

2011 SEP -7 A 11:39

REGIONAL HEARING  
CLERK

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2**

In the Matter of:

**MUNICIPALITY OF AÑASCO**

**RESPONDENT**

STATUS REPORT

DOCKET NUMBER CWA-02-2010-3454

**Informative Motion Regarding Progress Made in Filing an Executed  
Consent Agreement and Final Order and  
Request for Extension of Time to File**

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

As previously informed to the Honorable Court, Complainant and the Municipality of Añasco (Respondent) (together the "Parties") have reached an agreement in principle dispositive of all matters asserted in the Administrative Complaint, including a penalty.

The final terms of the settlement have been memorialized by the Parties in a Consent Agreement and Final Order (CA/FO). The CA/FO has been set into concurrence for approval and signature. The Respondent and the Complainant have signed the CA/FO (see *Attachment A, pages 7 and 8*). The concurrence process has

finalized in EPA Region 2's San Juan office and has been partially completed in EPA Region 2's New York office.

Due to weather conditions that prevailed in the New York area caused by Tropical Storm Irene early last week, the EPA Region 2's New York office remained closed on August 29, 2011 (the Agency was on alert and started taking all precautionary measures to address the emergency and its aftermath since Friday, August 26, 2011). Once the Agency resumed operations on Tuesday, August 30, 2011, EPA Region 2 staff focused on addressing matters related to the emergency.

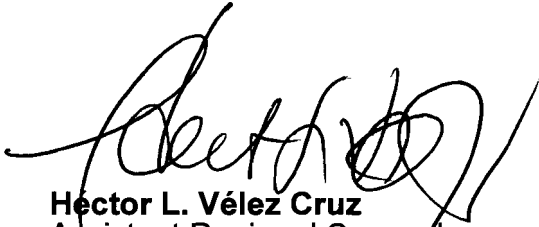
The CA/FO is in the Regional Administrator's office for concurrence, approval and signature of the Final Order (final stage). Once this process concludes, the fully executed CA/FO will immediately be filed.

This Motion has been filed today in order to have the Administrative Law Judge, Honorable Barbara A. Gunning, take notice of the progress made in the approval process to file a fully executed CA/FO.

In light of the above, Complainant requests the Honorable Administrative Law Judge to grant the Parties until September 21, 2011, in order to file the duly executed CA/FO and notify its execution to the Presiding Officer.

This Motion was discussed today, September 6, 2011, with Juan M. Casellas Rodríguez, Esq., attorney for the Respondent, who agreed to the filing of this motion.

Respectfully submitted, in San Juan, Puerto Rico, this 6<sup>th</sup> day of September, 2011.



**Héctor L. Vélez Cruz**  
Assistant Regional Counsel  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region II  
Centro Europa Bldg., Suite 207  
1492 Ponce de León Ave.  
San Juan, PR 00907-4127  
(787) 977-5850 (office)  
(787) 729-7748 (fax)  
[velez.hector@epa.gov](mailto:velez.hector@epa.gov)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION II

In the Matter of:

**MUNICIPALITY OF AÑASCO**

**RESPONDENT**

MOTION

DOCKET NUMBER CWA-02-2010-3454

CERTIFICATE OF SERVICE

I certify that I have this day caused to be sent the foregoing *Informative Motion Regarding Progress Made in Filing an Executed Consent Agreement and Final Order and Request for Extension of Time to File*, dated September 6, 2011, 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, 16<sup>th</sup> Floor  
New York, NY 10007-1866  
Fax (212) 637-3202.

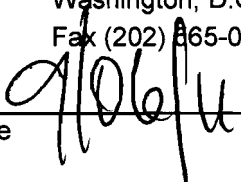
Copy by **Certified Mail, Return Receipt** to:

Attorney for Respondent:  
**Juan M. Casellas Rodriguez, Esq.**  
Nolla, Palou & Casellas, LLC  
Westernbank World Plaza  
268 Muñoz Rivera Avenue., Ste 2003  
P. O. Box 195287  
San Juan, P.R. 00919-5287  
Tel: (787) 625-6535  
Fax: (787) 625-6530  
[jmc@npclawyers.com](mailto:jmc@npclawyers.com).

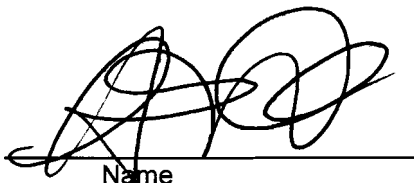
Copy by facsimile, **Overnight Mail** to:

Administrative Law Judge  
**Honorable Barbara A. Gunning**  
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) 865-0044.

Date



Name



Attachment A

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
Region 2

In the Matter of:

MUNICIPALITY OF AÑASCO  
P. O. Box 1385  
Añasco, Puerto Rico 00610-1385

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-02-2010-3454

CONSENT AGREEMENT AND FINAL ORDER

Complainant, the United States Environmental Protection Agency ("EPA" or "Complainant"), having issued the Complaint herein on September 24, 2010, against the Municipality of Añasco (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. Respondent violated Sections 301 and 402 of the Act, 33 U.S.C. §§ 1311 and 1342, by failing to prepare, implement and enforce the Storm Water Management Program (SWMP) required by the National Pollutant Discharge Elimination System 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 16, 2008 deadline as required by the Administrative Compliance Order CWA-02-2008-3110 ("Compliance Order" or "Order"), dated February 6, 2008.

CONCURRENCES

Name	H. Vélez	Init	HV	Date	08/24/2011	Filename	Municipality of Añasco		
Symbol	CEPD/MPCB	CEPD/MPCB	ORC - CT	ORC - CT	CEPD - Q	ORC	DRA	ORA	RA
Surname	Y. Maciay	T. Rodriguez	H. Vélez	S. Carreño	C. Soderberg	E. Schaaf	G. Pavlou	L. Plevin	J. Enck
Date	8/24/2011	8/24/11			08/24/11				

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
Region 2**

In the Matter of:

**MUNICIPALITY OF AÑASCO**  
P. O. Box 1385  
Añasco, Puerto Rico 00610-1385

**RESPONDENT**

Proceeding pursuant to Section  
309(g)(2)(B) of the Clean Water Act, 33  
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**CONSENT AGREEMENT  
AND  
FINAL ORDER**

**DOCKET NUMBER  
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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 October 25, 2010, 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 rights 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 § 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 SIXTY FOUR THOUSAND SIX HUNDRED TWENTY-EIGHT DOLLARS (\$64,628.00). Respondent shall pay this civil penalty in accordance with paragraphs 11 and 12 of this Consent Agreement.
10. For purposes of settlement, Respondent consents 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. No later than sixty (60) days after the date signature on the Final Order (at the end of this document), Respondent shall pay an initial penalty of TWENTY-ONE THOUSAND FIVE HUNDRED FORTY-FOUR DOLLARS (\$21,544.00).

12. Thereafter, Respondent shall make 2 payments of TWENTY-ONE THOUSAND FIVE HUNDRED FORTY-TWO DOLLARS (\$21,542) each, in accordance with the following schedule:
- a. the first of the 2 payments no later than the last day in the 6<sup>th</sup> month following the Effective Date; and
  - b. the second and final payment no later than the last day of the 10<sup>th</sup> month following the Effective Date.
13. Respondent shall pay the penalty of SIXTY FOUR THOUSAND SIX HUNDRED TWENTY-EIGHT DOLLARS (\$64,628.00) 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."

15. Respondents shall also send copies of each payment to each of the following:

Yolianne Maclay  
Storm Water Program Specialist  
Multimedia, Permits and Compliance Branch  
Caribbean Environmental Protection Agency  
U.S. Environmental Protection Agency Region 2  
1492 Ponce de León Ave., Suite 417  
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, 16<sup>th</sup> Floor  
New York, New York 10007.

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

- 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; and
  - d. Respondent also may be required to pay attorneys fees and costs for collection proceedings in connection with nonpayment.
16. 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**

17. 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.
18. 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 Respondent's violation of any applicable provision of law.
19. This CA/FO 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.
20. 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.

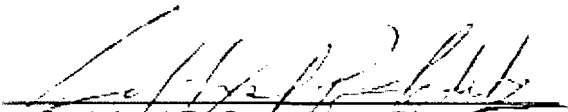
21. Each undersigned representative of the parties to this Consent Agreement certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this Consent Agreement and to execute and legally bind that party to it.
22. Each party shall bear its own costs and attorney's fees in connection with the action resolved by this CA/FO.

RESPONDENT MUNICIPALITY OF AÑASCO:

BY: Jose E. Martinez  
NAME OF SIGNATORY  
TITLE OF SIGNATORY

DATE: 8/19/11

**COMPLAINANT:**

BY: 

DATE: 05-24-11

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 0090

### 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

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION II

In the Matter of:

**MUNICIPALITY OF AÑASCO**

**RESPONDENT**

**CONSENT AGREEMENT**  
**AND**  
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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 August , 2011, 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 **Certified Mail, Return Receipt** to:

Attorney for Respondent:  
**Juan M. Casellas Rodríguez, Esq.**  
Nolla, Palou & Casellas, LLC  
Westernbank World Plaza  
268 Muñoz Rivera Avenue., Ste 2003  
P. O. Box 195287  
San Juan, P.R. 00919-5287  
Tel: (787) 625-6535  
Fax: (787) 625-6530  
[jmc@npclawyers.com](mailto:jmc@npclawyers.com).

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

Administrative Law Judge  
**Honorable Barbara A. Gunning**  
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