

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REG.II  
2010 OCT -5 P 1:13  
REGIONAL HEARING  
CLERK

October 5, 2010

Karen Maples  
Regional Hearing Clerk  
Region 2  
US EPA

RE: *In The Matter Of: Praderas Del Mar, Inc.*  
*Docket No. CWA-02-2009-3602*

Dear Ms. Maples:

Enclosed is a Consent Agreement and Final Order (CA/FO) in the above-referenced matter. This CA/FO was fully executed on September 30, 2010.

Sincerely,

Eduardo J. Gonzalez, Esq.

Enclosure

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REG.II

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REGIONAL HEARING  
CLERK

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

**In the matter of**

**Praderas del Mar, Inc.  
Aguada, Puerto Rico**

**Respondent**

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

**Consent Agreement and Final Order  
For Assessment of a Class I Civil Penalty  
Pursuant to Section 309(g) of the Clean  
Water Act**

**Docket No. CWA-02-2009-3602**

**CONSENT AGREEMENT AND ORDER**

1. Complainant, the United States Environmental Protection Agency ("EPA"), having issued the Complaint herein on September 30, 2009, against Respondent Praderas del Mar, Inc. ("Respondent"), and
2. 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 without further litigation is the most appropriate means of resolving this matter;
3. 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**

4. 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.
5. The Complaint charges the Respondent for the discharge of pollutants into navigable waters, without authorization by the Secretary of the Army as required by Section 404 of the Act, 33 U.S.C. § 1344, in violation of Section 301(a) of the Act, 33 U.S.C. § 1311 (a).
6. EPA notified the Commonwealth of Puerto Rico regarding this action and offered an opportunity for the Commonwealth to confer with EPA on the proposed penalty assessment, pursuant to 40 CFR Part 22.

7. This action was public noticed. No public comment was received.

## **II. JURISDICTION**

8. Paragraphs 4 through 7 are re-alleged and incorporated herein by reference.

9. 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.

## **III. APPLICABILITY**

10. 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.

11. No transfer of ownership or operation of the Facility, whether in compliance with the procedures of this Paragraph or otherwise, shall relieve Respondent of its obligation to comply with this CA/FO.

12. Respondent shall provide a copy of this CA/FO to all officers, employees, and agents whose duties might reasonably include compliance with any provision of this CA/FO.

13. In any action to enforce this CA/FO, Respondent shall not raise as a defense the failure by any of its officers, directors, employees, agents, or contractors to take any actions necessary to comply with the provisions of this CA/FO.

## **IV. TERMS OF SETTLEMENT**

14. For the purpose of this proceeding, Respondent stipulates that:

- a. 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;
- b. Respondent waives any defenses they might have as to jurisdiction and venue, and, without admitting or denying the factual or legal allegations contained in the Complaint;
- c. Respondent hereby consents to Respondent consents to the issuance and the terms of this Consent Agreement and Final Order, without admitting or denying the factual or legal allegations contained in the Complaint;
- d. 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; and,
- e. Respondent consents to the payment of the civil penalty cited in the Paragraph

below.

15. Pursuant to § 309(g) of the Clean Water Act, 33 U.S.C. § 1319(g), the nature of the violations and other relevant factors, Complainant and Respondent agree that an appropriate civil penalty to settle this action is in the amount of Twenty Thousand dollars (\$20,000.00).

#### **V. PAYMENT OF PENALTY**

16. The effective date of this Consent Agreement shall be the date the Division Director, pursuant to the authority re-delegated by the Regional Administrator, signs the Final Order accompanying this Consent Agreement.
17. Respondent agrees to pay the amount the amount of twenty thousand dollars (\$20,000.00) in five (5) payments, as follows:
  - a. An initial payment in the amount of five thousand dollars (\$5,000.00) shall be made within forty five (45) calendar days from the effective date of this Consent Agreement.
  - b. A second payment in the amount of three thousand seven hundred and fifty dollars (\$3,750.00) shall be made within two hundred twenty five (225) calendar days from the effective date of this Consent Agreement.
  - c. A third payment in the amount of three thousand seven hundred and fifty dollars (\$3,750.00) shall be made within four hundred and five (405) calendar days from the effective date of this Consent Agreement.
  - d. A fourth payment in the amount of three thousand seven hundred and fifty dollars (\$3,750.00) shall be made within five hundred and eighty five (585) calendar days from the effective date of this Consent Agreement.
  - e. A fifth payment in the amount of three thousand seven hundred and fifty dollars (\$3,750.00) shall be made within seven hundred and sixty five (765) calendar days from the effective date of this Consent Agreement.
18. These five (5) payments, which include principal and interest for a total of \$20,184.93, satisfy the full civil penalty of twenty thousand dollars (\$20,000.00) over a period of seven hundred and sixty five calendar days.
19. Checks shall be made payable to the “**Treasurer of the United States of America.**” The checks shall be 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 any of the following methods:

CHECK PAYMENTS:

U.S. 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

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

David Pohle  
Wetlands Enforcement Coordinator  
U.S. Environmental Protection Agency Region 2  
290 Broadway - 24th Floor  
New York, NY 10007-1866  
Fax number: (212) 637-3889

and

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

20. The payments must be received at the above address in compliance with the due dates described above, commencing with the initial payment 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.
21. 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.

#### **VI. General Provisions**

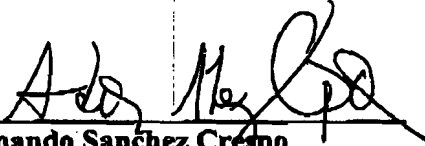
22. This Consent Agreement is being voluntarily and knowingly entered into by the parties in full and final settlement of any and all civil liabilities that might have attached as a result of the allegations contained in the Complaint.
23. Respondent has read the Consent Agreement, understands its terms, finds it to be reasonable and consents to its issuance and its terms. Respondent consents to the issuance of the accompanying Final Order. Respondent agrees that all terms of settlement are set forth herein.
24. Respondent explicitly and knowingly consents to the assessment of the civil penalty as set forth in this Consent Agreement and agrees to pay the penalty in accordance with the terms of this Consent Agreement.

25. Respondent knowingly and explicitly waives its rights under Sections 309(g)(2) and (8) of the Act, 33 U.S.C. §1319(g)(2) and (8), to request or to seek any Hearing on or Judicial Review of the Complaint or on any of the allegations therein asserted, on this Consent Agreement or the Findings of Fact and Conclusions of Law herein, or on the accompanying Final Order.
26. Respondent waives any right he 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 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.
27. Issuance of the Consent Agreement and Final Order does not constitute a waiver by EPA of its right to enforce the substantive legal requirements underlying this penalty assessment, either administratively or judicially pursuant to Sections 309(a), (b), and (c) of the Act, 33 U.S.C. § 1319(a), (b), and (c), for violations that occur subsequent to the date of this Final Order. Pursuant to Section 309(g)(7) of the Act, 33 U.S.C. § 1319(g)(7), issuance or compliance with this Consent Agreement and Final Order does not waive, extinguish or otherwise affect Respondent's obligation to comply with all applicable requirements of the Clean Water Act, or regulations promulgated thereunder and of any legal order or permit issued thereunder.
28. Each undersigned signatory to this Consent Agreement certifies that he or she is duly and fully authorized to enter into and ratify this Consent Agreement and all the terms and conditions set forth in this Consent Agreement.
29. The provisions of this Consent Agreement and Final Order shall be binding upon the Respondent, his agents, servants, authorized representatives and successors or assigns.
30. Each party hereto agrees to bear its own costs and fees in this matter.
31. Respondent consents to service upon Respondent by a copy of this Consent Agreement and Final Order by an EPA employee other than the Regional Hearing Clerk.

**THE UNDERSIGNED PARTIES enter into *Consent Agreement and Final Order In The Matter Of: Praderas Del Mar, Inc. Index No. CWA-02-2009-3602.***


**FOR RESPONDENT, PRADERAS DEL MAR, INC:**

**Dated:** \_\_\_\_\_

  
Armando Sanchez Crespo  
President, Praderas del Mar Inc.  
PR-115, Km. 24.0 Interior, Asomante Ward,  
Aguada, Puerto Rico

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

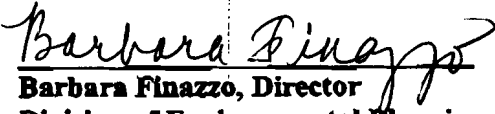
**Dated:** 9/30/10

  
Barbara Finazzo, Director  
Division of Environmental Planning and  
Protection  
EPA, Region 2  
New York, New York

**VII. Final Order**

The Director of the Division of Environmental Planning and Protection 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.

**Dated:** 9/30/10

  
Barbara Finazzo, Director  
Division of Environmental Planning and  
Protection  
EPA, Region 2  
New York, New York

*Re: Praderas del Mar, Inc., Aguada, Puerto Rico; Proceeding Pursuant to § 309(g) of the Clean Water Act, 33 U.S.C. § 1319(g); Docket No. CWA-02-2009-3602*



UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 2

In the matter of

Praderas del Mar, Inc.  
Aguada, Puerto Rico

Respondent

Index No. CWA-02-2009-3602

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

CERTIFICATE OF SERVICE

I certify that, on the date noted below, I served the foregoing *Consent Agreement and Final Order*, bearing the above-referenced docket number, in the following manner:

Copy to Respondent's Counsel

Via Electronic Mail and

Regular Mail:

Heriberto Guivas, Esq.  
HC-03 Box 39605  
Aguada, PR 00602

Original and One Copy

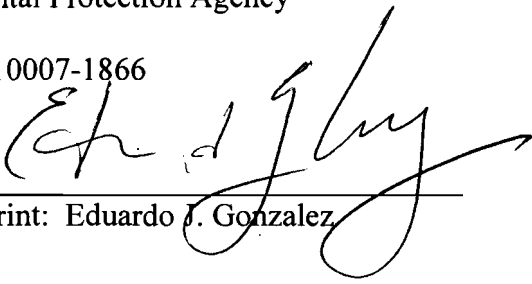
By Internal Mail:

Regional Hearing Clerk  
U.S. Environmental Protection Agency  
290 Broadway, 16<sup>th</sup> floor  
New York, New York 10007-1866

Copy By Internal Mail:

Helen S. Ferrara  
Regional Judicial Officer  
U.S. Environmental Protection Agency  
290 Broadway  
New York, NY 10007-1866

Date: October <sup>5</sup>7, 2010

  
Print: Eduardo J. Gonzalez