sanchez, Esq.  
P.O. Box 372946  
Cayey, PR 00737

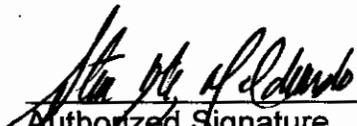
**V. GENERAL PROVISIONS**

21. 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.
22. 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.
23. 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.
24. 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.
25. 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.
26. 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.
27. 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.

28. 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.
29. 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.
30. Each party hereto agrees to bear its own costs and fees in this matter.
31. Respondent consents to service upon Respondent by a copy of the CA/FO by an EPA employee other than the Regional Hearing Clerk.
32. 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  
Ben-Mald, Corp.  
d/b/a Cinderella Poultry Farm  
Respondent

NAME:

STEVEN PEIRITA MALDONADO

TITLE:

President.

DATE:

15-JUNIO-2012

**FOR COMPLAINANT:**

A handwritten signature in black ink, appearing to read 'Jose Font', written over a horizontal line.

Jose Font, Acting Director  
Caribbean Environmental Protection Division  
U.S. Environmental Protection Agency, R2  
City View Plaza II, Suite 7000  
48, Road 165, Km. 1.2  
Guaynabo, PR 00968-8069

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
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In The Matter of

Ben-Mald Corp.  
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Respondent

DOCKET NO. CWA-02-2011-3357

CERTIFICATE OF SERVICE

I certify that, on the date noted below, I served the foregoing fully executed Consent Agreement and Final Order, bearing the above-referenced docket number, in the following manner.

Copy by Certified Mail  
Return Receipt Requested:

Aracelis Colon Sanchez, Esq.  
P.O. Box 372946  
Cayey, PR 00737

Original and One Copy  
By Express Mail :

Regional Hearing Clerk  
U.S. Environmental Protection Agency, R2  
290 Broadway, 16<sup>th</sup> floor  
New York, New York 10007-1866

Date:

July 25, 2012

  
\_\_\_\_\_  
ORC/CT Administrative Assistant