

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

In the Matter of:

Puerto Rico Land Authority

RESPONDENT

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

2016 DEC 15 AM 10:52

**CONSENT AGREEMENT
AND FINAL ORDER**

**DOCKET NUMBER
CWA-02-2016-3601**

I. PRELIMINARY STATEMENT

1. This is a civil administrative proceeding for the assessment of a civil penalty pursuant to Section 309(g) of the Clean Water Act (“CWA” or “the Act”), 33 U.S.C. § 1319(g).
2. The following Findings of Fact are alleged and Order issued pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency (“EPA”) by the Act, 33 U.S.C. § 1251 *et. seq.*, which authority has been duly delegated to the Regional Administrator of Region 2, EPA and since further re-delegated to the Director, Clean Water Division, Region 2, EPA.
3. EPA is commencing and concluding this proceeding for the assessment of a civil penalty, pursuant to Section 309(g) of the Clean Water Act, 33 U.S.C. §1319(g), and 40 CFR §22.13(b) of the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits” (CROP), which sets forth procedures for simultaneous commencement and conclusion of administrative civil penalty assessment proceedings through issuance of a consent agreement and final order pursuant to 40 C.F.R. § 22.18 (b)(2) and (3).

II. FINDINGS OF FACT

4. Puerto Rico Land Authority (hereinafter, “Respondent”) is a governmental agency of the Commonwealth of Puerto Rico (“Commonwealth”), and it is administratively placed within the Commonwealth’s Department of Agriculture.
5. Respondent is tasked to acquire, conserve and preserve land of agricultural value, assist in the training of new farmers and facilitate the use of land for the greater public good of the Commonwealth. Respondent is focused on agricultural and economic development and on the acquisition of land through purchase, assignment, transfer, exchange, bequest, gift or eminent domain.

With Respect to Finca María Antonia, S.A., and Finca Límon

6. Respondent is in control of activities on properties known as Finca María Antonia, S.A., and Finca Límon, both located in Cienaga Ward, Municipality of Guánica, Puerto Rico (hereinafter “the Properties”).

In the Matter of: Puerto Rico Land Authority
CONSENT AGREEMENT AND FINAL ORDER
DOCKET NUMBER CWA-02-2016-3601

7. The Properties are located in the Lajas Valley Agricultural Reserve, as it is defined pursuant to Commonwealth of Puerto Rico law.
8. The Properties contain lands that are inundated or saturated by surface or ground water that supports vegetation typically adapted for life in saturated soil conditions, and which meet the definition of wetlands under the Act (see 33 C.F.R. § 328.3(b)).
9. The wetlands referenced in Paragraph 8, above, include a discrete unit of wetlands centered at 18.000169° N, 66.932811° W, no less than 206 acres in total area, situated entirely within the Properties, and extending across both Properties, that is hereinafter referenced as "the Wetland".
10. The Wetland is adjacent to Lajas Channel.
11. Lajas Channel is navigable-in-fact.
12. Lajas Channel is susceptible for use in interstate commerce.
13. Lajas Channel may be currently used, and/or was used in the past, for interstate commerce.
14. Lajas Channel discharges into the Loco River.
15. The Loco River flows to Guánica Bay.
16. The Loco River is navigable-in-fact.
17. The Loco River is susceptible for use in interstate commerce.
18. The Loco River is currently used, and/or was used in the past, for interstate commerce.
19. Guánica Bay is a tidal embayment and an arm of the Caribbean Sea.

With Respect to excavation and cleaning, and land-clearing activities

20. Beginning in September 2013, and continuing in June 2014, Respondent conducted ditch excavation and cleaning, and land-clearing activities (the "Work") at the Properties using earth-moving equipment resulting in discharges of dredged and fill material into the Wetland.
21. The Work is described in an initial Order on Consent, CWA-02-2014-3501, issued November 8, 2013, pursuant to Section 309(a) of the Clean Water Act, 33 U.S.C. § 1319(a), and agreed to by the parties; a second Order on Consent, CWA-02-2014-3502, issued April 22, 2014, pursuant to Section 309(a) of the Clean Water Act, 33 U.S.C. § 1319(a), agreed to by the parties; and an Order to Cease and Desist (Docket No. CWA-02-2014-3503), issued by EPA on August 7, 2014, pursuant to Section 309(a) of the Clean Water Act, 33 U.S.C. § 1319(a).

22. The Work ceased in 2014, and the Wetlands were restored.
23. The Respondent discharged pollutants, consisting of dredged and fill material, into navigable waters of the United States without authorization from the Secretary of the Army as required by Section 404 of the Act, 33 U.S.C. § 1344, from a point source, in violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a).
24. By letter dated September 10, 2014, Respondent submitted to EPA financial hardship claim and “inability to pay” a penalty for the violations. It also submitted financial statements for fiscal years 2011-2012, 2012-2013, and 2013-2014. In its letter, Respondent explained that it is a public corporation of the Government of Puerto Rico with a mission of implementing Puerto Rico’s agrarian policy and promoting social justice and economic development through its management of public agricultural lands, keeping those lands available to farmers at subsidized rates with the objective of enabling farmers to sustain themselves through their agricultural activity.

III. JURISDICTIONAL STATEMENT

25. The purpose of the Clean Water Act (“Act” or “CWA”) is “to restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.” 33 U.S.C. § 1251(a).
26. The Act, among other things, prohibits “the discharge of any pollutant by any person” into waters of the United States, except as provided in Section 301 of the Act. 33 U.S.C. § 1311(a).
27. For the purposes of the Act, the Puerto Rico Land Authority is a “person”, which is defined under the Act to include, *inter alia*, any “individual, corporation, partnership, association, State, municipality, commission, or political subdivision of a State, or any interstate body”. 33 U.S.C. § 1362(5).
28. For the purposes of the Act, “[n]avigable waters” are “the waters of the United States, including the territorial seas.” 33 U.S.C. § 1362(7).
29. The Lajas Channel is a navigable water of the United States pursuant to Section 502(7) of the Act, 33 U.S.C. §1362(7).
30. The Loco River is a navigable water of the United States pursuant to Section 502(7) of the Act, 33 U.S.C. §1362(7).
31. For the purposes of the Act, the term “discharge of a pollutant” means “any addition of any pollutant to navigable waters from any point source.” 33 U.S.C. § 1362(12).
32. For the purposes of the Act, “[p]ollutants” include “dredged or fill material” 33 U.S.C. §§ 1344(a) and 1362(6).
33. Section 404 of the Act, 33 U.S.C. § 1344, authorizes the Secretary of the Army, acting through the U.S. Army Corps of Engineers (“the Corps”) to authorize discharges of dredged and fill material into navigable waters of the United States.

34. The discharge of pollutants, consisting of dredged and fill material, into navigable waters of the United States without authorization from the Secretary of the Army as required by Section 404 of the Act, 33 U.S.C. § 1344, from a point source, is unlawful under Section 301(a) of the Act, 33 U.S.C. § 1311(a).
35. The Act's definition of "waters of the United States" includes certain "wetlands." *See* 33 C.F.R. § 328.3(b).
36. Pursuant to 33 C.F.R. § 328.3(b), wetlands are "those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions."
37. The EPA and the Corps share enforcement authority of Section 404 of the Act pursuant to a Memorandum of Agreement between EPA and the Corps.
38. Neither the Secretary of the Army nor the EPA have issued authorizations pursuant to Section 404 of the Act for discharges of dredged and fill material from point sources into the Wetlands at the Properties.

IV. CONCLUSIONS OF LAW

39. Based upon the above findings, Puerto Rico Land Authority has violated Section 301 of the Act, 33 U.S.C. § 1311, for the discharge of pollutants consisting of earthen dredge and fill material into waters of the United States from point sources without authorization by the Secretary of the Army as provided by Section 404 of the Act, 33 U.S.C. § 1344.
40. EPA has jurisdiction over the subject matter of this action, pursuant to Section 309 of the Act, 33 U.S.C. § 1319, and over the Respondent.

V. CONSENT AGREEMENT

41. Paragraphs 1- 40 are re-alleged and incorporated herein by reference.
42. EPA and Respondent agree that it is in the public interest to resolve the issues alleged in this Consent Agreement without further litigation and the expense and effort that litigation entails.
43. Based upon the foregoing and pursuant to Section 309(g) of the Act, 33 U.S.C. § 1319(g), and the CROP, it is hereby agreed by and between EPA and Respondent, and Respondent voluntarily and knowingly agrees as follows:

VI. TERMS OF SETTLEMENT

44. For the purpose of this proceeding, Respondent:
 - a. Admits the jurisdictional allegations of this CA/FO;
 - b. Neither admits or denies the factual allegations contained herein;

- c. Waives its right to contest the allegations, at a judicial or administrative hearing, or to appeal this CA/FO;
- d. Consents to the payment of the civil penalty in the amount of *Eighty Seven Thousand Dollars (\$87,000)*, pursuant to the extended payment plan provided in Paragraphs 45 – 50, below;
- e. Certifies that due to its current financial condition, Respondent cannot pay the penalty within 30 days of the effective date of this CA/FO without experiencing an undue financial hardship, and that the PRLA officer herein executing this CA/FO certifies, under penalty of law, that the financial information provided to EPA as basis for the contention of Respondent's financial hardship and the accompanying documents, are true, accurate, and complete based upon personal knowledge or personal inquiry of the person or persons directly responsible for gathering the information, and that he is aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations; and,
- f. Agrees that the effective date of this Order shall be the date the Regional Administrator signs the Final Order accompanying this CA/FO.

VII. PAYMENT OF CIVIL PENALTY

- 45. Respondent shall pay a civil penalty in the amount of *Eighty Seven Thousand Dollars (\$87,000)* pursuant to an extended payment schedule, consisting of sixty (60) installment payments, which will each consist of principal and applicable interest.
- 46. Payments shall be made by check payable to the "Treasurer of the United States of America," using one of the payment mechanisms provided in paragraph 51, below.
- 47. For each installment, Respondent shall make a payment in the amount of: *one thousand four hundred eighty six dollars with eighty five cents (\$1,486.85)* each.
- 48. Respondent shall make the first installment payment no later than thirty (30) calendar days from the effective date of this Order.
- 49. After the first installment payment, Respondent shall make a payment every thirty (30) calendar days, making each installment payment no later than thirty (30) calendar days from the previous installment payment, for a total of fifty-nine (59) additional installment payments.
- 50. Respondent shall make each installment payment until the extended payment schedule is completed and the totality of the civil penalty is satisfied.
- 51. Respondent shall clearly identify, regardless of the form of payment, the name and docket number of the case, set forth in the caption on the first page of this document. The payment methods are described below:
 - a. If Respondent chooses to pay by cashiers' or certified check, the check shall be mailed mail to:

BY U.S. POSTAL SERVICE

United States Environmental
Protection Agency
Fines and Penalties
Cincinnati Finance Center
P. O. Box 979077
St. Louis, MO 63197-9000

BY OVERNIGHT MAIL

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
ATTN Box 979077
St. Louis, MO 63101
Contact: Natalie Pearson
Tel.: (314) 418-4087

b. If Respondent chooses to pay electronically, the transfer shall be made to:

i. BY WIRE TRANSFER
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."

or

ii. BY AUTOMATED CLEARINGHOUSE (ACH) (also known as REX or remittance express)

ACH for receiving US currency

PNC Bank

808 17th Street, NW

Washington, DC 20074

ABA = 051036706

Transaction Code 22 - checking

Environmental Protection Agency

Account 310006—CTX Format

Contact: Jesse White

Tel.: (301) 887-6548

52. Online Payment Option is available through the Department of Treasury. This payment option can be accessed through 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:

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

And,

David Pohle
U.S. Environmental Protection Agency, Region 2
290 Broadway, 24th Floor
New York, New York 10007

The payment must be received at the above address on or before 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").

53. Failure to pay the penalty in full according to the above provisions will result in referral of this matter to the United States Department of Justice or the United States Department of the Treasury for Collection.
54. 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.
55. In addition, pursuant to Section 309(g)(9) of the 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. You also may be required to pay attorney's fees and costs for collection proceedings in connection with nonpayment.
56. The penalty to be paid is a civil penalty assessed by the EPA and shall not be deductible from Respondent's federal or Commonwealth of Puerto Rico state taxes.

VII. GENERAL PROVISIONS

57. The provisions of this CA/FO shall be binding upon Respondent, its officers, directors, agents, servants, authorized representatives and successors or assigns, including but not limited to, subsequent purchasers. No transfer of ownership or operation shall relieve Respondent of its obligation to comply with this CA/FO.
58. 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.
59. Except for the specific violations alleged herein, 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.
60. 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.
61. This CA/FO constitutes a settlement by EPA of all claims for civil penalties pursuant to the CWA for the violations by the Respondent alleged herein. 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.
62. 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.
63. Each party shall bear its own costs and attorney's fees in connection with the action resolved by this CA/FO.

For Respondent: Puerto Rico Land Authority hereby consents to the issuance of the ORDER and agrees to be bound thereby.

BY: Sal RL
Salvador E. Ramírez Cardona
Executive Director
Puerto Rico Land Authority
P.O. Box 9745
Santurce, Puerto Rico 00908

DATE: August 16, 2016

For the Complainant, the United States Environmental Protection Agency:

BY: 

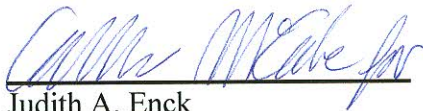
DATE: 9/14/16

Jeff Gratz, Acting Director
Clean Water Division
U.S. Environmental Protection Agency, Region 2
290 Broadway
New York, New York, 10007

VII. FINAL ORDER

The Regional Administrator of the United States 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, United States Environmental Protection Agency, Region 2, New York, New York.

DATED: 12/9/16



Judith A. Enck
Regional Administrator
U.S. Environmental Protection Agency
Region 2
290 Broadway, Floor 26
New York, NY 10007-1866

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

In the Matter of:

Puerto Rico Land Authority

RESPONDENT

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-02-2016-3601**

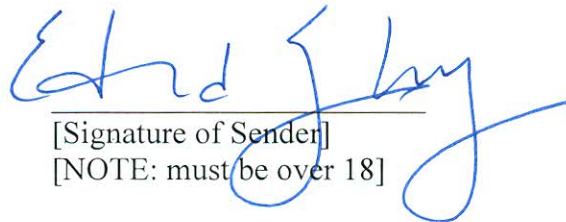
CERTIFICATE OF SERVICE

I certify that on the date noted below, I caused to be mailed a copy of the foregoing "CONSENT AGREEMENT AND FINAL ORDER, DOCKET NUMBER-CWA-02-2016-3601", to the following persons at the addresses listed below:

Rafael Espasas, Esq.
Puerto Rico Land Authority
P.O. Box 9745
San Juan, Puerto Rico 00908

I hand carried the original and a copy of the foregoing Complaint to the office of the Regional Hearing Clerk, United States Environmental Protection Agency, Region 2.

Date: 12/15/16
New York, New York


[Signature of Sender]
[NOTE: must be over 18]