

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
Region 2**

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. 11
2009 MAR 26 AM 11:35
REGIONAL HEARING
CLERK

IN THE MATTER OF:

VÍCTOR MORALES

P. O. Box 8817
Caguas, Puerto Rico 00726

VÍCTOR MORALES LOT DEVELOPMENT

RESPONDENTS

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

**CONSENT AGREEMENT
AND
FINAL ORDER**

DOCKET NUMBER CWA-02-2008-3357

NPDES TRACKING NO. PRR10BH00

CONSENT AGREEMENT AND ORDER

Complainant, the United States Environmental Protection Agency ("EPA"), having issued the Complaint herein on September 30, 2008, against Respondents Víctor Morales and Víctor Morales Lot Development (together the "Respondents"), and

Complainant and Respondents (the "Parties") 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 Complaint alleges that Respondents:
 - a. did not submit an individual National Pollutant Discharge Elimination System (NPDES) permit application as required by 40 C.F.R. § 122.21, nor did it file a complete and accurate Notice of Intent form prior to commencement of construction activities as required by Part 2 of EPA's

July 1, 2003 NPDES General Permit for Discharges from Large and Small Construction Activities” (the “Construction Permit”); and

- b. discharged pollutants into waters of the United States without authorization of an 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 CFR Part 22.
4. This action was public noticed. No public comment was received.
5. On December 12, 2008, Respondents filed an Answer and requested a hearing in this matter.
6. This Consent Agreement and Final Order shall apply to and be binding upon Respondents, their officers, directors, employees, successors and assigns, including, but not limited to, subsequent purchasers.
7. Respondents stipulate 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 Respondents. Respondents waive any defenses they might have as to jurisdiction and venue, and, without admitting or denying the factual or legal allegations contained in the Complaint, consent to the terms of this Consent Agreement and Final Order (CA/FO).
8. Respondents hereby waive their 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. 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 TWELVE THOUSAND (\$12,000.00) DOLLARS.
10. For purposes of settlement, Respondents consent to the issuance of this Consent Agreement and consent to the payment of the civil penalty cited in the foregoing Paragraph.

II. A. Penalty

11. Respondents agree to pay the above stated amount in *two payments*. The effective date of this Consent Agreement shall be the date the Director of the Caribbean Environmental Protection Division of EPA, Region 2 signs the Final Order (due date) accompanying this Consent Agreement.
 - a. An initial payment of SIX THOUSAND DOLLARS (\$6,000.00) shall be made within forty-five (45) calendar days from the effective date of the Consent Agreement; and
 - b. a second and final payment shall be made within two hundred twenty-five (225) calendar days from the effective date of the Consent Agreement in the amount of SIX THOUSAND DOLLARS (\$6,000.00).
12. Respondents shall pay the penalty of TWELVE THOUSAND DOLLARS (\$12,000.00) by cashiers' or certified checks, 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:

Jaime López
Environmental Engineer
Multimedia, Permits and Compliance Branch
Caribbean Environmental Protection Agency
U.S. Environmental Protection Agency Region 2
1492 Ponce de León Ave. – 4th Floor
San Juan, PR 00907-4127
Fax number: (787) 289-7104,

Héctor L. Vélez Cruz, Esq.
Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 2
1492 Ponce de León Ave., Suite 417
San Juan, PR 00907-4127
Fax number: (787) 729-7748,

and

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

13. Payment must be received at the above address no later than forty-five (45) calendar days after the date of signature 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 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 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 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.
14. 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.

II. B. General Provisions

15. The Respondents waive 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.
16. 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 Respondents' 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.
17. This CA/FO shall not relieve Respondents 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, if any.
18. This CA/FO 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 CA/FO is intended to nor shall be construed to operate in any way to resolve any criminal liability of the Respondents. Compliance with this CA/FO 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.

19. 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.
20. Each party shall bear its own costs and attorney fees in connection with the action resolved by this CA/FO.

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FROM : VICTOR MORALES CONSTRUCTION

FAX NO. : 7877326225

Mar. 09 2009 11:47AM P2

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03/09/2009 11:04

787-703-0336

Rfael Machargo

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RESPONDENT VÍCTOR MORALES:

BY: 
VICTOR MORALES

DATE: 9-marzo-09

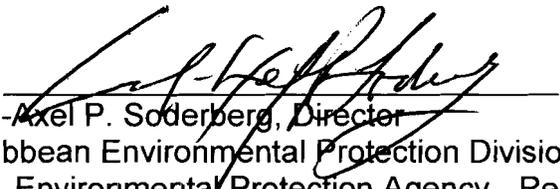
RESPONDENT VICTOR MORALES LOT DEVELOPMENT:

BY: 

VICTOR MORALES
Owner

DATE: 9-marzo-09

COMPLAINANT:

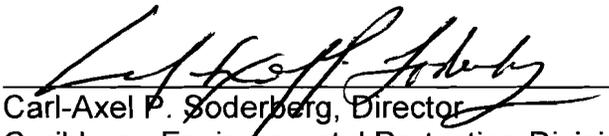
BY: 
Carl-Axel P. Soderberg, Director
Caribbean Environmental Protection Division
U.S. Environmental Protection Agency - Region 2
Centra Europa Building, Suite 417
1492 Ponce de León Avenue
San Juan, Puerto Rico 00907-4127

DATE: 23 / III / 08

III. FINAL ORDER

The Director of the Division of Enforcement and Compliance Assistant, 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.

23/III/09
Date


Carl-Axel P. Soderberg, Director
Caribbean Environmental Protection Division
U.S. Environmental Protection Agency - Region 2
Centro Europa Building, Suite 417
1492 Ponce de León Avenue
San Juan, Puerto Rico 00907-4127

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region 2**

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Certificate of Service

I certify that I have this day caused to be sent the foregoing *Consent Agreement and Final Order*, dated March 23, 2009, and bearing the above-referenced docket number, in the following manner to the respective addressees below:

Original and copy by facsimile, **Overnight Mail** to:

Karen Maples
Regional Hearing Clerk
Region II
U.S. Environmental Protection Agency
290 Broadway, 16th Floor
New York, NY 10007-1866
Fax (212) 637-3202.

Copy by **Regular Mail** to:

Attorney for Respondent:
Rafael Machargo Maldonado, Esq.
P.O. Box 193005
San Juan, P.R. 00919-3005
Tel: (787) 653-3225
Fax: (787) 703-0336.

Copy by facsimile, **Overnight Mail** to:

Presiding Officer:
Honorable Helen S. Ferrara
Regional Hearing Clerk
Region II
U.S. Environmental Protection Agency
290 Broadway, 16th Floor
New York, NY 10007-1866
Fax (212) 637-3202.

March 25, 2009
Date


Name