

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

IN THE MATTER OF:

Mr. Juan Benet
PLAYA CLARA, S.E.
P.O. Box 789
Culebra, PR. 00775

Playa Clara Lot Development
NPDES Number PRU202015

RESPONDENT

DOCKET NUMBER CWA-02-2008-3358

PROCEEDING PURSUANT TO SECTION
309 (G) OF THE CLEAN WATER ACT,
33 U.S.C. § 1319(G)

COMPLAINANT'S MOTION TO WITHDRAW COMPLAINT

I. BACKGROUND

On October 3, 2008, EPA Region 2 ("Complainant" or "EPA") filed an Administrative Complaint, Findings of Violation, Notice of Proposed Assessment of Civil Penalty, and Notice of Opportunity to Request a Hearing ("Complaint"), Docket No. CWA-02-2008-3358, against Respondent, Playa Clara, S.E., owner and operator of a project known as Playa Clara Lot Development (the "Project"). The Complaint alleged that the Project, a construction site, was a point source and that Respondent was required to apply for and obtain NPDES permit coverage for the storm water discharges from the Project. The Complaint charged Respondent with the following violations of the Clean Water Act ("CWA"): (1) failure to apply for and obtain coverage under a National Pollutant Discharge Elimination System ("NPDES") storm water permit; and (2) illegal discharge of pollutants into waters of the United States without NPDES permit coverage. For these violations the Complaint proposed a civil penalty of \$32,500.00.

The Complaint included, among other things, a copy of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, codified in 40 C.F.R part 22 (“CROP”), and detailed instructions explaining when and where to file an answer to the complaint. Specifically, the Complaint stated that “an original and one copy of a written Answer to the Complaint, * * * must be filed within thirty (30) days after service of the Complaint” and that such Answer must be send to EPA’s Region 2 Regional Hearing Clerk at: U.S. Environmental Protection Agency, Region 2, 290 Broadway, 16th floor, New York, New York 10007-1866.

On or about December 14, 2008, Respondent sent a letter entitled Answer to Administrative Complaint (“Answer”) to EPA in which Respondent denied certain facts alleged in the Complaint, admitted others, and raised affirmative defenses. Respondent did not request a hearing in this matter, and did not file its Answer with the Regional Hearing Clerk as instructed in the Complaint and as required by Section 22.15 the CROP.

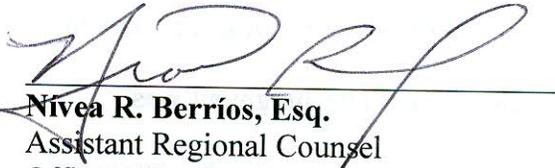
In or about January 2009, the matter was assigned to Regional Judicial Officer Helen S. Ferrara as Presiding Officer. Soon thereafter, Complainant and Respondent, engaged in settlement negotiations in order to reach an agreement dispositive of all matters asserted in the Complaint, including a penalty. Respondent alleged that it was going through financial difficulties and presented Complainant with documents in support of its financial hardship claim, which according to Respondent, made it impossible for it to pay the proposed penalty. Complainant analyzed such financial documents in order to evaluate Respondent’s inability to pay claim.

For the reasons set forth below, and pursuant to section 22.14(d) of the CROP, EPA moves to withdraw the Complaint in the above-captioned matter without prejudice.

administrative resources, Complainant respectfully requests that the Presiding Officer issue an order granting Complainant's request to withdraw the Complaint without prejudice.

Date: 6/21/16

Respectfully submitted,



Nivea R. Berríos, Esq.

Assistant Regional Counsel

Office of Regional Counsel for Caribbean Programs

US Environmental Protection Agency - Region 2

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Complainant's Motion to Withdraw Complaint in the matter of Playa Clara, S.E., Docket No. CWA-02-2008-3358, were sent to the following persons on the date and manner indicated below:

Copy by Certified Mail/Return
Receipt Requested:

For Respondent:

Mr. Juan Benet
Playa Clara
P.O. Box 789
Culebra, Puerto Rico 00775

Original and one copy
by Overnight and
electronic mail:

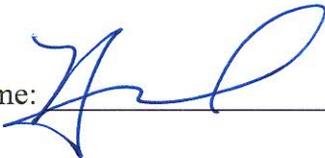
Karen Maples

Regional Hearing Clerk
Region 2
U.S. Environmental Protection Agency
290 Broadway, 16th Floor
New York, NY 10007-1866
maples.karen@epa.gov

Copy by Overnight
and electronic mail:

Hon. Helen S. Ferrara

Presiding Officer
Region 2
U.S. Environmental Protection Agency
290 Broadway, 16th Floor
New York, NY 10007-1866
ferrara.helen@epa.gov

Name: 

Date: 6/23/16