

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II

2007 SEP 28 PM 2:11

REGIONAL HEARING
CLERK

In the Matter of:

**Puerto Rico Aqueduct and Sewer
Authority,**

La Boca Water Filter Plant,
Barranquitas, Puerto Rico.

NPDES Permit No. PR0026565

RESPONDENT

**CONSENT AGREEMENT AND FINAL
ORDER**

Docket Number: CWA - 02-2007- 3406

I. PRELIMINARY STATEMENT

1. This administrative proceeding for the assessment of a civil penalty was instituted pursuant to Section 309(g) of the Clean Water Act (the "Act"), 33 U.S.C. § 1319(g).
2. The Complainant in this proceeding, the Director of the Caribbean Environmental Protection Division ("CEPD"), Region 2, United States Environmental Protection Agency ("EPA") issued an "Administrative Complaint, Findings of Violation, Notice of Proposed Assessment of a Civil Penalty and Notice of Opportunity to Request a Hearing" (hereinafter, "Complaint") to the Puerto Rico Aqueduct and Sewer Authority ("PRASA" or "Respondent"), on February 9, 2007.
3. The Complaint charged Respondent with violations of Section 301 of the Act, 33 U.S.C. § 1311, and regulations promulgated pursuant to the Act at 40 C.F.R. § 122.41(a), for the illegal discharges at the La Boca Water Filter Plant (the "WFP"), located at State Road 749, Km 0.1, Quebradilla Ward, Barranquitas, Puerto Rico.
4. The following Findings of Fact are made and Final Order issued pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency (the "Administrator") by the Act, as amended, 33 U.S.C. § 1251 *et seq.*, and in particular Section 309(g) of the Act, 33 U.S.C. § 1319(g). This authority has been duly delegated from the Administrator to the Regional Administrator of Region 2 of EPA.

5. This Consent Agreement and Final Order ("CA/FO") is issued in accordance with 40 C.F.R. § 22.13(b) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits ("CROP"), which sets forth procedures where the parties agree to the settlement of an action in which a civil penalty was assessed through the issuance of a consent agreement and final order pursuant to 40 C.F.R. § 22.18(b)(2) and (3).
6. The parties, EPA and PRASA, understand that it is in the public's best interest to resolve the issues that are the basis for the above referenced enforcement action. Accordingly, both parties agree, by entering into this CA/FO, that settlement of this matter, upon the terms set forth herein, is an appropriate means of resolving claims against Respondent without further litigation. No adjudicated findings of fact or conclusions of law have been made. The following constitute EPA's Findings of Fact and Conclusions of Law.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

7. PRASA is a person within the meaning of Section 502(5) of the Act, 33 U.S.C. §1362(5).
8. PRASA owns and operates the WFP which is best described by the Standard Industrial Classification code 4941.
9. Section 301(a) of the Act, 33 U.S.C. §1311(a), provides in part that "Except as in compliance with this Section and Sections ..402, and 404 of the Act, the unauthorized discharge of any pollutant by any person shall be unlawful."
10. The WFP discharged pollutants through a point source into Río Hondo, a water of the United States, all within the respective definitions established in Section 502 of the Act, 33 U.S.C. § 1362. Respondent is subject to the provisions of the Act, 33 U.S.C. § 1251 et seq.
11. On May 19, 2005, PRASA submitted a NPDES permit application for the WFP. On September 18, 2006, the Puerto Rico Environmental Quality Board ("PREQB") issued an Intent Water Quality Certificate ("IWQC") for the WFP.
12. On September 26, 2006, PRASA self reported that unauthorized discharges from La Boca WFP had been occurring for several months.
13. PRASA finished the construction of a Sludge Treatment System ("STS") at the WFP in the year 2006. The STS uses an engineering treatment technology to provide treatment to the filters' backwash wastewater and the sedimentation tanks' wastewater prior to discharge into receiving waters.

14. After receiving the report of the violations EPA conducted a Compliance Evaluation Inspection ("CEI") of the WFP on October 20, 2006. The purpose of the CEI was to evaluate compliance with the NPDES program. At the time of the CEI, EPA found that the facility began to operate on July 14, 2006 and had been discharging without a NPDES permit from such date until October 16, 2006.
15. On October 17, 2006, the Puerto Rico Department of Health issued a permit to recirculate the effluent from the STS of the WFP into the headworks, ceasing discharges into the Rio Hondo.
16. At the time of the CEI, the final NPDES permit to authorize the discharge of pollutants from the WFP into the Rio Hondo had not been issued.
17. At the time of the CEI, La Boca WFP had no evidence of properly monitoring and reporting the quality of the effluent discharged.
18. As described in the above paragraphs, Respondent violated Section 301(a) of the Act, 33 U.S.C. §1311(a), for approximately 95 days by:
 - a. discharging without a NPDES permit; and
 - b. failing to monitor and report the quality of the effluent discharged

III. CONSENT AGREEMENT

Based upon the foregoing, and pursuant to Section 309(g) of the Act, 3 U.S.C. § 1319(g), and the CROP, 40 C.F.R. § 22.18, it is hereby agreed by and between the Parties and Respondent voluntarily and knowingly agrees as follows:

Jurisdiction

1. For the purpose of this proceeding, Respondent admits the jurisdictional allegations of the Complaints and of this Consent Agreement as applied to the facilities addressed herein and neither admits nor denies the specific factual allegations contained in the Complaint and the above Findings of Fact.

Payment of Civil Penalty

2. Pursuant to Section 309(g) of the Act and having taken into account the nature, circumstances, extent and gravity of the violations, and any other factors that may be required by the Act, EPA has determined that a civil

penalty in the amount of Twenty-One Thousand Six Hundred Dollars (\$21,600) is appropriate in settlement of this case.

3. Respondent shall pay the above stated amount, by cashier's or certified check, payable to the "Treasurer of the United States of America." The check shall be identified with a notation of the name and docket numbers of this case, set forth in the caption on the first page of this document. Such check shall be mailed to:

Regional Hearing Clerk
EPA Region 2
P.O. Box 360188M
Pittsburgh, Pennsylvania 15251

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

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

and

Silvia Carreño
Assistant Regional Counsel
Office of Regional Counsel-Caribbean Team
U.S. Environmental Protection Agency, Region 2
Centro Europa Building, Suite 417
1492 Ponce de León Avenue
San Juan, Puerto Rico 00907-4127.

4. Payment must be **received** at the above address on or before forty-five (45) calendar days after the effective date of the final order at the end of this document (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 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.

- 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. You also may be required to pay attorneys fees and costs for collection proceedings in connection with nonpayment.
- d. The penalty to be paid is a civil penalty assessed by the EPA and shall not be deductible from Respondent's federal or state taxes.

IV. GENERAL PROVISIONS

1. This Consent Agreement is being voluntarily and knowingly entered into by the Parties in full and final settlement of the civil liabilities that might have attached as a result of the allegations contained in the Complaint. 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.
2. 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.
3. Respondent knowingly and explicitly waives its right under Section 309(g)(2) and (8) of the Act, 33 U.S.C. § 1319(g)(2) and (8), to request or to seek any Hearing on or Judicial Review of the Complaints consolidated herein or on any of the allegations therein asserted, on this Consent Agreement or the Findings of Fact and Conclusions of Law herein, or on the accompanying Final Order.
4. 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 or the Deputy 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.

5. 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 Sections 309(a), (b) and (c) of the Act, 33 U.S.C. § 1319(a), (b) and (c).
6. 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 Clean Water Act, of regulations promulgated thereunder, and of any legal order or permit issued thereunder.
7. 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.
8. The provisions of this CA/FO shall be binding upon the Respondent, its officers, directors, agents, servants, authorized representatives and successors or assigns.
9. Each party hereto agrees to bear its own costs and fees in this matter.
10. Respondent consents to service upon Respondent by a copy of this Consent Agreement and Final Order by an EPA employee other than the Regional Hearing Clerk.

RESPONDENT:

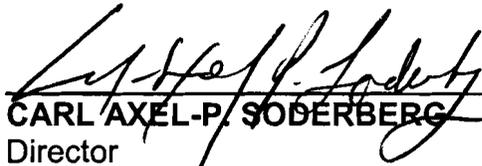


José F. Ortiz Vázquez
Executive President
PRASA

September 19, 2007

Date

COMPLAINANT:



CARL AXEL-P. SODERBERG
Director
Caribbean Environmental Protection Division
United States Environmental Protection Agency
Region 2
Centro Europa Building, Suite 417
1492 Ponce de León Avenue
San Juan, Puerto Rico 00907

09-13-07
Date

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, New York.



ALAN J. STEINBERG
Regional Administrator
United States Environmental Protection Agency
Region 2
290 Broadway
New York, New York 10007



Date

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

In the Matter of:

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RESPONDENT

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CERTIFICATE OF SERVICE

I certify that, on the date noted below, I caused to be mailed a copy of the foregoing "Consent Agreement and Final Order" to the following persons, at the addresses listed below and in the following manner:

Original and copy for filing

Fed Ex:

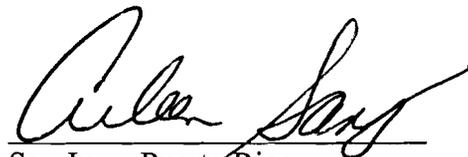
Karen Maples
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
290 Broadway – 16th Floor
New York, New York, 10007

Copy by Certified Mail /

Return Receipt Requested:

Jorge Marrero Narváez, Esq.
PO Box 7066
San Juan, PR 00916-7066

Date: 09/26/2007



San Juan, Puerto Rico
Office of Regional Counsel - CT