



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REG. II

REGION II  
290 BROADWAY  
NEW YORK, NEW YORK 10007-1866

2009 SEP 29 PM 4:07  
REGIONAL HEARING  
CLERK

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

September 29, 2009

Jerry Lucas Marrero, Esq.  
McConnell Valdés  
270 Muñoz Rivera Avenue  
San Juan, Puerto Rico 00918


RE: In the Matter of Shell Chemical Yabucoa  
Docket No. CWA-02-2009-3461

Dear Mr. Marrero:

Enclosed is a Consent Agreement and Final Order (CA/FO) in the above-referenced matter. This CA/FO was fully executed on September 24, 2009.

Please note that the penalty of \$69,000 is required to be paid in full and received by EPA no later than November 9, 2009.

Sincerely,

  
Nina Dale, Esq.

Enclosure

cc: ~~Karen Myles~~  
Regional Hearing Clerk (w/enclosures)

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 2  
290 Broadway  
New York, New York 10007-1866

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REG. II  
2009 SEP 29 PM 4:07  
REGIONAL HEARING  
CLERK

In the Matter of:

**SHELL CHEMICAL YABUCOA, INC.**  
State Road 901, Km. 2.7, Barrio Camino Nuevo  
Yabucoa, Puerto Rico 00767

**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-02-2009-3461**

**CONSENT AGREEMENT AND ORDER**

WHEREAS Complainant, the United States Environmental Protection Agency ("EPA"), having issued the Complaint herein on July 10, 2009, against Respondent Shell Chemical Yabucoa, Inc. ("Respondent") and,

WHEREAS Respondent having filed its Answer to the Complaint on August 11, 2009, and requested a hearing on the allegations and civil penalty included in the Complaint, and

WHEREAS 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;

NOW, THEREFORE, before the taking of any testimony or evidence 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(g) of the Clean Water Act, 33 U.S.C. § 1319(g).

2. The Complaint alleges that Respondent failed to comply with the terms of its NPDES Permit No. PR0000400, issued by EPA for Respondent's facility located at State Road 901, Km. 2.7, Camino Nuevo Ward, Yabucoa, Puerto Rico. The Complaint also alleges that Respondent discharged pollutants into waters of the United States at a point not authorized in the 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. This Final Order shall apply to and be binding upon Respondent, its officers, directors, employees, successors and assigns, including, but not limited to, subsequent purchasers.
6. On August 11, 2009, Respondent filed an Answer to the Complaint and requested a hearing on the alleged violations and civil penalty levied in the Complaint.
7. Respondent stipulates that EPA has jurisdiction over the subject matter alleged in the Complaint. 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 Consent Agreement and Final Order.
8. Respondent hereby waives its right in this case 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-NINE THOUSAND DOLLARS (\$69,000.00).
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.

## II. A. Penalty

11. No later than forty-five (45) days after the date of signature on the Final Order (at the end of this document), Respondent shall pay the penalty of SIXTY-NINE THOUSAND DOLLARS (\$69,000.00) by cashier's or certified check, 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. This check shall be mailed to:

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

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

Mr. José Rivera  
Caribbean Environmental Protection Division  
Centro Europa Building, Suite 417  
1492 Ponce De León Avenue  
San Juan, Puerto Rico 00907

and

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

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. 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. Respondent also may be required to pay attorney's fees and costs for collection proceedings in connection with nonpayment.


- 12. 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**

- 13. 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 sole 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, if this Consent Decree and Final Order is finally executed and EPA does not pursue any other action based on the facts or violations alleged in the Complaint.
- 14. Nothing in this agreement shall be construed as prohibiting, altering or in any way limiting the ability of EPA to seek 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 any other violations by Respondent of any applicable provision of law.
- 15. This Consent Agreement and Order 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.
- 16. This Consent Agreement and Final Order constitutes the full and final settlement by EPA of all claims for civil liabilities and fines that may have been levied pursuant to the Clean Water Act for the facts and violations alleged in the Complaint. Compliance with this Consent Agreement and Final Order shall not be a defense to any actions subsequently commenced by EPA pursuant to Federal laws and regulations administered by EPA, and it is the responsibility of Respondent to comply with such laws and regulations.

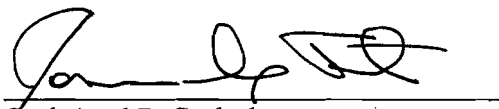
17. Each undersigned signatory to this Consent Agreement certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this Consent Agreement and to execute and legally bind that party to it.
18. Each party shall bear its own costs and attorney's fees in connection with the action resolved by this Consent Agreement and Order.
19. 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.
20. EPA shall notify Respondent within 5 business days after this Consent Agreement has been ratified and the Final Order is signed.

RESPONDENT:

BY:   
\_\_\_\_\_  
Juan M. López  
Site Manager  
Shell Chemical Yabucoa, Inc.  
State Road 901, Km. 2.7, Barrio Camino Nuevo  
Yabucoa, Puerto Rico 00767

DATE: 9/23/2009

COMPLAINANT:

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

DATE: September 23, 2009

### **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.

September 24, 2009  
Date

Barbara A. DiAngelo for  
George Pavlou  
Acting Regional Administrator  
United States Environmental  
Protection Agency-Region 2  
290 Broadway  
New York, NY 10007-1866

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 2  
290 Broadway  
New York, New York 10007-1866

In the Matter of:

SHELL CHEMICAL YABUCOA, INC.  
State Road 901, Km. 2.7, Barrio Camino Nuevo  
Yabucoa, Puerto Rico 00767,

Respondent.

Proceeding to Assess Civil Penalty Pursuant to  
Section 309(g) of the Clean Water Act

Docket No. CWA-02-2009-3461

CERTIFICATE OF SERVICE


I certify that on September 29<sup>th</sup> 2009, I served the foregoing fully executed CONSENT AGREEMENT and FINAL ORDER, bearing the above referenced docket number, on the persons listed below, in the following manner:

Original and One Copy  
By Hand:

Office of Regional Hearing Clerk  
U.S. Environmental Protection  
Agency - Region 2  
290 Broadway, 16th floor  
New York, New York 10007-1866

Copy by Certified Mail  
Return Receipt Requested:

Jerry Lucas Marrero, Esq.  
McConnell Valdés  
270 Muñoz Rivera Avenue  
San Juan, Puerto Rico 00918



Ana Madera, Secretary