



90-11-3-11961

Environmental Enforcement Section  
Washington, DC 20044-7611

U.S. Department of Justice

Environment and Natural Resources Division

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October 29, 2024

Dennis Seilhamer, Esq.  
Seilhamer Law Group  
255 Calle Canals  
San Juan, P.R. 00907

Re: Settlement of stipulated penalty claims

Mr. Seilhamer,

By this letter the United States, on behalf of the Environmental Protection Agency (EPA), proposes a resolution of the United States' claims against the Puerto Rico Land Authority for stipulated penalties regarding two Superfund Sites in Puerto Rico: the Murcielago Pesticide Warehouse Superfund Site (Murcielago) and the Vega Baja Landfill Superfund Site (Vega Baja). The stipulated penalty claims arise from the Land Authority's failure to make payments as required under settlement agreements addressing cleanup of environmental contamination at the sites pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. §§ 9601-9675.

In 2003, the EPA and the Land Authority entered into an Administrative Order on Consent for Removal Action (AOC) No. CERCLA-02-2003-2015 to address the cleanup at Murcielago. Paragraph 74 of the AOC requires the Land Authority to reimburse EPA for response costs, remitting payment to EPA within 30 days of receipt of each billing. Paragraph 80 of the AOC provides that the Land Authority shall, upon demand by EPA, pay a stipulated penalty for failure to comply with any of the time limits set forth in the AOC. In November of 2016, EPA sent an invoice to the Land Authority for EPA's oversight costs which was due thirty days after receipt. Despite receipt of this invoice, which EPA can show through U.S. Postal Service records, the Land Authority never paid this bill. Contemporaneous with the issuance of this letter, EPA is sending the Land Authority a proposed CERCLA Section 122(h) administrative order on consent (AOC) providing for the Land Authority to pay this bill which includes the invoiced amount plus any accrued interest. Based on our recent conversations with representatives of the Land Authority, we understand that the Land Authority is amenable to agree to enter into the Section 122(h) settlement and pay the bill, including accrued interest, soon. We have calculated the amount of accrued stipulated penalties that the Land Authority could be liable for through September 30, 2024. Based on that estimated payment date, accrued stipulated penalties for the late payment under the AOC total \$19,686,500.

On April 19, 2013, the United States District Court for the District of Puerto Rico approved the judicial consent decree (Consent Decree") between the United States on behalf of EPA and the Land Authority to address the cleanup at the Vega Baja site. *See United States v. Commonwealth of Puerto Rico, et. al.*, Civil Action No. 12-1988(ADC). Paragraphs 43(a)(1)(ii) and (iii) of the Consent Decree set forth the following three due dates for response cost

payments: one within thirty days of the effective date of the consent decree for \$350,000; one on July 15, 2013, for \$300,000; and one on December 15, 2013, for \$300,000. Paragraph 63(a) of the Vega Baja consent decree provides for the accrual of stipulated penalties for failure to meet any compliance milestone listed under Paragraph 63(b) including, at Paragraph 63(b)(10), payment of response costs. The Land Authority never made any complete payments, but made sporadic smaller payments totaling \$227,902.64, with the last payment made in 2018. As with Murcielago, the Order on Consent will require the Land Authority to make the full payment of the amount due under the Consent Decree for Vega Baja, including accrued interest. We have calculated the amount of accrued stipulated penalties that the Land Authority could be liable for through September 30, 2024. Based on that estimated payment date, accrued stipulated penalties for the late payment under the Consent Decree total \$23,873,500.

By this letter, the United States proposes to resolve its claims for stipulated penalties against the Land Authority set forth in this letter for \$302,150.


Provided that this proposal is acceptable, I request that the Land Authority signify its acceptance by signing and dating this letter below and returning it to me within fourteen days of its receipt of this letter. Payment of the \$302,150 will then be due 30 days after the date of the Land Authority's signature on the letter.

The Land Authority should make its payment at <https://www.pay.gov> using the "EPA Miscellaneous Payments Cincinnati Finance Center" link and include reference to Site/Spill ID numbers 02-TR and 02-HJ.

Provided the Land Authority makes the above-described payment on time, the United States covenants not to sue or to take administrative action against the Land Authority for stipulated penalties, civil penalties, and punitive damages under Sections 106(b) and 107(c)(3) of CERCLA, 42 U.S.C. §§ 9606(b)(1) and 9607(c)(3), arising from (i) the Land Authority's failure, prior to the date of this letter, to make timely payment of EPA's oversight costs for the Murcielago Site pursuant to Paragraph 74 of the Order and (ii) the Land Authority's failure, prior to the date of this letter, to timely make payment of EPA's past costs pursuant to the Consent Decree.

Sincerely,


TODD KIM  
Assistant Attorney General  
Environment and Natural Resources Division  
U.S. Department of Justice

  
Angela McFadden  
Trial Attorney  
Environmental Enforcement Section

Of counsel: Elizabeth Leilani Davis, Esq., EPA  
Sarena Malsin, Esq., EPA

**Agreed to and Accepted for the Puerto Rico Land Authority:**

10-29-24  
Dated

  
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Ramon González Beiró  
President of the Governing Board  
Land Authority of Puerto Rico  
1309 Ave. Manuel Fernández Juncos, Pda. 19½  
San Juan, P.R. 00908