



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REGION 2
2008 OCT -7 1M 7:07
REGIONAL HEARING
CLERK

October 3, 2008

RE: In the Matter of VDE Corp and Ivan Tort
Docket No. CWA-02-2007-3402

Dear Karen Maples, Regional Hearing Clerk:

Enclosed is a Consent Agreement and Final Order (CA/FO) in the above-referenced matter. This CA/FO was fully executed on September 29, 2008.

Please note that the penalty of \$48,500.00 is required to be paid in full and received by EPA no later than 45 days after the date of signature by the Regional Administrator.

Sincerely,

Eduardo J. Gonzalez, Esq.
Assistant Regional Counsel

Enclosure

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 2**

U.S. ENVIRONMENTAL PROTECTION AGENCY-REGION 2
2006 OCT - 7 AM 7:10
REGIONAL HEARINGS

IN THE MATTER OF: VDE Corp. 1473 Wilson Avenue, Suite 501 San Juan, PR 00907; Ivan Tort 1473 Wilson Avenue, Suite 501 San Juan, PR 00907; F & R Contractors Corp.;; Respondents	DOCKET NO. CWA-02-2007-3402 NPDES TRACKING NO. PRR10B412 Proceeding pursuant to Section 309(g) of the Clean Water Act, 33 U.S.C. §1319(g)
--	---

CONSENT AGREEMENT AND FINAL ORDER

Complainant, the United States Environmental Protection Agency ("EPA"), having issued the Complaint herein on October 31, 2006, against VDE Corp. ("VDE") and Ivan Tort, and,

F & R Contractors Corp. ("F&R"), appearing herein voluntarily, and VDE (both parties hereinafter collectively referred to as "Respondents") having agreed with the Complainant 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. The Complaint alleges that the Respondents failed to comply with the terms of the NPDES General Permit for Discharges from Large and Small Construction Activities ("CGP") which became effective on July 1, 2003 and expired on July 1, 2008. The general permit number for this CGP in Puerto Rico is PRR100000. The Complaint is incorporated herein by reference.
3. EPA notified the Commonwealth of Puerto Rico regarding this action and offered an

opportunity for the Commonwealth to confer with EPA on the proposed penalty assessment, pursuant to 40 CFR Part 22.

4. This action was public noticed. No public comment was received.
5. VDE filed an Answer and requested a hearing in this matter.
6. In its answer to the Complaint, VDE requested that all allegations included in the Complaint that referred to Mr. Tort be dismissed.
7. In its answer to the Complaint, VDE also argued that F&R should be joined as a party in the administrative proceeding because F&R had the day-to-day operational control of the site and was also in charge of all large scale clearing and grading activities at the site.

II. JURISDICTION

8. Paragraphs 1 through 7 are re-alleged and incorporated herein by reference.
9. EPA has jurisdiction over the subject matter of this action, pursuant to Section 309 of the Act, 33 U.S.C. § 1319, and over the Respondents.
10. The Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 CFR Part 22, allow the parties to agree to a settlement by simultaneously commencing and concluding a proceeding against a party by the issuance of a consent agreement and final order, see 40 CFR Part 22.13(b).
11. Pursuant to 40 CFR Part 22.13(b), F&R hereby agrees to appear before, and become party to the instant proceeding voluntarily and knowingly; and, for the purpose of this proceeding admits the jurisdictional allegations in the Complaint and neither admits nor denies the specific factual allegations contained in the Complaint.

III. APPLICABILITY

12. This Consent Agreement and Final Order shall apply to and is binding upon Respondents, VDE and F&R, and shall not apply or be binding upon Mr. Ivan Tort.
13. The obligations of this CA/FO apply to and are binding upon the United States, and upon Respondents and any successors, assigns, or other entities or persons otherwise bound by law.
14. No transfer of ownership or operation of the Facility, whether in compliance with the procedures of this Paragraph or otherwise, shall relieve Respondents of their obligation to ensure that the terms of this CA/FO are implemented. At least 30 Days prior to such

transfer, Respondents shall provide a copy of this CA/FO to the proposed transferee and shall simultaneously provide written notice of the prospective transfer, together with a copy of the proposed written agreement, to EPA Region 2. Any attempt to transfer ownership or operation of the Facility without complying with this Paragraph constitutes a violation of this CA/FO.

15. Respondents shall provide a copy of this CA/FO to all officers, employees, and agents whose duties might reasonably include compliance with any provision of this CA/FO, as well as to any contractor retained to perform work required under this CA/FO. Respondents shall condition any such contract upon performance of the work in conformity with the terms of this CA/FO.
16. In any action to enforce this CA/FO, Respondents shall not raise as a defense the failure by any of its officers, directors, employees, agents, or contractors to take any actions necessary to comply with the provisions of this CA/FO.

IV. TERMS OF SETTLEMENT

17. For the purpose of this proceeding, Respondents stipulate that:
 - a. 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 Respondents;
 - b. Respondents waive any defenses they might have as to jurisdiction and venue, and, without admitting or denying the factual or legal allegations contained in the Complaint;
 - c. Respondents hereby consent to the terms of this Consent Agreement and Final Order;
 - d. Respondents hereby waive their right to a judicial or administrative hearing or appeal on any issue of law or fact set forth in the Complaint; and,
 - e. Respondents consent to the payment of the civil penalty cited in the Paragraph below.
18. Pursuant to § 309(g) of the Clean Water Act, 33 U.S.C. § 1319(g), the nature of the violations and other relevant factors, Complainant and Respondents agree that an appropriate civil penalty to settle this proceeding is in the amount of Forty Eight Thousand Five Hundred dollars (\$48,500.00).
19. VDE agrees to conduct final stabilization activities at the site, in compliance with the terms of the CGP and their Storm Water Pollution Prevention Plan.

V. PAYMENT OF CIVIL PENALTY

20. Respondents shall pay a civil penalty in the amount of forty eight thousand five hundred dollars (\$48,500.00) Dollars payable to the "Treasurer of the United States of America."
21. The effective date of this Consent Agreement shall be the date the Regional Administrator signs the Final Order accompanying this Consent Agreement.
22. Respondents agree to pay the above stated amount in five payments, as follows:
 - a. An *initial payment* in the amount of twenty four thousand two hundred fifty dollars (\$24,250.00) shall be made within forty-five (45) calendar days from the effective date of this Consent Agreement.
 - b. A *second payment* in the amount of six thousand two hundred eighty seven dollars and thirty five cents (\$6,287.35) shall be made within two hundred twenty five (225) calendar days from the effective date of this Consent Agreement.
 - c. A *third payment* in the amount of six thousand two hundred eighty seven dollars and thirty five cents (\$6,287.35) shall be made within four hundred five (405) calendar days from the effective date of this Consent Agreement.
 - d. A *fourth payment* in the amount of six thousand two hundred eighty seven dollars and thirty five cents (\$6,287.35) shall be made within five hundred eighty five (585) calendar days from the effective date of this Consent Agreement.
 - e. The *final payment* in the amount of six thousand two hundred eighty seven dollars and thirty five cents (\$6,287.35) shall be made within seven hundred sixty five (765) calendar days from the effective date of this Consent Agreement.

These five payments satisfy the totality of the civil penalty of Forty Eight Thousand Five Hundred dollars (\$48,500.00) plus interest that accrues on the unpaid principal over the period of seven hundred sixty five calendar days that Respondents has requested to satisfy payment.

23. The checks shall be made payable to the "**Treasurer of the United States of America.**" The checks shall be 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. Respondents shall perform payment pursuant to any of the following methods:

PAYMENT BY CHECK

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

Wire transfers should be directed to the Federal Reserve Bank of New York:

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

VDE and F&R shall also send copies of each payment to each of the following:

Henry Mazzucca, P.E., Chief
Compliance Section
Water Compliance Branch
U.S. EPA, Region 2
290 Broadway, 20th Floor
New York, NY 10007

and

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

24. Each payment must be received at the above address no later than the date specified on paragraph 22, above. 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 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;
 - d. Respondents also may be required to pay attorneys fees and costs for collection proceedings in connection with nonpayment.
25. 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.

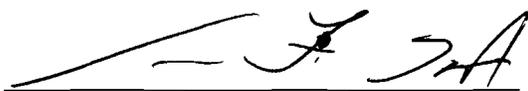
VI. General Provisions

26. The Respondents waives any right they 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.
27. 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 Respondents’ 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.
28. This Consent Agreement and Order shall not relieve Respondents of their 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 installed by Respondents, if any, in connection with the SEP undertaken pursuant to this Agreement.

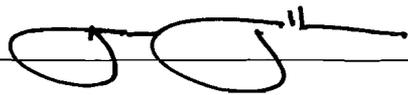
29. This Consent Agreement and Final Order constitutes a settlement by EPA of all claims for civil penalties pursuant to the Clean Water Act for the violations alleged in the Complaint. Nothing in this Consent Agreement and Final Order is intended to nor shall be construed to operate in any way to resolve any criminal liability of the Respondent. Compliance with this Consent Agreement and Final Order 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 Respondents to comply with such laws and regulations.
30. 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.
31. Each party shall bear its own costs and attorney's fees in connection with the action resolved by this Consent Agreement and Order.

FOR RESPONDENT VDE CORP.:

BY: 
Ivan Tort
President of VDE Corp.

DATE: 12/5/07

FOR RESPONDENT F&R CONTRACTORS CORP.:

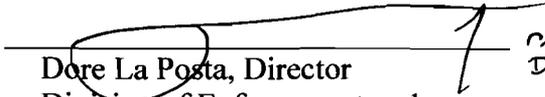
BY:  _____

DATE: Sept 12, 2008

ANTONIO FULLANA MORALES
Projects Manager of F&R Constructors, Corp.

FOR COMPLAINANT U.S. EPA, REGION 2:

BY:


Dore La Posta, Director
Division of Enforcement and
Compliance Assistance
U.S. EPA, Region 2
290 Broadway, 21st Floor
New York, New York 10007-1866

*PROVIDE
DURING
FOR ME*

DATE: SEPTEMBER 25, 2008

VII. 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.

9-29-08
Date

Alan J. Steinberg
Alan J. Steinberg
Regional Administrator
United States Environmental
Protection Agency-Region 2
290 Broadway
New York, NY 10007-1866

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 2**

<p>IN THE MATTER OF: VDE Corp. 1473 Wilson Avenue, Suite 501 San Juan, PR 00907</p> <p>Ivan Tort 1473 Wilson Avenue, Suite 501 San Juan, PR 00907</p> <p style="text-align:right">Respondents.</p> <p>Proceeding pursuant to Section 309(g) of the Clean Water Act, 33 U.S.C. §1319(g)</p>	<p>DOCKET NO. CWA-02-2007-3402</p> <p>NPDES TRACKING NO. PRR10B412</p>
---	--

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.

Original and One Copy

By Hand:

Office of Regional Hearing Clerk
U.S. Environmental Protection
Agency - Region 2
290 Broadway, 16th floor
New York, New York 10007-1866

VDE Corporation

Copy by Certified Mail

Return Receipt Requested :

Carlos Colón Franceschi, Esq.
Toro, Colon, Mullet, *et al.* P.S.C.
P.O. Box 195383
San Juan, PR 00919

F&R Corporation

Copy by Certified Mail

Return Receipt Requested:

Centro de Seguros Bldg. Suite 407
701 Ponce De León Ave.
San Juan, PR 00907

Dated: Et al. by 10/3/08