

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 2

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG.11
2013 JAN 22 A 7 57
REGIONAL HEARING
CLERK

IN THE MATTER OF:

BRIGHTON HOMES CARIBBEAN, INC.
Avenida Condado 64, Suite # 6
San Juan, Puerto Rico 00908

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-02-2011-3361

NPDES TRACKING NO. PRU200820

CONSENT AGREEMENT AND FINAL ORDER

Complainant, the United States Environmental Protection Agency ("EPA"), having issued the Complaint herein on August 11, 2011, against Respondent, Brighton Homes Caribbean, Inc. ("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(g)(2)(B) of the Clean Water Act, 33 U.S.C. § 1319(g)(2)(B).
2. The Complaint alleges that Respondent discharged pollutants into waters of the United States without authorization of a National Pollutant Discharge Elimination System ("NPDES") permit.
3. EPA notified the Commonwealth of Puerto Rico regarding this action and offered an opportunity for the Commonwealth of Puerto Rico to confer with EPA on the proposed penalty assessment, pursuant to 40 C.F.R. Part 22.
4. This action was public noticed. No public comment was received.

5. Respondent appeared *pro se*, answered the complaint, and requested mediation.
6. 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.
7. 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.
8. 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.
9. Respondent hereby waives its right to a judicial or administrative hearing or appeal on any issue of law or fact set forth in the Complaint.

II. TERMS OF SETTLEMENT

10. Pursuant to Section 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 FOUR THOUSAND FIVE HUNDRED DOLLARS (\$4,500.00).
11. 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.

II. A. Penalty

12. Respondent shall pay the penalty of FOUR THOUSAND FIVE HUNDRED DOLLARS (\$4,500.00) in three installment payments, as follows:
 - a. an initial payment of ONE THOUSAND FIVE HUNDRED DOLLARS (\$1,500.00) shall be made within forty-five (45) calendar days from the date that the attached Final Order is signed by the Regional Judicial Officer of EPA Region 2;
 - b. a second payment of ONE THOUSAND FIVE HUNDRED DOLLARS (\$1,500.00) shall be made within two hundred and thirty (230) calendar days from the date that the attached Final Order is signed by the Regional Judicial Officer of EPA Region 2; and
 - c. a third and final payment of ONE THOUSAND FIVE HUNDRED DOLLARS (\$1,500.00) shall be made within four hundred and ten (410) calendar days from the date that the attached Final Order is signed by the Regional Judicial Officer of EPA Region 2.
13. Each installment payment shall be made payable to the **“Treasurer of the United States of America”** and identify with a notation the name and docket number of this case, as set forth in the caption on the first page of this document. Payments made by check

(cashier's or certified checks only) and other payment methods shall follow the procedures listed below:

CHECK PAYMENTS:

US Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. 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
ATIN Box 979077
St. Louis, MO 63101
Contact: Natalie Pearson
Telephone Number: 314-418-4087

AUTOMATED CLEARINGHOUSE OR REMITTANCE EXPRESS:

PNC Bank
808 17th Street, NW
Washington, DC 20074
Contact -- Jesse White 301-887-6548
ABA = 051036706
Transaction Code 22 - checking
Environmental Protection Agency
Account 310006—CTX Format

ON LINE PAYMENT:

This payment option, available through the Department of Treasury, can be accessed at: WWW.PAY.GOV. Enter sfo 1.1 in the search field; open form and complete required fields.

14. Respondent shall also send copies of this 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

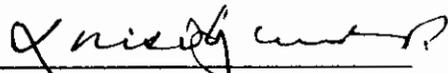
Robert M. Durango, Esq.
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 2
City View Plaza II–Suite 7000
#48 RD. 65 km 1.2
Guaynabo, Puerto Rico 00968-8069
Fax number: (787) 729-7748

15. Payments must be received at the above address in accordance with the payment schedule established in Paragraph 12 above.
16. The date by which payment must be received shall hereafter be referred to as the “due date”. In computing any period of time under this Consent Agreement, where the last day would fall on a Saturday, Sunday, Federal or Commonwealth of Puerto Rico holiday, the period shall run until the close of business of the next working day.
 - 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 payments are 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 payments are 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; and
 - d. Respondent may also be required to pay attorneys fees and costs for collection proceedings in connection with nonpayment.
17. The penalty to be paid is a civil penalty assessed by the EPA and shall not be deductible from the Respondent’s federal or state taxes.

II. B. GENERAL PROVISIONS

18. The 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 Director or 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.
19. 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 Respondent's violation of any applicable provision of the law.
20. This Consent Agreement and Final Order shall not relieve Respondent of its 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.
21. 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 Respondent to comply with such laws and regulations.
22. 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.
23. Each party hereto shall bear its own costs and attorneys' fees in connection with the action resolved by this Consent Agreement and Final Order.

FOR RESPONDENT, Brighton Homes Caribbean, Inc.:

BY: 
LOUIS O. GONZALEZ
President
Brighton Homes Caribbean, Inc.
Avenida Condado 64, Suite # 6
San Juan, Puerto Rico 00908

DATE: Nov. 6, 2012

FOR COMPLAINANT, U.S. EPA, Region 2:

BY:


JOSE C. FONT

Acting Director

Caribbean Environmental

Protection Division

U.S. EPA, Region 2

City View Plaza II – Suite 7000

#48 RD. 65 km 1.2

Guaynabo, Puerto Rico 00968-8069

DATE:

12/26/2012

III. FINAL ORDER

The Regional Judicial Officer 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.

1/10/13
Date

Helen S. Ferrara

Helen S. Ferrara
Regional Judicial Officer
United States Environmental
Protection Agency-Region 2
290 Broadway, 16th Floor
New York, NY 10007-1866

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 2

IN THE MATTER OF:

BRIGHTON HOMES CARIBBEAN, INC.
425 State Road 693 PMB 303
Dorado, Puerto Rico 00646-4802

Respondent.

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

CONSENT AGREEMENT
AND
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DOCKET NO. CWA-02-2011-3361

NPDES TRACKING NO. PRU200820

CERTIFICATE OF SERVICE

I hereby certify that, on the date noted below, the foregoing fully executed Consent Agreement and Final Order, bearing the above-referenced docket number was sent, in the following manner:

Copy by PDF and Certified Mail
Return Receipt Requested:

Louis O. Gonzalez
Brighton Homes Caribbean, Inc.
Avenida Condado 64, Suite # 6
San Juan, Puerto Rico 00908

Original and Copy by Overnight:

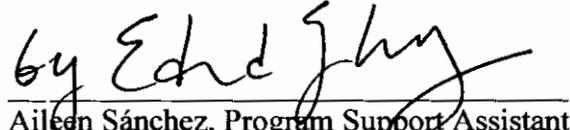
Karen Maples
Regional Hearing Clerk
U. S. EPA, Region 2
290 Broadway, 16th Floor
New York, NY 10007-1866

Copy by PDF and
Internal Mail (pouch):

Helen S. Ferrara
Regional Judicial Officer
United States Environmental
Protection Agency-Region 2
290 Broadway, 16th Floor
New York, NY 10007-1866

Date:

1/10/13


Aileen Sánchez, Program Support Assistant
EPA, Region 2, Office of Regional Counsel