

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2

In the Matter of:

**WYETH PHARMACEUTICALS COMPANY**  
State Road 3, Km. 142.1  
Guayama, Puerto Rico 00784

**RESPONDENT**

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

**CONSENT AGREEMENT**  
**AND**  
**FINAL ORDER**

**DOCKET NUMBER:**  
**CWA-02-2009-3460**

REGIONAL HEARING

2019 MAR 18 PM 2:47

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REGION 2

**CONSENT AGREEMENT AND FINAL ORDER**

Complainant, the United States Environmental Protection Agency (EPA), having issued the Complaint herein on May 5, 2009, against Respondent Wyeth Pharmaceuticals Company (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 of the Clean Water Act (CWA or the Act), 33 U.S.C. § 1319.
2. The Complaint alleges that Respondent:
  - a. discharged industrial waste mixed with stormwater into Las Mareas Bay, without a NPDES permit, on September 22–24, 2008;

- b. failed to inspect and maintain the outfall serial number 002 underground discharge pipeline; and
  - c. failed to comply with multiple sampling requirements of its 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. The Complaint was public noticed. No public comment was received.
5. On June 10, 2009, Respondent filed its Answer to the Complaint, denying certain facts, admitting others, raising affirmative defenses, and requesting that a hearing be held in the above-captioned matter.
6. The Parties reached a settlement agreement, dispositive of all allegations asserted in the Complaint, in order to reach a resolution to this matter and, in the interest of the Parties, avoid the delays and costs resulting from an administrative procedure. The settlement agreement entails payment of a penalty (as set forth below), as well as certain activities contained in an Administrative Order on Consent, which will be executed concurrently with this CA/FO.

## **II. TERMS OF SETTLEMENT**

7. This Consent Agreement and Final Order shall apply to and be binding upon Respondent, its officers, directors, employees, successors and assigns, including, but not limited to, subsequent purchasers.
8. 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 Consent Agreement and Final Order.
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.

### **III. PAYMENT OF PENALTY**

10. Pursuant to Section 309(g) of the 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 SEVENTY SEVEN THOUSAND DOLLARS (\$77,000.00).
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 the foregoing Paragraph.

#### **III. A. Penalty**

12. No later than thirty (30) days after Respondent's receipt of the fully-executed Final Order (at the end of this document), Respondent shall pay the penalty SEVENTY SEVEN THOUSAND DOLLARS (\$77,000.00) 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  
PO 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  
314-418-4087.

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

José A. Rivera  
Environmental Engineer  
Multimedia, Permits and Compliance Branch  
Caribbean Environmental Protection Agency  
U.S. Environmental Protection Agency Region 2  
1492 Ponce de León Ave., Suite 417  
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  
1492 Ponce de León Ave., Suite 417  
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.

Payment must be received at the above address no later than thirty (30) calendar days after Respondent's receipt of the fully-executed Final Order. 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;

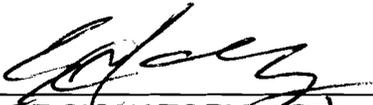
- b. further, if the payment is not received on or before the due date, interest will be assessed at the annual rate established by the Secretary of Treasury pursuant to the Debt Collection Act, 31 U.S.C. § 3717, on the overdue amount from the due date through the date of payment. In addition, a late 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;
  - c. in addition, pursuant to Section 309(g)(9) of the 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;
  - d. Respondent also may be required to pay attorneys fees and costs for collection proceedings in connection with nonpayment.
13. 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.

### **III. B. General Provisions**

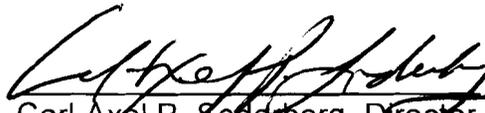
14. The Respondent waives any right it may have pursuant to 40 C.F.R. § 22.8 to be present during discussions with or to be served with and to reply to any memorandum or communication addressed to the Director or the Regional Administrator where the purpose of such discussion, memorandum, or communication 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.
15. 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.
16. 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.

17. 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.
18. 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.
19. Each party shall bear its own costs and attorneys fees in connection with the action resolved by this CA/FO.

**FOR RESPONDENT:**

BY:  DATE: MAR, 01, 2010  
NAME OF SIGNATORY Edwin Gomez  
TITLE OF SIGNATORY Marketing Director  
WYETH PHARMACEUTICALS COMPANY

FOR COMPLAINANT:

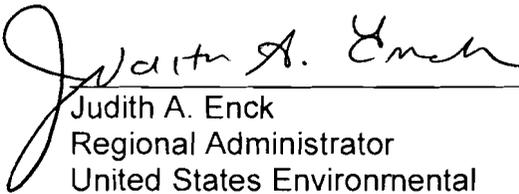


Carl-Axel P. Soderberg, Director  
Caribbean Environmental Protection Division  
U.S. Environmental Protection Agency,  
Region 2  
Centro Europa Building, Suite 417  
1492 Ponce de León Avenue  
San Juan, PR 00907-4127

#### IV. 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. EPA Region 2, New York, NY.

3-18-10  
Date

  
\_\_\_\_\_  
Judith A. Enck  
Regional Administrator  
United States 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:

**WYETH PHARMACEUTICALS COMPANY,  
INC.**

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Guayama, Puerto Rico 00784

**DOCKET NUMBER  
CWA-02-2009-3460**

**RESPONDENT**

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

**CERTIFICATE OF SERVICE**

I certify that this day I have caused to be sent the foregoing **Motion for Continuance**, bearing the above-referenced docket number, in the following manner to the respective addressees below:

Copy by **Federal Express** to:

Judge William B. Moran  
U.S. Environmental Protection Agency  
Office of Administrative Law Judges  
Franklin Court Building  
1099 14<sup>th</sup> Street, N.W. Suite 350  
Washington, D.C. 20460

Original and copy by **Hand** to:

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

Copy by **Certified Mail** to:

Attorney for Respondents:  
Karín G. Díaz-Toro, Esquire  
Torres & García, P.S.C.  
Counsel for Wyeth Pharmaceuticals Company, Inc.  
PO Box 19539  
San Juan, Puerto Rico 00910-1539

Date: 3-18-2010

  
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