

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION II

IN THE MATTER OF:

**Municipality of Mayagüez**

**RESPONDENT**

**MOTION**

DOCKET NUMBER

CWA-02-2011-3453

U.S. ENVIRONMENTAL  
PROTECTION AGENCY REGION II  
2013 FEB - 1 A 11: 37  
CASE CALL HEARING  
CLERK

**STATUS REPORT AND REQUEST FOR EXTENSION OF TIME TO FILE  
EXECUTED CONSENT AGREEMENT AND FINAL ORDER**

COMES NOW Complainant, the U.S. Environmental Protection Agency (“EPA” or “Complainant”) through the undersigned attorney, and respectfully alleges and prays as follows:

The Complainant and the Municipality of Mayagüez (Respondent) (herein together the “Parties”) have been actively participating in good faith negotiations, including conference calls, in order to expedite a final settlement of this matter.

On January 8, 2013, Complainant presented Respondent with a new settlement offer. Thereafter, the Parties held several conference calls discussing the terms of the proposed agreement and to follow-up as well to learn about Respondent’s final decision regarding the settlement offer.

Today, Counsel for Respondent informed the undersigned that Respondent reviewed and approved the terms of the settlement and signed the Consent Agreement and Final Order (CA/FO) (see **Attachment A, page 7**).

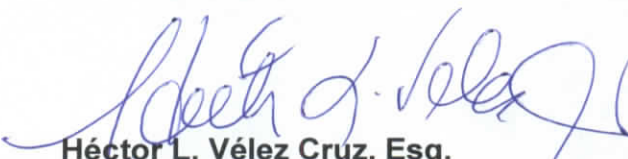
The CA/FO has been set into concurrence within EPA Region 2 for approval and signature. Once the concurrence process finalizes in EPA Region 2's San Juan office, it will be sent to EPA Region 2's New York office for continuance of the review and concurrence process and for signature of the Final Order by the Regional Administrator. Once this process concludes, the fully executed CA/FO will immediately be filed.

This Motion has been filed today in order to have the Chief Administrative Law Judge, Honorable Susan L. Biro, take notice of the efforts and progress made by the Parties in filling an executed CA/FO.

In light of the above, and due to the complexity of the review and concurrence process within the Agency and between the Parties in order to finalize a fully executed CA/FO, the Complainant requests the Honorable Presiding Officer to allow the Parties until **February 28, 2013**, in order to file the duly executed CA/FO and notify its execution to the Presiding Officer.

This Motion was discussed today, January 30, 2013, with Luis Sánchez Mercado, Esq., attorney for Respondent, who agreed to the filing of this motion.

Respectfully submitted, in San Juan, Puerto Rico, this 30<sup>th</sup> day of January, 2013.



**Héctor L. Vélez Cruz, Esq.**  
US Environmental Protection Agency, R2  
Centro Europa Building, 417  
1492 Ponce de Leon  
San Juan, PR 00907  
Tel. 787-977-5819  
Fax. 787-729-7748  
[Velez.Hector@epamail.epa.gov](mailto:Velez.Hector@epamail.epa.gov)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION II

IN THE MATTER OF:

**Municipality of Mayagüez**

**RESPONDENT**

**MOTION**

DOCKET NUMBER

CWA-02-2011-3453

CERTIFICATE OF SERVICE

I certify that I have this day caused to be sent the foregoing *Status Report and Request for Extension of Time to File Executed Consent Agreement and Final Order*, dated January 30<sup>th</sup>, 2013, and bearing the above-referenced docket number, in the following manner to the respective addressees below:

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

**Karen Maples**  
Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region2  
290 Broadway, 16<sup>th</sup> Floor  
New York, NY 10007-1866  
Fax (212) 637-3202

Copy by email, **Certified Mail / Return Receipt** to:

Attorney for Respondent, Municipality of Mayagüez  
**Luis J. Sánchez Mercado, Esq.**  
Sánchez Mercado Law Offices, P.S.C.  
P. O. Box 6551  
Mayagüez, P.R. 00681-6551  
Tel: (939) 717-9886 / (787) 374-2976  
Fax: (866) 395-8215  
[sanchezmercadolaw@gmail.com](mailto:sanchezmercadolaw@gmail.com)

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

Chief Administrative Law Judge  
**Honorable Susan L. Biro**  
Office of Administrative Law Judges  
U.S. Environmental Protection Agency  
1099 14<sup>th</sup> Street, N.W., Suite 350  
Washington, D.C. 20005  
Fax (202) 565-0044.  
Email: [oadfiling@epa.gov](mailto:oadfiling@epa.gov)

Date

1/30/2013

Name



Attachment A

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
Region 2

In the Matter of:

**MUNICIPALITY OF MAYAGÜEZ**

P. O. Box 447  
Mayagüez, Puerto Rico 00681

**RESPONDENT**

Proceeding pursuant to Section 309(g)(2)(B) of  
the Clean Water Act, 33 U.S.C. § 1319(g)

**CONSENT AGREEMENT  
AND  
FINAL ORDER**

**DOCKET NUMBER  
CWA-02-2010-3453**

**CONSENT AGREEMENT AND ORDER**

Complainant, the United States Environmental Protection Agency ("EPA"), having issued the Complaint herein on December 28, 2010, against Respondent Municipality of Mayagüez ("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 ("CA/FO") 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 Respondent violated Sections 301 and 402 of the Act, 33U.S.C. §§ 1311 and 1342, by failing to prepare, implement and enforce the Storm Water Management Program (SWMP) required by the NPDES General Permit for Discharges from Small MS4s for systems located in the Commonwealth of Puerto Rico (the "Small MS4 Permit") and by failing to submit a copy of the SWMP to EPA by the May 18, 2008 deadline as

required by the Administrative Compliance Order CWA-02-2008-3120 ("Compliance Order" or "Order"), dated February 11, 2008.

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. On May 23, 2012, Respondent filed an answer to the Complaint, denying certain facts, admitting others, raising affirmative defenses and requesting a hearing in this matter.
6. This CA/FO 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 CA/FO.
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

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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 EIGHTY THOUSAND DOLLARS (\$80,000.00). Respondent shall pay this civil penalty in accordance with paragraphs 11-12 of this Consent Agreement.
  10. 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 and consents to the performance of the SEP.

**II. A. Penalty**

11. No later than sixty (60) days after the Effective Date of this Order, as defined in the Final Order (at the end of this document), Respondent shall pay an initial penalty of TWENTY THOUSAND DOLLARS (\$20,000.00).
12. Thereafter, Respondent shall make 3 payments of TWENTY THOUSAND DOLLARS (\$20,000.00) each, in accordance with the following schedule:
  - a. the first of the 3 payments no later than the last day in the 6<sup>th</sup> month following the Effective Date;
  - b. the second and final payment no later than the last day of the 9<sup>th</sup> month following the Effective Date; and
  - c. the third of the 3 payments no later than the last day of the 12<sup>th</sup> month following the Effective Date.
13. Respondent shall pay the penalty of EIGHTY THOUSAND DOLLARS (\$80,000.00) by cashiers' or certified checks, payable to the "Treasurer of the United States of America" or by wire transfers.
14. Respondent shall clearly identify, with either form of payment, the name and docket number of this case, set forth in the caption on the first page of this document.
  - a. Respondent shall mail the checks to:

US Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
PO Box 979077  
St. Louis, MO 63197-9000.

**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.

- b. Alternatively, Respondent shall make wire transfers to:

**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."

**ACH (also known as REX or remittance express)**

Automated Clearinghouse (ACH) for receiving US currency  
PNC Bank  
808 17<sup>th</sup> 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:**

There is now an On Line Payment Option, available through the Dept. of Treasury. This payment option can be accessed from the information below: [WWW.PAY.GOV](http://WWW.PAY.GOV). Enter sfo 1.1 in the search field. Open form and complete required fields.

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

*act*

Yolianne Maclay  
Environmental Engineer  
Multimedia, Permits and Compliance Branch  
Caribbean Environmental Protection Agency  
U.S. Environmental Protection Agency Region 2  
City View Plaza II, Suite 7000  
#48 RD. 165 km 1.2  
Guaynabo, PR 00968-8069  
Fax number: (787) 289-7104,

Héctor L. Vélez Cruz, Esq.  
Team Leader  
Office of Regional Counsel, Caribbean Team  
US Environmental Protection Agency, Region 2  
City View Plaza II, Suite 7000  
#48 RD. 165 km 1.2  
Guaynabo, PR 00968-8069,

and

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

Payments must be received at the above address as specified in paragraphs 11-12, above.

- at
- c. 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.
  - d. 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.
  - e. 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.
  - f. Respondent also may be required to pay attorneys fees and costs for collection proceedings in connection with nonpayment.
15. 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**

16. 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 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.

17. 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 law.
18. This CA/FO shall not relieve Respondent 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.
19. 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 Respondent. 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 Respondent to comply with such laws and regulations.
20. 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.
21. Each party shall bear its own costs and attorney fees in connection with the action resolved by this CA/FO.

ast

RESPONDENT MUNICIPALITY OF MAYAGÜEZ:

BY: Cliff. Tiled

DATE: 30 Jan 2013

NAME OF SIGNATORY  
TITLE OF SIGNATORY

MANAGER FOR ECONOMIC DEVELOPMENT

est

**COMPLAINANT:**

BY: \_\_\_\_\_

DATE: \_\_\_\_\_

José C. Font, Director  
Caribbean Environmental Protection Division  
U.S. Environmental Protection Agency - Region 2  
City View Plaza II, Suite 7000  
#48 RD. 165 km 1.2  
Guaynabo, PR 00968-8069

ast

**III. 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, NY.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Judith A. Enck  
Regional Administrator  
United States Environmental  
Protection Agency-Region 2  
290 Broadway  
New York, NY 10007-1866

ast

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION II

In the Matter of:

**MUNICIPALITY OF MAYAGÜEZ**

**RESPONDENT**

**CONSENT AGREEMENT**  
**AND**  
**FINAL ORDER**

**DOCKET NUMBER CWA-02-2010-3453**

CERTIFICATE OF SERVICE

I certify that I have this day caused to be sent the foregoing **Consent Agreement and Final Order**, dated \_\_\_\_\_, 2012, and bearing the above-referenced docket number, in the following manner to the respective addressees below:

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

Copy by facsimile, **Certified Mail/Return Receipt** to:

Attorney for Respondent, Municipality of Mayagüez  
**Luis J. Sánchez Mercado, Esq.**  
Sánchez Mercado Law Offices, P.S.C.  
P. O. Box 6551  
Mayagüez, P.R. 00681-6551  
Tel: (939) 717-9886 / (787) 374-2976  
Fax: (866) 395-8215  
[sanchezmercadolaw@gmail.com](mailto:sanchezmercadolaw@gmail.com)

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

Chief Administrative Law Judge  
**Honorable Susan L. Biro**  
Office of Administrative Law Judges,  
U.S. Environmental Protection Agency  
1099 14<sup>th</sup> Street, N.W., Suite 350,  
Washington, D.C. 20005  
Fax (202) 565-0044.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name