



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
CARRIBEAN ENVIRONMENTAL PROTECTION DIVISION
CITY VIEW PLAZA II BUILDING, 7TH FLOOR
ROUTE 165 GUAYNABO, PUERTO RICO 00968

U.S. Environmental
Protection Agency - Region 2
2018 OCT 11 PM 2:22
REGIONAL HEARING
CLERK

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CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Pedro Feliciano Benitez
President
L.P.C.&D., Inc.
P. O. Box 2025
Las Piedras, Puerto Rico 00771

**Re: In the Matter of L.P.C.&D., Inc.
Executed Consent Agreement and Final Order
Docket Number CWA-02-2018-3451**

Dear Mr. Feliciano Benítez:

Enclosed please find a copy of the executed Consent Agreement and Final Order ("CA/FO") referenced above. This CA/FO was executed by the U.S. Environmental Protection Agency ("EPA") on September 25, 2018.

Based on Section V of the CA/FO, L.P.C.&D., Inc. ("Respondent") shall pay the amount of \$60,000 plus accrued interest (\$37.50) according to a payment schedule. Please refer to Section V of the CA/FO for the payment deadlines and methods.

If you have any questions concerning the above, please contact José A. Rivera, Team Leader, Clean Water Act Team, at (787) 977-5842 or rivera.jose@epa.gov.

Sincerely,

Carmen R. Guerrero Pérez
Director
Caribbean Environmental Protection Division

Enclosure

cc: Angel Melendez, EQB (via email w/ enclosure)
Karen Maples, Regional Hearing Clerk (hard copy w/o enclosure)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

In the Matter of:

L.P.C. & D., INC.
P. O. Box 2025
Las Piedras, Puerto Rico 00771

**CONECTOR LOS FILTROS
CONSTRUCTION PROJECT**
Between Road PR-833 to Road PR-199,
Guaynabo, Puerto Rico

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-02-2018-3451**

I. PRELIMINARY STATEMENT

1. This is a civil administrative proceeding for the assessment of a civil penalty instituted pursuant to Section 309(g) of the Clean Water Act ("CWA" or "the Act"), 33 U.S.C. § 1319(g).
2. The Administrator has delegated the authority to take this action to the Regional Administrator of Region 2 of United States Environmental Protection Agency ("EPA"), which authority has been duly delegated to the undersigned Director of the Caribbean Environmental Protection Division ("CEPD").
3. This Consent Agreement and Final Order ("CA/FO") is entered into by the Director of the CEPD ("Complainant") and L.P.C.D., Inc. ("Respondent") pursuant to Section 309(g) of the Act, 33 U.S.C. § 1319(g); and 40 C.F.R. § 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 set 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).

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II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

4. Respondent is a for profit corporation organized under the laws of the Commonwealth of Puerto Rico. Respondent is registered in the Puerto Rico Department of State under registration number 93087.
5. Respondent is a "person" pursuant to Section 502(5) of the CWA, 33 U.S.C. § 1362(5).
6. At all relevant times, Respondent was the "operator," as defined in 40 C.F.R. § 122.2, of the construction site known as the Conector Los Filtros Construction Project located between Road PR-833 and Road PR-199 in Guaynabo, Puerto Rico (the "Project").
7. The Project is a "point source" pursuant to Section 502(14) of the CWA, 33 U.S.C. § 1362(14).
8. The Project is a "facility" as defined in 40 C.F.R. § 122.2.
9. The construction activities associated with the Project included, among other things:
 - a. 1.5 linear kilometers of highway construction that required earth movement, including clearing and grubbing, cut and fill, and excavation. The estimated area of land disturbance involved in the Project was 5.85 acres;
 - b. installation of utilities, including relocation of power lines; and
 - c. installation of storm water collection and discharge systems.
10. Respondent was engaged at all relevant times in construction activity, including earth movement activities such as clearing, grading and excavation, at the Project.
11. At all relevant times, Respondent discharged stormwater containing "pollutants," as defined in 40 C.F.R. § 122.2, from the Project into the Guaynabo River, which is a tributary of the Bayamón River. The Bayamón River discharges into the Atlantic Ocean.
12. The Guaynabo River, Bayamón River and the Atlantic Ocean are "waters of the United States" as that term is defined in Section 502(7) of the Act, 33 U.S.C. § 1362(7) and 40 C.F.R. § 122.2.

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13. Section 301(a) of the Act, 33 U.S.C. § 1311(a), provides in part that “[e]xcept as in compliance with [CWA § 402], the discharge of any pollutant by any person shall be unlawful.”
14. Section 402(p) of the Act, 33 U.S.C. § 1342(p), authorizes the Administrator of EPA to issue permits under the National Pollutant Discharge Elimination System (“NPDES”) for the discharge of pollutants subject to certain requirements of the Act and conditions which the Administrator determines are necessary.
15. Section 402(p)(2)(B) of the Act, 33 U.S.C. § 1342(p)(2)(B), authorizes the Administrator of EPA to issue a permit for storm water discharges associated with industrial activity.
16. The Administrator of EPA promulgated regulations at 40 C.F.R. §§ 122.26(a)(1)(ii) and 122.26(b)(14), which require that an NPDES permit shall be obtained for storm water discharges associated with industrial activity.
17. The EPA regulations at 40 C.F.R. § 122.26(b)(14)(x) included storm water discharges from construction activity.
18. Respondent was required to apply for an NPDES permit for its storm water discharges associated with industrial activity pursuant to 40 C.F.R. §§ 122.21 and 122.26(e)(1).
19. Respondent is therefore subject to the provisions of the CWA, 33 U.S.C. § 1251 *et seq.*
20. On February 16, 2012, EPA re-issued the NPDES General Permit for Discharges from Construction Activities (“2012 CGP”). 77 Fed. Reg. 12,286 (Feb. 29, 2012). The 2012 CGP became effective on February 16, 2012 and expired on February 16, 2017.
21. The 2012 CGP established requirements such as submitting a Notice of Intent (“NOI”), development of Storm Water Pollution Prevention Plans (“SWPPP”), performance of inspections, and completion of inspection reports, among others.
22. Part 1.4 of the 2012 CGP provides that the operator seeking coverage under the 2012 CGP must submit to EPA a complete and accurate NOI prior to commencing construction activities.
23. Part 1.4.2 and Table I of the 2012 CGP requires operators of new projects to file a NOI to obtain coverage under the 2012 CGP at least fourteen (14) days prior to commencing earth disturbing activities.

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24. Parts 1.4 and 7.1.1 of the 2012 CGP require operators associated with a construction project to be covered under the 2012 CGP to develop a SWPPP prior to submitting a NOI for coverage under the 2012 CGP.
25. On December 17, 2014, an EPA official conducted a Reconnaissance Inspection ("Inspection") of the Project. The findings of the Inspection were included in the Inspection Report dated December 18, 2017.
26. During the Inspection, the EPA official observed and/or learned, among other things, the following:
 - a. the Municipality of Guaynabo hired the Respondent for the construction of the Project;
 - b. on or about August 18, 2014, Respondent commenced earth-disturbing activities, land-disturbing activities and pollutant-generating activities at the Project;
 - c. discharges of storm water associated with construction activities from the Project into the Guaynabo River were ongoing;
 - d. construction activities and earth movement activities were ongoing;
 - e. certain erosion and sediment controls had not been selected, installed, and maintained at the Project;
 - f. stabilization practices were not observed at the Project (most of the Project was observed without temporary or final stabilization);
 - g. no off-site vehicle tracking control was observed at the entrances of the Project; and
 - h. stockpile soils were observed without erosion or sediment controls.
27. On December 17, 2014, an EPA official reviewed the EPA NOI Processing Center database (the "EPA Review") to determine if Respondent had obtained NPDES permit coverage for the Project.
28. The findings of the Inspection and EPA Review revealed that Respondent filed an incomplete NOI form seeking coverage under the 2012 CGP, for its discharges of pollutants from the Project into waters of the United States.
29. On December 18, 2014, EPA issued an Administrative Compliance Order, Docket Number CWA-02-2015-3105 ("ACO"), against Respondent and the Municipality of Guaynabo requiring, among other things, to cease clearing, grading and

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excavation activities at the Project; prepare and submit a Compliance Plan to bring the Project in compliance with the requirements of the 2012 CGP; and submit monthly progress reports.

30. Respondent discharged pollutants without an NPDES permit from August 18, 2014, (date when earth movement activities commenced) to February 27, 2015, (date when Respondent filed the NOI for the Project), in violation of Sections 301(a) and 402(p) of the Act, 33 U.S.C. §§ 1311(a) and 1342(p).
31. Based upon the implementation of the provisions of the ACO, EPA terminated the ACO on March 31, 2014. Notwithstanding the termination of the ACO, EPA required Respondent to submit a final report on the final soil stabilization and to continue submit electronic copy of the inspection reports prepared in accordance to Part 4.1.7 of the CGP until further notice. Respondent submitted the final report on April 13, 2015, and continued to submit electronic copy of the inspection reports until January 8, 2016.
32. Based upon the findings of facts and conclusions of law set forth above, EPA has jurisdiction over the subject matter of this action, pursuant to Section 309(g) of the Act, 33 U.S.C. § 1319(g), and over the Respondent.

III. CONSENT AGREEMENT

33. Paragraphs 1 through 32 are re-alleged and incorporated herein by reference.
34. EPA and Respondent agree that it is in the public interest to resolve the issues alleged in this CA/FO without further litigation and the expense and effort that litigation entails.
35. 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:

IV. TERMS OF SETTLEMENT

36. For the purpose of this proceeding, Respondent:
 - a. admits the jurisdictional allegations of this CA/FO;
 - b. neither admits nor denies the factual allegations contained herein;
 - c. waives its right to contest the allegations, a judicial or administrative hearing, or to appeal this CA/FO; and

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- d. shall pay a civil penalty in the amount of sixty thousand dollars (**\$60,000**), by making installment payments for up to three (3) months from the effective date of the Final Order, as stated in Section V, below.

V. PAYMENT OF CIVIL PENALTY

37. Respondent shall pay the total amount of sixty thousand dollars (\$60,000) plus accrued interest (\$37.50), according to the following schedule:
- (a) a payment of \$30,000 (\$30,000 principal plus \$0 accrued interest) shall be made within 30 days of the effective date;
 - (b) a payment of \$15,000 (\$15,000 principal plus \$25.00 accrued interest) shall be made within 60 days of the effective date; and
 - (c) a payment of \$15,000 (\$15,000 principal plus \$12.50 accrued interest) shall be made within 90 days of the effective date.
38. All payments shall be made by cashier's or certified check payable to the "Treasurer of the United States of America," by electronic transfer (i.e. wire or automated clearinghouse), or online payment:
- a. If Respondent chooses to pay the civil penalty by cashiers' or certified check, the check shall be mailed to:

BY U.S. POSTAL SERVICE

U.S 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 the civil penalty, the transfer shall be made to:

BY WIRE TRANSFER:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045.

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Field Tag 4200 of the Fedwire message should read "D 68010727
Environmental Protection Agency."

**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.

- c. On Line Payment Option is available through the U.S. 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.
- d. Respondent shall clearly identify, regardless of the form of payment, the name and docket number of the case:

**In the Matter of: L.P.C. &D., Inc.
Conector Los Filtros Construction Project**

Docket Number: CWA-02-2018-3451

- 39. Respondent shall send proof of payment, as specified in paragraph 38 above, to each of the following:

José A. Rivera, BSCE
Lead Environmental Engineer, Clean Water Act Team
Multimedia Permits and Compliance Branch
Caribbean Environmental Protection Agency
United States Environmental Protection Agency Region 2
City View Plaza II
48 CARR 165 STE 7000
Guaynabo, PR 00968-8073,

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Suzette Méendez-Colón, Esq.
Assistant Regional Counsel
Office of Regional Counsel
United States Environmental Protection Agency, Region 2
City View Plaza II
48 CARR 165 STE 7000
Guaynabo, PR 00968-8073,

and

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

40. Failure to pay the penalty in full according to the above provisions may result in referral of this matter to the United States Department of Justice or the United States Department of the Treasury for collection.
41. 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 fifteen dollars (\$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 six percent (6%) per annum penalty also will be applied on any principal amount not paid within ninety (90) days of the due date.
42. 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 twenty percent (20%) of the aggregate amount of penalties and quarterly nonpayment penalties, which are unpaid as of the beginning of such quarter. Respondent may also be required to pay attorney's fees and costs for collection proceedings in connection with nonpayment.
43. 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 taxes.

VII. GENERAL PROVISIONS

44. The provisions of this CA/FO shall be binding upon Respondent, its officers, directors, agents, servants, authorized representatives and successors or assigns,

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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.

45. 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.
46. 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.
47. This CA/FO shall not relieve Respondent of its obligation to comply with all applicable provisions of the CWA and the regulations implementing it, nor shall it be construed as the issuance of a permit or a ruling on, or determination of, any issues related to any federal, state or local law, regulation or permit.
48. Full payment of the civil penalty shall only resolve Respondent's liability for federal civil penalties for the violations and facts alleged herein. Full payment of this penalty shall not in any case affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.
49. Each undersigned representative of the parties to this CA/FO certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this CA/FO and to execute and legally bind that party to it.
50. Each party shall bear its own costs and attorney's fees in this matter.

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For Respondent: L.P.C.&D., Inc. hereby consents to the issuance of the ORDER and agrees to be bound thereby.

BY: 
PEDRO FELICIANO BENITEZ
President
L.P.C.&D., Inc.
P. O. Box 2025
Las Piedras, Puerto Rico 00771

DATE: 09 17 18

For the Complainant, the United States Environmental Protection Agency:

BY: 
CARMEN R. GUERRERO PÉREZ
Director
Caribbean Environmental Protection Division
United States Environmental Protection Agency, Region 2
City View Plaza II
48 CARR 165 STE 7000
Guaynabo, PR 00968-8073

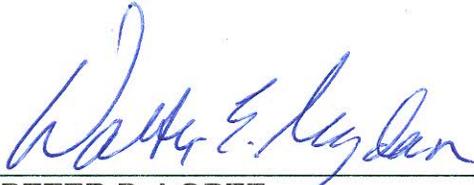
DATE: SEPTEMBER 18, 2018

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VIII. 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.

BY:

for 

DATE:

Sept. 25, 2018

PETER D. LOPEZ

Regional Administrator

United States Environmental Protection Agency, Region 2

290 Broadway

New York, New York 10007

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