

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION II
290 Broadway
New York, NY 10007-1866**

IN THE MATTER OF:

The Ritz Carlton Resort
6900 Estate Great Bay
St. Thomas, VI 00802

Respondent

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

TPDES ID. No. VI0040479

**CONSENT AGREEMENT
AND
FINAL ORDER**

DOCKET NO. CWA-02-2023-3301

CONSENT AGREEMENT AND FINAL ORDER

Complainant, United States Environmental Protection Agency, Region 2 (“EPA” or “Complainant”), and Respondent, The Ritz Carlton Resort (“Respondent”), by their undersigned representatives, hereby consent and agree as follows:

I. PRELIMINARY STATEMENT

1. This is a civil administrative proceeding for the assessment of a civil penalty instituted pursuant to Section 309(g) of the Clean Water Act (“CWA” or “the Act”), 33 U.S.C. § 1319(g).
2. The Complaint alleges that Respondent is in violation of Sections 301 and 402 of the Act, 33 U.S.C. §§ 1311 and 1342, because Respondent failed to comply with monitoring and reporting requirements established in the Virgin Islands Department of Planning and Natural Resources (“VIDPNR”) Territorial Pollutant Discharge Elimination System (“TPDES”) permit, VI0040479, for Respondent’s facility located at or near 6900 Estate Great Bay in St. Thomas, U.S. Virgin Islands (the “Facility”).
3. EPA notified the U.S. Virgin Islands regarding this action and offered an opportunity for the U.S. Virgin Islands 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 has not filed an answer.
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. 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.
8. 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

9. For purposes of settlement, Respondent consents to the issuance of this Consent Agreement and consents to the payment of the civil penalty described in Section II.A. and agrees to perform the Supplemental Environmental Project (“SEP”) described in Section II.B.

A. Civil Penalty

10. Upon consideration of the factors in Section 309(g)(3) of the Act, 33 U.S.C. § 1319(g)(3), and Respondent’s agreement to perform a SEP, Complainant has determined that a civil penalty of **TWENTY-NINE THOUSAND, NINE HUNDRED AND EIGHTY-SIX DOLLARS AND FIFTY CENTS (\$29,986.50)** is appropriate to settle this matter.
11. Respondent shall pay the full penalty amount within **thirty (30) calendar days** of its receipt of the Final Order issued by the EPA Regional Administrator adopting this Agreement. If the due date for payment falls on a weekend or legal federal holiday, the due date is the next business day. Payment must be received by 11:00 a.m. Eastern Time to be considered received that day.
12. Respondent shall pay the penalty using a method provided on the website: <https://www.epa.gov/financial/makepayment>, and shall identify such payment(s) with “Docket No. CWA-02-2023-3301.”
13. Respondent shall send a copy of the check or other record of payment, immediately following payment, to the following by email or mail:

Christopher Saporita, Esq.
Assistant Regional Counsel
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th Floor
New York, NY 10007
saporita.chris@epa.gov

and

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

14. In addition, a handling charge of fifteen dollars (\$15) shall be assessed on the 31st day from the due date of any payment, and for each subsequent thirty-day period that the debt, or any portion thereof, remains unpaid. In addition, a six percent (6%) per annum penalty shall be assessed on any unpaid principal amount if payment is not received within ninety (90) days of the due date. Payments are first applied to outstanding handling charges, 6% penalty interest, and late interest. The remainder is then applied to the outstanding principal amount.
15. Respondent shall not claim the penalty as a federal or other tax deduction or credit.
16. Failure to pay the penalty in full according to the above provisions may result in referral of this matter to the United States Department of Justice or the United States Department of the Treasury for collection.

B. Supplemental Environmental Project (“SEP”)

17. In response to the alleged violations of sections 301 and 402 of the Act, 33 U.S.C. §§ 1311 and 1342, and in settlement of this matter, although not required by the CWA, its implementing regulations, Defendant’s Territorial Pollutant Discharge Elimination System (“TPDES”) permit, or any other federal, state, or local law, Respondent agrees to implement a SEP, as described below in Paragraph 18 and more specifically described in Attachment A.

18. Respondent shall perform a pollution reduction SEP consisting of installing a sediment trap to minimize the discharge of sediments and debris in storm water into a 0.92-acre wetland on its resort property and installing an oil and water separator and sediment trap to abate the discharge of oil and sediment into Turquoise Bay, an embayment within Great Bay, which is part of the Caribbean Sea. Respondent shall construct and maintain the oil water separator and the two sediment traps, shall conduct pre- and post-installation sampling to ensure the performance of the controls, and shall submit periodic and final reports to EPA demonstrating its performance of the SEP. The SEP is more specifically described in Attachment A and is incorporated herein by reference.
19. Respondent shall spend no less than **\$27,000** for the design, installation, and sampling related to the SEP. Respondent shall include documentation of the expenditures made in connection with the SEP as part of the SEP Completion Report. If Respondent's implementation of the SEP does not expend the full amount set forth in this Paragraph, EPA may seek stipulated penalties, as described in Paragraph 28.
20. Within **thirty (30) days** of the Effective Date of the CA/FO, or by the first storm event producing measurable stormwater runoff, whichever is later, Respondent shall determine the amount/velocity of stormwater runoff flowing into the discharge areas and complete pre-installation sampling. Within **one-hundred-and-twenty (120) days** of the Effective Date of the CA/FO, the pollution control devices shall be installed. Post-installation sampling shall be performed during the first storm event generating a discharge, and quarterly thereafter, for a period of three (3) years. Respondent shall operate and maintain the pollution control devices, including monthly maintenance and maintenance after periods of heavy rainfall, for at least three (3) years.
21. Use of SEP Implementer
 - a. Respondent has selected **The Green Piece Engineering + Environment** as an engineer and **OTL Mechanical** as a supplier to size and install the oil water separator and sediment traps; and
 - b. Respondent will contract with an EPA-certified laboratory (Ocean Systems Laboratory) to collect and analyze the oil and TSS samples.
22. The EPA had no role in the selection of any SEP implementer or specific equipment identified in the SEP, nor shall this CA/FO be construed to constitute EPA approval or endorsement of any SEP implementer or specific equipment identified in this CA/FO.
23. The SEP is consistent with applicable EPA policy and guidelines, specifically EPA's 2015 Update to the 1998 Supplemental Environmental Projects Policy, (March 10, 2015). The SEP advances at least one of the objectives of the CWA by reducing the discharge of pollutants to waters of the United States beyond what is currently required by the Act.

24. The SEP is not inconsistent with any provision of the CWA. The SEP relates to the alleged violation(s) and is designed to reduce the adverse impact to public health and/or the environment to which the alleged violations contribute, specifically, by reducing the discharge of pollutants to receiving waters below what is required by the CWA, thereby improving the chemical, physical, and biological integrity of those waters.
25. Respondent certifies the truth and accuracy of each of the following:
- a. That all cost information provided to the EPA in connection with the EPA's approval of the SEP is complete and accurate and that the Respondent in good faith estimates that the cost to implement the SEP, exclusive of administrative and employee oversight costs, is \$27,000;
 - b. That, as of the date of executing this CA/FO, Respondent is not required to perform or develop the SEP by any federal, state, or local law or regulation and is not required to perform or develop the SEP by agreement, grant, or as injunctive relief awarded in any other action in any forum;
 - c. That the SEP is not a project that Respondent was planning or intending to construct, perform, or implement other than in settlement of the claims resolved in this CA/FO;
 - d. That Respondent has not received and will not have received credit for the SEP in any other enforcement action;
 - e. That Respondent will not receive reimbursement for any portion of the SEP from another person or entity;
 - f. That for federal income tax purposes, Respondent agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP; and
 - g. That Respondent is not a party to any open federal financial assistance transaction that is funding or could fund the same activity as the SEP described in Paragraph 18.
 - h. That Respondent has inquired of the SEP implementers whether either is party to an open federal financial assistance transaction that is funding or could fund the same activity as the SEP and has been informed by the implementers that neither is a party to such a transaction.
26. Any public statement, oral or written, in print, film, or other media, made by Respondent or a representative of Respondent referring to the SEP under this CA/FO from the date of its execution of this CA/FO shall include the following language: "This project was undertaken in connection with the settlement of an enforcement action taken by the U.S. Environmental Protection Agency for alleged violations of the federal laws."
27. SEP Reports.
- a. Respondent shall submit a SEP Completion Report to EPA no later than **three (3) years, four (4) months, and fifteen (15) days** after the Effective Date of the CA/FO. The SEP Completion Report shall contain the following information, with supporting documentation:

- i. A detailed description of the SEP as implemented;
 - ii. A description of any operating problems encountered and the resolutions thereof;
 - iii. Itemized costs;
 - iv. Certification that the SEP has been fully implemented pursuant to the provisions of this CA/FO; and
 - v. A description of the environmental and public health benefits resulting from implementation of the SEP (with a quantification of the benefits and pollutant reductions, if feasible).
- b. Periodic Reports. Beginning no later than **fifteen (15) days** after the end of the first calendar quarter following installation of the pollution control devices, and continuing for **three (3) years**, Respondent shall submit quarterly reports to EPA containing the following information as it pertains to sampling and maintenance performed in accordance with this CA/FO in the preceding quarter:
 - i. The date(s) sampling was performed;
 - ii. The approximate amount of rainfall (inches) at the Facility on the date(s) sampling was performed;
 - iii. A copy of the lab results for all sampling performed; and
 - iv. A written, and, where appropriate, photographic description of maintenance activities performed on the pollution control devices.
- c. Respondent agrees that failure to submit the SEP Completion Report or any Periodic Report required by subsections (a) and (b) above shall be deemed a violation of this CA/FO and Respondent shall become liable for stipulated penalties pursuant to Paragraph 28, below.
- d. Respondent shall submit all notices and reports required by this CA/FO to green.katherine@epa.gov.
- e. In itemizing its costs in the SEP Completion Report, Respondent shall clearly identify and provide acceptable documentation for all eligible SEP costs. Where the SEP completion report includes costs not eligible for SEP credit, those costs must be clearly identified as such. For purposes of this Paragraph, "acceptable documentation" includes invoices, purchase orders, or other documentation that specifically identifies and itemizes the individual costs of the goods and/or services for which payment is being made. Canceled drafts do not constitute acceptable documentation unless such drafts specifically identify and itemize the individual costs of the goods and/or services for which payment is being made.

28. Stipulated Penalties

- a. Except as provided in subparagraphs (b) and (c) below, if Respondent fails to satisfactorily complete the requirements regarding the SEP specified in Paragraph 18 by the deadlines in Paragraph 20, Respondent agrees to pay, in addition to the civil penalty in Paragraph 10, the following per day per violation stipulated penalty for each day the Respondent is late meeting the applicable SEP requirement:
 - i. \$250 per day for days 1-30

- ii. \$500 per day for days 31-60
 - iii. \$750 per day for days 61+
- b. If Respondent fails to timely submit any SEP reports required under Paragraph 27, in accordance with the timelines set forth in this CA/FO, Respondent agrees to the following per day stipulated penalty for each day after the report was due until Respondent submits the report in its entirety:
 - i. \$100 per day for days 1-30
 - ii. \$250 per day for days 31-60
 - iii. \$500 per day for days 61+
- c. If Respondent does not satisfactorily complete the SEP, including spending the minimum amount on the SEP set forth in Paragraph 19, above, Respondent shall pay a stipulated penalty to the United States in the amount of \$35,000. The determinations of whether the SEP has been satisfactorily completed shall be in the sole discretion of EPA.
- d. EPA retains the right to waive or reduce any stipulated penalty.
- e. Respondent shall pay stipulated penalties not more than fifteen days after receipt of written demand by EPA for such penalties. The method of payment shall be in accordance with the provisions of Paragraph 12. Interest and late charges shall be paid as stated in Paragraph 14.

III. OTHER TERMS AND CONDITIONS

- 29. Failure by Respondent to comply with any of the terms of this Agreement shall constitute a breach of the Agreement and may result in referral of the matter to the Department of Justice for enforcement of the Agreement and for such other relief as may be appropriate.
- 30. Nothing in this Agreement shall be construed as a waiver by Complainant of its authority to seek costs or any appropriate penalty associated with any collection action instituted because of Respondent's failure to perform pursuant to the terms of the Agreement.
- 31. Each undersigned representative of the parties to this Agreement certifies that he or she is fully authorized by the party represented to bind that party to the terms and conditions of this Agreement and to execute and legally bind that party to this Agreement.
- 32. This Agreement, upon incorporation into a Final Order by the Director of the Enforcement and Compliance Assurance Division, and full satisfaction by the parties, shall be a complete, full, and final settlement of the civil penalty owed for violations alleged in this Agreement.

33. This Agreement resolves Respondent's liability for federal civil or administrative penalties under Sections 309(d) and 309(g) of the Act, 33 U.S.C. §§ 1319(d) and (g), for the violations alleged in this Agreement. This Agreement shall not in any case affect EPA's right to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law whether or not alleged in this Agreement. This Agreement shall not affect Respondent's right to assert any defense in any action by EPA to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.
34. Each party shall bear its own costs and attorneys' fees in connection with all issues associated with this Agreement.
35. Respondent consents to service upon it by delivery of a copy of this Agreement by an EPA employee other than the Regional Hearing Clerk.

FOR COMPLAINANT, UNITED STATES ENVIRONMENTAL PROTECTION AGENCY,
REGION 2:

DORE LAPOSTA
Director, Enforcement and Compliance Assurance Division
United States Environmental Protection Agency, Region 2
290 Broadway New York, NY 10007

FOR RESPONDENT, THE RITZ CARLTON RESORT



Donny Dominique
Director of Engineering
The Ritz Carlton Resort
6900 Estate Great Bay, St. Thomas, VI 00802

IV. FINAL ORDER

Pursuant to 40 C.F.R. § 22.18(b), the above Consent Agreement entered into by the parties is hereby approved, incorporated herein, and issued as an Order. Respondent is hereby **ORDERED** to comply with all of the terms of the Consent Agreement, effective immediately upon receipt by Respondent of this Consent Agreement and Final Order.

SO ORDERED

Dore LaPosta
Director, Enforcement and Compliance Assurance Division
United States Environmental Protection Agency, Region 2
290 Broadway, New York, NY 10007

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 Broadway
New York, New York 10007-1866

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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:

Original and One Copy by EPA Internal Mail:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th floor
New York, NY 10007-1866

Copy by Electronic Mail:

Donny Dominique
Director of Engineering
The Ritz Carlton Resort
Donny.Dominique@ritzcarlton.com

Christopher Saporita
Assistant Regional Counsel