



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

ENVIRONMENTAL PROTECTION AGENCY-REGION 2
2009 DEC -1 PM 4:49
REGIONAL HEARING CLERK

NOV 23 2009

CERTIFIED MAIL - RETURN RECEIPT REQUESTS

Article Number: 7005 3110 0000 5929 6615

Mr. Domingo Sadurni Marti, President
Villa Franca Development Corp.
P.O. Box 71385
San Juan, Puerto Rico 00936

Re: Consent Agreement and Final Order for Signature
Villa Franca Development Corp.
Docket No. CWA-02-2010-3402

Dear Mr. Sadurni:

Enclosed is the fully executed Consent Agreement and Final Order (CA/FO) in the above-referenced matter. Please note that the penalty of \$40,000 is required to be paid in accordance with the schedule specified in Part IV of the enclosed CA/FO. If you have any questions regarding this letter, please contact Mr. Henry Mazzucca, P.E., Chief, Compliance Section at (212) 637-4229 or Mr. Murray Lantner, P.E., Environmental Engineer at (212) 637-3976.

Sincerely,


Dore LaPosta, Director
Division of Enforcement and Compliance Assurance

Enclosure

cc: Eng. Wanda E. García Hernández, Acting Director, Water Quality Area, PREQB

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 Broadway
New York, New York 10007

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. 2
2009 DEC -1 PM 4:49
REGIONAL HEARING
CLERK

IN THE MATTER OF:

**Villa Franca Development Corp.
P.O. Box 71385
San Juan, Puerto Rico 00936-8485**

Respondent

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

CONSENT AGREEMENT
AND
FINAL ORDER

DOCKET NO. CWA-02-2010-3402

CONSENT AGREEMENT AND ORDER

Complainant, the United States Environmental Protection Agency ("EPA"), is herein simultaneously commencing and concluding this proceeding by the issuance of this Consent Agreement and Final Order ("CA/FO"), against Respondent Villa Franca ("Respondent"), and,

Complainant and Respondent having agreed that settlement of this matter is in the public interest, and that entry of this Consent Agreement and Final Order 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 Complainant alleges that Respondent failed to comply with the terms of the National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges From Construction Activities (CGP, Construction General Permit, Permit) PRR100000, which is the duly issued NPDES permit for the Commonwealth of Puerto Rico.

3. EPA notified the Puerto Rico Environmental Quality Board (EQB) regarding this action and offered an opportunity for EQB to confer with EPA on the proposed penalty assessment, pursuant to 40 CFR Part 22.
4. At the time of signature of this document by EPA this document was public noticed for the required period.
5. 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.
6. 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.
7. Respondent hereby waives HIS/HER/ITS right to a judicial or administrative hearing or appeal on any issue of law or fact set forth in the Complaint.
8. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants into waters of the United States except as in compliance with Sections 301, 306, 307, 308 and 402 of the Act.

II. STATEMENT OF FACTS

Villa Franca owns/operates the construction sites listed in the table below that violated the CWA and/or CGP as follows:

Table: Villa Franca, Ciudad Jardin Gurabo/Juncos Facilities

NPDES Permit No.	Site Name	Site Address	Site City
PRU020993	Gurabo River Bridge (Part of a Common Plan of Development for Ciudad Jardin Project)	State Road 189 Km. 10.1	Gurabo, PR
PRR10BB61	Lagos de Ciudad Jardin	PR-189 Km. 10.1, Mamey Ward	Gurabo, PR
PRR10BB58	Boulevard de Ciudad	Mamey Ward	Gurabo and Juncos, PR

NPDES Permit No.	Site Name	Site Address	Site City
	Jardin II		
PRR10BF17	Mansiones de Ciudad Jardin	State Road PR 189 Km. 10.1	Gurabo, PR
PRR10BB98	Ciudad Jardin de Gurabo Golf Course	Mamey Ward Road 189 Km. 10.1	Gurabo and Juncos, PR
PRR10BF41	Los Llanos de Ciudad Jardin II	State Road 189 Km. 10.1	Gurabo PR
PRR10BD67	Terra de Ciudad Jardin II	State Road 189 Km. 10.1	Juncos, PR

1. At Gurabo River Bridge

- a. According to Sections 301(a) and 402 of the Act, 33 U.S.C. §1311 and §1342 an Owner/Operator must obtain permit coverage prior to conducting construction Activity. Construction activity at the site began on or about March 1, 2006 and construction was completed in the months following the EPA inspection on January 23, 2007. Permit coverage was not obtained for this bridge construction project over the Gurabo River at the Ciudad Jardin site, nor was this project part of a common plan of development in the Storm Water Pollution Prevention Plan (SWPPP) associated with other Ciudad Jardin projects.

2. At Lagos de Ciudad Jardin

- a. According to CGP 3.4.C.1-3 the following records must be maintained as part of the SWPPP: dates when major grading activities occur; dates when construction temporarily or permanently ceased; and dates when stabilization measures were initiated. During the inspection these records were not available as required. The amended August 2007 SWPPP did contain this info.
- b. According to CGP 3.4.E the SWPPP must include a description of measures that will be installed during the construction process to control pollutants in storm water discharges that will occur after construction operations have been completed. The August 2007 SWPPP does not list the post construction storm water controls.
- c. According to CGP 3.10.A and 3.10.B inspections must be conducted in accordance with one of the two schedules. At least once every seven (7) calendar

days or at least once every fourteen (14) calendar days and within twenty-four (24) hours of the end of a storm event of 0.5 inches or greater. There are no records of weekly inspections for the period July 10, 2006 thru November 30, 2006. Inspection records following those dates were available.

- d. According to CGP 3.12.B a sign or other notice must be posted conspicuously near the main entrance of the construction site. During the inspection no sign was posted at the site entrance as required. Based on a letter from Villa Franca from August 2007 a sign has now been posted.

3. At Boulevard de Ciudad Jardin II

- a. According to Sections 301(a) and 402 of the Act, 33 U.S.C. § 1311 and § 1342 an Owner/Operator must obtain Permit coverage prior to discharging pollutants associated with industrial activity from a point source to waters of the United States. In accordance with the CGP and Section 308 of the CWA 33 U.S.C. § 1318 a Notice of Intent (NOI) must be submitted to EPA to obtain permit coverage. Construction Activity at the site began on February 13, 2006. The facility submitted a Notice of Intent (NOI) to obtain CGP coverage on June 20, 2006 and obtained Permit coverage on August 9, 2006. As described above CGP coverage was not obtained in a timely manner.
- b. According to CGP 3.4.C.1-3 the following records must be maintained as part of the SWPPP: dates when major grading activities occur; dates when construction temporarily or permanently ceased; dates when stabilization measures initiated. During the inspection these records were not available as required. Prior to August 7, 2007 this information was not included in the SWPPP.
- c. According to CGP 3.4.E the SWPPP must include a description of measures that will be installed during the construction process to control pollutants in storm water discharges that will occur after construction operations have been completed. The SWPPP does not list the post construction storm water controls.
- d. According to CGP 3.10.A, 3.10.B inspections must be conducted in accordance with one of the two schedules. At least once every seven (7) calendar days or at least once every fourteen (14) calendar days and within twenty-four (24) hours of the end of a storm event of 0.5 inches or greater. Weekly site Inspections specified in the SWPPP were not conducted for the period April 28, 2006 to January 29, 2007.
- e. According to CGP 3.12.B a sign or other notice must be posted conspicuously near the main entrance of the construction site. During the inspection no sign was posted at the site entrance as required. Based on an August 2007 from Respondent a sign has now been posted.

- f. According to CGP 3.12.B control measures were not properly selected, installed and maintained. BMPs for top soil storage were not in place and silt fence around catch basin were not keyed into substrate as required by the CGP.

4. At Mansiones de Ciudad Jardin

- a. According to Sections 301(a) and 402 of the Act, 33 U.S.C. § 1311 and § 1342 an Owner/Operator must obtain Permit coverage prior to discharging pollutants associated with industrial activity from a point source to waters of the United States. In accordance with the CGP and Section 308 of the CWA 33 U.S.C. § 1318 a Notice of Intent (NOI) must be submitted to EPA to obtain permit coverage. Rover Development held the previous Permit for this Site PRR10BB02 until May 30, 2007 when it filed a Notice of Termination (NOT). Villa Franca submitted an NOI and obtained permit coverage on August 9, 2007. Therefore the site was unpermitted in June and July 2007 in violation of Sections 301 and 402 of the CWA.
- b. According to CGP 3.10.A, 3.10.B inspections must be conducted in accordance with one of the two schedules. At least once every seven (7) calendar days or at least once every fourteen (14) calendar days and within twenty-four (24) hours of the end of a storm event of 0.5 inches or greater. There was no inspection report in the SWPPP for two weekly inspection periods after the June 18, 2007 inspection and before the July 9, 2007 inspection.
- c. According to CGP 3.4.E the SWPPP must include a description of all post-construction storm water management measures that will be installed during the construction process to control pollutants in storm water discharges that will occur after construction operations have been completed. SWPPP does not list the post construction storm water controls.

5. At Ciudad Jardin de Gurabo Golf Course

According to CGP 3.4.E the SWPPP must include a description of all post-construction storm water management measures that will be installed during the construction process to control pollutants in storm water discharges that will occur after construction operations have been completed. SWPPP does not list the post construction storm water controls.

6. At Los Llanos de Ciudad Jardin II

According to CGP 3.4.E the SWPPP must include a description of all post-construction storm water management measures that will be installed during the construction process to control pollutants in storm water discharges that will occur after construction operations have been completed. SWPPP does not list the post construction storm water controls.

7. At Terra de Cuidad Jardin II

According to CGP 3.4.E the SWPPP must include a description of all post-construction storm water management measures that will be installed during the construction process to control pollutants in storm water discharges that will occur after construction operations have been completed. SWPPP does not list the post construction storm water controls.

III. TERMS OF SETTLEMENT

8. This Consent Agreement and Final Order shall apply to and be binding upon Respondents, their officers, members, employees, successors and assigns, including, but not limited to, subsequent purchasers.
9. Respondent stipulates that EPA has jurisdiction over the subject matter alleged in this CA/FO and that Complainants' allegations state a claim upon which relief can be granted against Respondents.
10. Respondent waives any defenses they might have as to jurisdiction and venue, and, without admitting or denying the factual or legal allegations contained in this CA/FO, consent to the terms of this Consent Agreement and Final Order.
11. Respondent hereby waives their right to a judicial or administrative hearing or appeal on any issue of law or fact set forth in the Complaint.
12. Pursuant to § 309(g) of the Clean Water 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 FORTY THOUSAND (\$40,000.00) DOLLARS.
13. Within thirty (30) calendar days of the effective date of this CA/FO, Respondent shall submit the following:
 - a. a SWPPP amendment with post construction storm water controls to comply with CGP 3.4.E at the Lagos de Ciudad Jardin site;
 - b. SWPPP amendment with post construction storm water controls to comply with CGP 3.4.E at the Boulevard de Ciudad Jardin site;
 - c. SWPPP amendment with post construction storm water controls to comply with CGP 3.4.E at the Mansiones de Ciudad Jardin site;
 - d. SWPPP amendment with post construction storm water controls to comply with CGP 3.4.E at the Ciudad Jardin de Gurabo Golf Course site;

- e. SWPPP amendment with post construction storm water controls to comply with CGP 3.4.E at the Los Llanos de Ciudad Jardin II;
- f. SWPPP amendment with post construction storm water controls to comply with CGP 3.4.E at the Terra de Ciudad Jardin II site;

14. 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.

IV. PAYMENT OF PENALTY

The Respondent shall pay the penalty of FORTY THOUSAND (\$40,000.00) plus interest. First payment has to be made within fifteen (15) days after the date signature on the Final Order by the Regional Administrator of Region 2 of the EPA (at the end of this document). The payment schedule as follows:

Schedule - Within Specified Calendar Days of CA/FO Effective Date	Total Payment (Principle plus Interest)
15	\$5,000.00
45	\$5,086.30
75	\$5,073.97
105	\$5,061.64
135	\$5,049.32
165	\$5,036.99
195	\$5,024.66
225	\$5,012.33

All payments have to be made 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. Respondent shall perform payment pursuant to the following:

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

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

Henry Mazzucca, P.E., Chief
Compliance Section
Water Compliance Branch
U.S. Environmental Protection Agency Region 2
290 Broadway, 20th Floor
New York, NY 10007
Fax number (212) 637-4211

and

Timothy Murphy
U.S. Environmental Protection Agency Region 2
290 Broadway, 16th Floor
New York, NY 10007-1866
Fax number: (212) 637-3889

and

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

15. Payment must be received at the above address no later than the relative date for each payment. 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 thirty (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 ninety (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.

- 16. 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.

V. GENERAL PROVISIONS

- 17. The Respondent 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.
- 18. 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 Respondents' violation of any applicable provision of law.
- 19. 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.

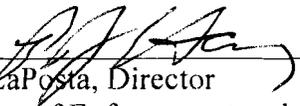
20. This Consent Agreement and Final Order constitute a settlement by EPA of all claims for civil penalties pursuant to the Clean Water Act for the violations alleged in the Complaint. Nothing in this Consent Agreement and Final Order is intended to nor shall be construed to operate in any way to resolve any criminal liability of the Respondents. 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.
21. Each undersigned representatives of the parties to this Consent Agreement certify 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.
22. Each party shall bear its own costs and attorneys' fees in connection with the action resolved by this Consent Agreement and Order.

FOR RESPONDENT, VILLA FRANCA:

BY: 
Domingo Sadurni Marti, President,
Villa Franca Development Corp.

DATE: 9/11/09.

FOR COMPLAINANT U.S. EPA, REGION 2:

BY: 
Dore LaPosta, Director
Division of Enforcement and Compliance Assistance
U.S. Environmental Protection Agency, Region 2

DATE: 11/20/09

VI. 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.

11/23/09
Date


George Pavlou
Acting Regional Administrator
United States Environmental
Protection Agency-Region 2
290 Broadway
New York, NY 10007-1866

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 Broadway
New York, New York 10007

IN THE MATTER OF: Villa Franca Development Corp. P.O. Box 71385 San Juan, Puerto Rico 00936-8485 Respondent Proceeding pursuant to Section 309(g) of the Clean Water Act, 33 U.S.C. §1319(g)	<u>CONSENT AGREEMENT</u> <u>AND</u> <u>FINAL ORDER</u> DOCKET NO. CWA-02-2010-3402
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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:

Domingo Sadurni Marti, President
Villa Franca Development Corp.
P.O. Box 71385
San Juan, Puerto Rico 00936-8485

Original and One Copy

Regional Hearing Clerk
By Internal Mail (pouch):
U.S. Environmental Protection Agency
290 Broadway, 16th floor
New York, New York 10007-1866

Date: 11/30/09


NAME OF SECRETARY, Secretary