



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2  
290 BROADWAY  
NEW YORK, NY 10007-1866

FEB 12 2010

CERTIFIED MAIL #  
RETURN RECEIPT REQUESTED

U.S. ENVIRONMENTAL  
PROTECTION AGENCY  
FEB 12 01 39 11  
REGIONAL HEARING  
OFFICE

Nancy A. Soto Lleras, Esq.  
Legal Affairs Director  
Municipality of Cayey  
P.O. Box 371330  
Cayey, PR 00737-1330

RE: Consent Agreement and Final Order  
In the Municipality of Cayey  
Docket No. CWA-02-2009-3454

Dear Mayor Ortíz Velázquez:

Enclosed please find the executed Consent Agreement and Final Order (CA/FO) negotiated with the Municipality of Cayey to settle the above-referenced enforcement action. Please note that pursuant to paragraph fifteen (15) of the CA/FO, the civil penalty payment of \$20,000 is due within ninety forty five (45) days of service and that pursuant to paragraph twenty one (21) of the CA/FO, the Work Plan for the SEP is due within sixty (60) days of service. If you have any questions, please have your attorney contact me at (787) 977-5822.

Sincerely,

for Roberto M Durango, Esq.

cc: Honorable Rolando Ortíz Velázquez

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2

U.S. ENVIRONMENTAL PROTECTION AGENCY  
2010-12-17 11:3:17  
REGIONAL HEARING  
CAYEY

In the Matter of:

**MUNICIPALITY OF CAYEY**

P. O. Box 371330  
Cayey, Puerto Rico 00737-1330

**RESPONDENT**

Proceeding pursuant to Section 309(g)(2)(B) of  
the Clean Water Act, 33 U.S.C. § 1319(g)

**PROCEEDING TO ASSESS A  
CLASS II CIVIL PENALTY**

**DOCKET NUMBER  
CWA-02-2009-3454**

**CONSENT AGREEMENT AND FINAL ORDER**

Complainant, the United States Environmental Protection Agency (EPA), having issued the Complaint herein on March 30, 2009, against the Municipality of Cayey (Respondent), and

Complainant and Respondent (collectively, the Parties) having agreed that settlement of this matter is in the public interest, and that entry of this Consent Agreement and Final Order (CAFO) 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(g)(2)(B) of the Clean Water Act (the Act), 33 U.S.C. § 1319(g)(2)(B).
2. On March 30, 2009, EPA issued a Complaint against Respondent alleging violations of Sections 308 and 402 of the Act, 33 U.S.C. §§ 1318 and 1342, for its failure to submit a Notice of Intent (NOI) requesting permit coverage under the National Pollutant Discharge Elimination System General Permit for Discharges from Small Municipal Separate Storm Sewer Systems (NPDES MS4 General Permit) from the Municipality of Cayey's Small MS4 into the Río La Plata, a water of the United States.

3. The Complaint was based on Administrative Compliance Order (ACO), Docket Number CWA-02-2008-3116, which was issued on February 16, 2008, and required Respondent to among others: (a) submit a NOI within ten (10) days from the receipt of the ACO; (b) develop, submit and implement a Storm Water Management Plan (SWMP) within ninety five (95) calendar days from the receipt of the ACO; and (c) submit a compliance cost report.
4. On July 6, 2009, Respondent submitted a NOI requesting coverage under the NPDES MS4 General Permit.
5. On July 9, 2009, EPA, Region 2, assigned NPDES MS4 General Permit tracking number PRR040047 to Respondent.
6. Since July, 2009, the Parties worked together in order reach a prompt, amicable resolution to this matter.
7. 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 C.F.R. Part 22.
8. This action was public noticed. No public comment was received.

## **II. TERMS OF THE SETTLEMENT**

9. 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.
10. 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.
11. 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.
12. 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.

**III. PAYMENT OF PENALTY**

13. Pursuant to Section 309(g) of the Clean Water Act, 33 U.S.C. § 1319(g), based upon the nature of the violations, Respondent's agreement to perform a Supplemental Environmental Project (SEP) and other relevant factors, EPA has determined that an appropriate civil penalty to settle this action is in the amount of TWENTY THOUSAND (\$20,000.00) DOLLARS.
14. For purposes of settlement, Respondent consents to the issuance of this CA/FO, to the payment of the civil penalty cited in the foregoing paragraph, and to the performance of the SEP.

**III. A. Penalty**

15. No later than forty-five (45) days after the date signature on the Final Order (at the end of this document), Respondent shall pay the penalty, TWENTY THOUSAND (\$20,000.00) DOLLARS, 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.

**CHECK PAYMENTS:**

US Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. 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  
Telephone Number: (314) 418-4087.

**In the Matter of Municipality of Cayey  
Docket Number CWA-02-2009-3454  
Consent Agreement and Final Order  
Page 3 of 25**

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

Yolianne Maclay  
Environmental Engineer  
Multimedia Permits and Compliance Branch  
Caribbean Environmental Protection Agency  
U.S. Environmental Protection Agency, Region 2  
Centro Europa Building, Suite 417  
1492 Ponce de León Ave.  
San Juan, PR 00907-4127  
Fax number: (787) 289-7104,

Roberto M. Durango, Esq.  
Assistant Regional Counsel  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 2  
Centro Europa Building, Suite 417  
1492 Ponce de León Ave.  
San Juan, PR 00907-4127  
Fax number: (787) 729-7748,

and

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

16. 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 (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 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 may also be required to pay attorneys fees and costs for collection proceedings in connection with nonpayment.
17. 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.
18. Except as provided in paragraph 15 above, in this section (and except as the parties may in writing agree to otherwise), all documentation, information, notices and reports required to be submitted in accordance with the terms and conditions of this CA/FO shall be sent by first class mail or its equivalent to each of the following:

**FOR COMPLAINANT:**

Yolianne Maclay  
Environmental Engineer  
Multimedia Permits and Compliance Branch  
U.S. Environmental Protection Agency, Region 2  
Caribbean Environmental Protection Division  
Centro Europa Building, Suite 417  
1492 Ponce de León Avenue  
San Juan, PR 00907-4127;

and

Roberto M. Durango, Esq.  
Assistant Regional Counsel  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 2  
Office of Regional Counsel—Caribbean Team  
Centro Europa Building, Suite 417  
1492 Ponce de León Avenue  
San Juan, PR 00907-4127.

**FOR RESPONDENT:**

Honorable Rolando Ortíz Velázquez, Mayor  
Municipality of Cayey  
P. O. Box 371330  
Cayey, Puerto Rico 00737-1330;

and

Nancy Soto Lleras, Esq.  
Legal Division Director  
Municipality of Cayey  
P. O. Box 371330  
Cayey, Puerto Rico 00737-1330.

**IV. Supplemental Environmental Project**

19. Respondent agrees to implement a SEP that consists of the construction of two retaining walls and storm water collection system to eliminate unstable slope conditions, and to prevent erosion and sedimentation at an unnamed creek, tributary of Río La Plata, a water of the United States. The SEP also includes the removal of accumulated debris on the slope sides and reforestation of the impacted area (see Attachment 1). The SEP is located at the Sector Las Parcelas, in the Barrio El Cedro, Cayey, Puerto Rico.
20. The total expenditure for the SEP shall not be less than SIXTY ONE THOUSAND TWO HUNDRED AND FIFTY DOLLARS (\$61,250.00) for the total amount spent in material, equipment, labor, engineering studies, plans and specifications, drawings, field inspections, permits, tasks, obligations and work, associated legal fees, in accordance with the specifications set forth in this CA/FO, in Attachment 1 of this CA/FO, and in the final EPA approved SEP Work Plan (Work Plan). Respondents shall include documentation of the expenditures made in connection with the SEP as part of the SEP Final Report (Final Report).
21. Within sixty (60) calendar days from the effective date of this Consent Agreement, Respondent shall submit for EPA's "approval," "disapproval," or "modification and approval," the Work Plan for the SEP.

22. The Work Plan submitted by Respondent shall contain provisions that at a minimum, provide for:
- a. design drawings and specifications for the construction of the retaining walls;
  - b. design drawings and specifications for the construction of the rural storm water collection system;
  - c. detailed inspection and construction schedules for the slope stabilization, the retaining walls, and the rural storm water collection system;
  - d. schedule for filing and obtaining all local, state, and federal permits required for the project;
  - e. a certification that the SEP does not use any federal funds and that funding for the SEP is covered solely by Respondent;
  - f. the construction contracts Respondent procures in relation to the SEP; and
  - g. cost estimates for the implementation of the SEP, including the costs associated with the slope stabilization, construction of the gabion walls, and the construction of the rural storm water collection and discharge system.
23. All materials to be developed and distributed as well as any public statement, oral or written, in print, film, or other media, made by Respondent describing this SEP, including any made at, during and/or in a compliance assistance meeting, lecture, presentation, seminar, mailing or other outreach effort, must display in a prominent manner the statement: **“This Project was funded by Respondent, the Municipality of Cayey, as part of its settlement of an enforcement action taken by the United States Environmental Protection Agency for violations of the Federal Clean Water Act.”**
24. EPA will review the Work Plan and any related materials submitted and will inform Respondent, in writing, of EPA’s approval, modification and approval, or disapproval of such work plan, in whole or in part, and the specific grounds for any disapproval. In the event that EPA disapproves the Work Plan, in whole or in part, within twenty (20) calendar days of receipt of EPA’s disapproval, Respondent shall revise and re-submit such work plan for EPA’s review and approval.

25. Upon re-submission of the Work Plan, EPA will review it and will inform Respondent, in writing, of EPA's approval, modification and approval, or disapproval of the re-submitted Work Plan, in whole or in part, and the specific grounds for any disapproval.
26. If EPA elects to request modifications of the resubmitted Work Plan, EPA will permit Respondents the opportunity to object in writing to the notification of deficiency given pursuant to this paragraph within twenty (20) calendar days of receipt of such notification. EPA and Respondent shall have an additional twenty (20) calendar days from the receipt by EPA of the notification of objection to reach agreement on changes necessary to the Work Plan. If agreement can not be reached on any such issue within this twenty (20) calendar day period, EPA shall provide a written statement of its decision on the adequacy of the Work Plan, which decision shall be final and binding upon Respondent.
27. Stipulated penalties shall be payable to the United States in the amount of two hundred and fifty (\$250.00) dollars per day for failure to submit an adequate Work Plan as stated in paragraph 21 above, beginning on the date that Respondent receives EPA's disapproval, in writing, of the resubmitted Work Plan.
28. Respondent shall commence the SEP in accordance with this CA/FO and the final EPA approved Work Plan, within twenty (20) calendar days of receipt of EPA's approval of the Work Plan.
29. Within sixty (60) calendar days from the date of Respondent's receipt of EPA's notification of approval of the Work Plan, Respondent shall submit its first quarterly progress report to EPA. Subsequent progress reports will be submitted on a quarterly basis thereafter (every 90 days) until submission of the Final Report (described in paragraph 32, below). The progress reports shall contain the following information:
  - a. a detailed description of the work completed during the previous reporting period;
  - b. a description of the work that will be undertaken in the next reporting period;
  - c. notification of any anticipated delays in the project, including an estimate of the amount of time by which the project will be delayed, as well as a detailed explanation for the delay; and
  - d. any problem(s) encountered during the previous reporting period and the solution(s) thereto.

30. In the event that either of the parties proposes a change to the SEP and/or final EPA approved Work Plan, Respondent shall submit for EPA approval, modification and approval, or disapproval, a modified Work Plan incorporating such proposed changes following the procedures in paragraphs 16–29 above.
31. Respondent shall follow the same process identified above under paragraphs 16–29, for all deliverables and reports identified in the Work Plan and in this Consent Agreement (including the quarterly progress reports identified in paragraph 29 above), unless specified otherwise in this CA/FO.

#### **IV. A SEP Final Report**

32. Respondent shall submit a Final Report to EPA within sixty (60) calendar days after the completion of all activities that are part of the Work Plan. The Final Report shall contain the following information:
  - a. a detailed description of the SEP as implemented;
  - b. a description of any problems encountered and the solutions thereto;
  - c. itemized costs and expenditures Respondent have incurred during each activity (include therewith copies of invoices, and any other documents requested by EPA, if necessary, to demonstrate such expenditures);
  - d. certification that the SEP has been fully implemented pursuant to the provisions of this CA/FO and the Work Plan; and
  - e. a description of the environmental and public health benefits resulting from implementation of the SEP.
33. In itemizing its costs in the Final Report, Respondent shall clearly identify and provide acceptable documentation for all eligible SEP costs. Where the Final Report includes costs not eligible for SEP credit, those costs must be clearly identified as such. For purposes of this paragraph, “acceptable documentation” includes invoices, purchase orders, or other documentation that specifically identifies and itemizes the individual costs of the goods and/or services for which payment is being made. Canceled drafts do not constitute acceptable documentation unless such drafts specifically identify and itemize the individual costs of the goods and/or services for which payment is being made.
34. Following receipt of the Final Report described in paragraph 32 above, EPA will review it and will inform Respondent, in writing, of EPA’s approval, modification and approval, or disapproval of report, in whole or in part, and the specific grounds for any disapproval, following the procedures established in paragraphs 24–26 above. The SEP will be completed once EPA approves, in writing, the

Final Report. Upon EPA's approval of the Final Report, Respondent shall cease to have any responsibility over the operation, maintenance, and/or repair of the SEP, unless any failure occurs as a result of Respondent's improper construction of the SEP.

35. Respondent agrees that failure to submit the Final Report, as required by paragraphs 32 and 33 above, shall be deemed a violation of this CAFO and Respondent shall become liable for stipulated penalties pursuant to paragraph 36 below.

#### **IV. B Stipulated Penalties**

36. In the event that Respondent fails to comply with any of the terms or provisions of this CAFO, including those related to the performance of the SEP described in paragraph 19 above and/or to the extent that the actual expenditures for the SEP do not equal or exceed the cost of the SEP described in paragraph 20 above, Respondents shall be liable for stipulated penalties according to the provisions set forth below:

<b>Total Expenditure (SEP completion percentage–cost)</b>	<b>Stipulated Penalty Amount (in U.S. dollars)</b>
90–100%	\$0.00
80–89%	\$3,800.00
75–79%	\$5,000.00
70–74%	\$6,000.00
Less than 70%	\$20,000.00

37. For failure to submit the Final Report required by paragraph 32 above, or to submit a corrected Final Report pursuant to paragraph 34, Respondent shall pay a stipulated penalty in the amount of two hundred and fifty dollars (\$250.00) for each day after the respective due dates established at paragraphs 32 and 34, until the report, or the corrected report, is submitted.
38. Stipulated penalties for paragraph 36 above shall begin to accrue on the day after performance is due, and shall continue to accrue through the final day of the completion of the activity.
39. Unless Respondent provides EPA with a written explanation pursuant to paragraph 45, below, Respondent shall pay stipulated penalties within thirty (30) calendar days after receipt of written demand by EPA for such penalties. Respondent agrees that such demand may be mailed to Respondent, through its representative, designated in paragraph 18, above. Payment of stipulated penalties shall be made payable to the **"Treasurer of the United States of**

**America,"** and shall be mailed, as described in paragraph 15. The instrument of payment shall be identified with a notation thereon listing the following: *In the Matter of Municipality of Cayey*, Docket Number CWA-02-2009-3455: stipulated penalties. A copy of any payment of stipulated penalties shall be mailed to the EPA officials mentioned in paragraph 18, above.

Late charges on stipulated penalties shall be paid as stated in paragraph 16.b, above.

40. After receipt of a demand from EPA for stipulated penalties pursuant to the preceding paragraph, Respondent shall have twenty (20) calendar days in which to provide Complainant with a written explanation of why it believes that a stipulated penalty is not appropriate for the cited violation(s) of this Consent Agreement (including any technical, financial or other information that Respondents deem relevant). Where Respondent has submitted a written explanation to EPA pursuant to this paragraph and have disputed in good faith that it has failed to perform the obligation(s) cited by EPA in its demand for payment of stipulated penalties, the amount of the stipulated penalty to be paid to EPA for the cited violation(s) shall not continue to accrue during the period of time the Director (or delegate) reviews Respondent's explanation and responds in writing to Respondent pursuant to paragraph 41, below.
41. The Director of CEPD, Region 2 may, in his sole discretion, reduce or eliminate any stipulated penalty due if Respondent has, in writing, demonstrated to EPA's satisfaction good cause for such action by EPA. If, after review of Respondent's submission pursuant to the preceding paragraph, Complainant determines that Respondent has failed to comply with the provisions of this Consent Agreement, and Complainant does not, in its sole discretion, eliminate the stipulated penalties demanded by EPA, Complainant will notify Respondent, in writing, that either the full stipulated penalty or a reduced stipulated penalty must be paid by Respondent. Respondent shall pay the stipulated penalty amount indicated in EPA's notice within twenty (20) calendar days of their receipt of such written notice from EPA.
42. Failure of Respondent to pay any stipulated penalty demanded by EPA pursuant to this Consent Agreement may result in referral of this matter to the United States Department of Justice or the Department or the United States Department of the Treasury for collection.
43. Nothing in this CA/FO 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 CA/FO or of the statutes and regulations upon which this Agreement is based, or for Respondent's violation of any applicable provision of law.

44. 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, nor shall it be construed to constitute EPA approval of the equipment or technology used by Respondent in connection with the SEP undertaken pursuant to this Agreement.

#### **IV. C Delays in the Completion of the SEP**

45. If any event occurs which causes or may cause delays in the completion of the SEP or submittal of reports or notices as required under this CA/FO, Respondent shall notify Complainant, in writing, not more than ten (10) calendar days after the delay or upon Respondent's knowledge of the anticipated delay, whichever is earlier. The notice shall describe in detail the anticipated length of the delay, the precise cause or causes of the delay, the measures taken and to be taken by Respondent to prevent or minimize the delay, and the timetable by which those measures will be implemented. Respondent shall adopt all reasonable measures to avoid or minimize any such delay. Failure by Respondent to comply with the notice requirements of this paragraph shall render this paragraph void and of no effect as to the particular incident involved and constitute a waiver of Respondent's right to request an extension of its obligation under this CA/FO based on such incident.
46. If EPA determines that the delay or anticipated delay identified by Respondent pursuant to paragraph 45 has been or will be caused by circumstances beyond the control of Respondent, or Respondent's consultants or contractors, the time for performance hereunder may be extended for a period no longer than the delay resulting from such circumstances. In such event, the parties shall stipulate to such extension of time.
47. In the event that the EPA does not determine that a reasonable delay in achieving compliance with the requirements of this CA/FO has been or will be caused by circumstances beyond the control of Respondent, EPA will notify Respondent in writing of its decision and any delays in the completion of the SEP shall not be excused.
48. The burden of proving that any delay is caused by circumstances beyond the control of Respondent shall rest with the Respondent. Increased costs or expenses associated with the implementation of actions called for by this CA/FO shall not, in any event, be a basis for changes in this CA/FO or extensions of time. Delay in achievement of one interim step shall not necessarily justify or excuse delay in achievement of subsequent steps.

#### **IV. D General Provisions Regarding the SEP**

49. Respondents agree that EPA, or its duly authorized representative, may be present during the implementation of the SEP at any time in order to confirm that the SEP is being undertaken in conformity with the representations made herein.
50. Respondent shall maintain at their offices legible copies of documentation concerning the development, implementation and financing of the SEP, and documentation supporting information in reports submitted to EPA pursuant to this CA/FO for a term of three (3) years after the implementation of the SEP. Respondent shall grant EPA, and its authorized representatives, access to such documentation and shall provide copies of such documentation to EPA within ten (10) calendar days of Respondent's receipt of a request by EPA for such information or within such additional time as approved by EPA, in writing. In all documents or reports, including, without limitation, any SEP reports, submitted to EPA pursuant to this CA/FO, Respondent shall, by their officers, sign and certify under penalty of law that the information contained in such document or report is true, accurate, and complete by signing the following statement:

I certify that the information contained in this written notice and the accompanying documents is true, accurate and complete. As to the identified portions of this response for which I cannot personally verify their accuracy, I certify under penalty of law that this response and all attachments were prepared in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

51. Respondent agrees that failure to submit any report required by this Consent Agreement in a timely manner shall be deemed a violation of this CA/FO and Respondent shall become liable for stipulated penalties for such violation pursuant to the provisions set forth above.
52. Nothing in this document is intended or construed to waive, prejudice or otherwise affect the right of EPA, or the United States, from pursuing any appropriate remedy, sanction or penalty prescribed by law against Respondent for Respondent having made any material misrepresentations or for providing materially false information in any document submitted in compliance with the terms and conditions of this Consent Agreement.

53. The SEP to be implemented by Respondent has been accepted by Complainant solely for purposes of settlement of this civil administrative proceeding. Nothing in this document is intended or shall be construed to be a ruling on or determination of any issue related to a federal, state or local permit.
54. Respondent hereby certifies that, as of the date of its signature on this Consent Agreement, it is not required to implement or complete the aforementioned SEP pursuant to any federal, state or local law, regulation or other requirement; that with the exception of this Consent Agreement, Respondent is not required to implement or complete the SEP described in this section by any agreement, grant, or as injunctive relief in this or any other case; and that Respondent has not planned before February 16, 2008, to perform any of the work that is part of the SEP.
55. Respondent further certifies that it has not received and is not presently negotiating to receive, credit in any other enforcement action for either of the aforementioned SEP, and that Respondent in good faith believes that the SEP is in accordance with EPA's 1998 Final Supplemental Environmental Projects policy set forth at 63 Fed. Reg. 24,796 (May 5, 1998).
56. Respondent certifies that it will not deduct nor capitalize SEP costs for federal income tax purposes.
57. If Respondent submits a request for extension, such request shall be accompanied by supporting documentation and shall be submitted to EPA no later than ten (10) calendar days prior to any due date set forth in this Consent Agreement, or other deadline established pursuant to this Consent Agreement. Such extension, if any, shall be approved in writing and shall not unreasonably be withheld.
58. The determination of whether the SEP has been satisfactorily completed, whether Respondent has made a good faith, timely effort to implement the SEP, whether the Respondent has complied with all the terms of the CA/FO and whether costs are creditable to the SEP shall be in the sole discretion of EPA. Should EPA have any concerns about the satisfactory completion of the SEP, EPA will communicate those concerns to Respondent and will provide it with an opportunity to respond. If EPA makes a determination that the SEP has been satisfactorily completed, it will provide Respondent with written confirmation of the determination within a reasonable amount of time. Such determination by EPA shall not be unreasonably withheld.

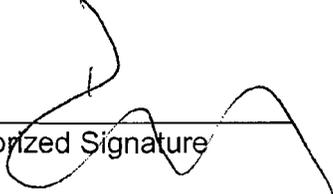
## **V. GENERAL PROVISIONS**

59. This CA/FO is being voluntarily entered into by the parties in full and final settlement of Respondent's liability for federal civil penalties for the violations and facts alleged in the Complaint and this CA/FO.
60. 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.
61. 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.
62. In computing any period of time under this Consent Agreement, where the last day would fall on a Saturday, Sunday, federal or Commonwealth holiday, the period shall run until the close of business of the next working day.
63. The provisions of this Consent Agreement shall be binding upon Respondent, its officials, authorized representatives and successors or assigns, including but not limited to, subsequent purchasers.
64. Respondent knowingly and explicitly waives its right under Section 309(g)(2), (8) of the Act, 33 U.S.C. § 1319(g)(2), (8), to request or to seek any hearing on or judicial review of any of the allegations herein asserted, on this Consent Agreement or the Findings of Fact and Conclusions of Law herein, or on the accompanying Final Order.
65. 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 Regional Administrator of EPA, or the Director of CEPD 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.
66. Issuance of the CA/FO 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 Section 309(a)–(c) of the Act, 33 U.S.C. §§ 1319(a)–(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 CA/FO does not waive, extinguish or otherwise affect Respondent's obligation to comply with all applicable requirements of the Act, of regulations promulgated thereunder, and of any legal order or permit issued thereunder.

67. 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.
68. Each party hereto agrees to bear its own costs and fees in this matter.
69. Respondent consents to service upon Respondent by a copy of the CA/FO by an EPA employee other than the Regional Hearing Clerk.
70. In any collection action, the validity, amount, and appropriateness of the penalty and of this CA/FO shall not be subject to review.

**FOR RESPONDENT:**

BY:

  
Authorized Signature

NAME: Honorable Rolando Ortíz Velázquez  
Municipality of Cayey  
P. O. Box 371330  
Cayey, Puerto Rico 00737-1330

TITLE: Mayor

DATE:

February 3rd, 2010

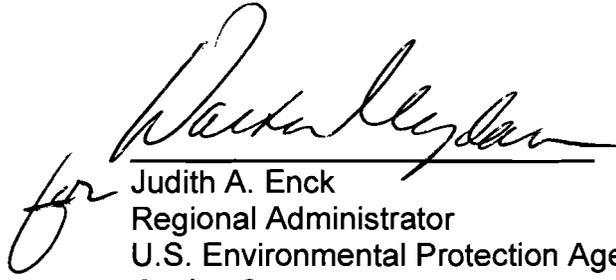
**FOR COMPLAINANT:**

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

**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. Environmental Protection Agency, Region 2, New York, New York.

DATED: 2/12/2010



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

**ATTACHMENT 1**

**CONSENT AGREEMENT AND FINAL ORDER  
SEP DESCRIPTION  
IN THE MATTER OF MUNICIPALITY OF CAYEY  
DOCKET NUMBER CWA-02-2009-3454**

**MUNICIPALITY OF CAYEY PROPOSAL FOR A SEP PROJECT SECTOR LAS  
PARCELAS AT EL CEDRO WARD IN CAYEY  
DOCKET NUMBER CWA-02-2009-3454**

February 2, 2010

The Municipality of Cayey proposes to implement a Supplemental Environmental Project (SEP) as part of a settlement for an Administrative Compliant issued by the Environmental Protection Agency pursuant to Section 309(g) of the Clean Water Act. The proposed SEP is intended to repair two road slidings at Sector Las Parcelas at El Cedro Ward in Cayey, which is located outside the urbanized boundaries of the municipality. **Attachment 1** includes a topographic map, depicting the location of the proposed project.

**Background**

The Supplemental Environmental Project Policy, dated May 1, 1998, provides for the implementation of Pollution Reduction projects tailored to eliminate discharges of pollutants entering into a water body. In this instance, the municipality of Cayey has identified that on the proposed location the slided road has obstructed part of the water creek channel, which has provoked an accumulation of debris and garbage, causing at the same times pestilence problems and creating favorable conditions for the proliferation of mosquitoes' larvae in the area, which in turn seriously affects the neighboring families. The implementation of the SEP achieves the reparation of the slided portions of the road, elimination of the creeks' obstruction, the construction of Gabion walls and reforestation of the area, among other things, providing for the elimination of illicit discharges and protection of human health, which are part of the control measures included in the National Pollutant Discharge Elimination System (NPDES) Small Municipal Separate Storm Sewer System (MS4) permit issued by EPA.

**Works to be performed for the implementation of the SEP Project:**

In order to resolve this problem, the following works are required:

1. Hydraulic improvements to the creek's channel to remove the accumulated debris and garbage produced by the road slide.
2. Construction of two gabion walls of 12.5 mts long by 3 mts wide by 3 mts high.
3. Reparation and filling with selected materials in area between the road and gabion walls.
4. Construction of curbs and gutters sections to appropriately channel storm waters from the road.
5. Reforestation with plants and greenery in the area to be filled by landslides. The plants to be planted shall be consistent with existing vegetation in the area (will be the same type of vegetation).

6. Project works will be within the easement of the road, therefore, under Resolution JP-25 Planning Board (Item II-2) this project is not required to obtain Building Permit (it is exempt) of the Regulations and Permits Administration.
7. The estimated time for completing the project is one hundred twenty (120) calendar days, including the auction process, procurement and construction, to be started after any agreement in the case becomes final.
8. The municipality will use the typical design of gabions available at the Planning Office of the Government of the Autonomous City of Cayey. The inspection of the project will be made by staff from the Planning Office of the Government of the Autonomous City of Cayey.
9. The estimated cost of work including policies, patents and means of construction is \$ 61,250.00

### **Construction of Rural Storm Water Collection and Discharge System**

The construction of a rural storm water collection and discharge system is comprised of approximately 160 linear meters of curbs and gutters. The construction of the rural storm water collection and discharge system will eliminate erosion of the existing unstable slopes within the proposed location.

### **Estimated Cost of SEP**

The Municipality of Cayey has estimated that the cost for the activities, comprised in the SEP, is as follows:

<b>Item</b>	<b>Work Description</b>	<b>Amount</b>	<b>Unit</b>	<b>Unit Cost</b>	<b>Total Cost</b>
1	Construction of curbs and gutters	160	Mln	\$ 50.00	\$ 7,500.00
2	Filling with exclusive material between the road and Gabion wall area	200	M3	\$ 30.00	\$ 6,000.00
3	Planting of vegetation and greenery	250	M2	\$ 10.00	\$ 2,500.00
4	Building of two walls made of gabions, filled with crushed stone (12.5 meters by 3.0 meters rnts 3.00 each)	150	M3	\$ 220.00	\$ 33,000.00
	Sub-total				<b>\$ 49,000.00</b>
	Policies and Insurance 15%				\$ 7,350.00
	Contingencies 10%				\$ 4,900.00
	<b>Total</b>				<b>\$ 61,250.00</b>

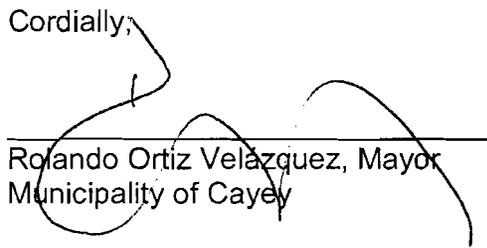
**SEP Implementation Schedule**

The municipality of Cayey has developed the following SEP implementation schedule:

<b><u>Task</u></b>	<b><u>Days from Effective Date of Agreement</u></b>
• Bidding and Contract	60 days
• Initiation of Construction	80 days
• Completion of Construction	150 days <sup>1</sup>
• Final Completion Report	180 days

If you have any questions concerning this proposal, please contact Nancy Soto, Esq. at (787) 263-4400.

Cordially,

  
\_\_\_\_\_  
Rolando Ortiz Velazquez, Mayor  
Municipality of Cayey

<sup>1</sup> The time required for construction is fifty (50) calendar days, weather permitting.

# **FIGURE 1**

## **CONSENT AGREEMENT AND FINAL ORDER TOPOGRAPHIC MAP OF THE CEDRO WARD PROJECT IN THE MATTER OF MUNICIPALITY OF CAYEY DOCKET NUMBER CWA-02-2009-3454**



SEP, Municipality of Cayey, Cedro Ward

SITE: Cedro Ward

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2**

**IN THE MATTER OF**

Municipality of Cayey  
P.O. Box 371330  
Cayey, Puerto Rico 00737-1330

**Respondent**

Proceeding pursuant to Section 309(g)(2)(B)  
of the Clean Water Act, 33 U.S.C. §  
1319(g)(2)(B)

**CONSENT AGREEMENT  
AND FINAL ORDER**

**Docket No. CWA-02-2009-3454**

**CERTIFICATE OF SERVICE**

I certify that, on the date noted below, I caused to be mailed, by certified mail, return-receipt-requested, a copy of this **"Consent Agreement and Final Order"** to:

Nancy A. Soto Lleras, Esq.  
Legal Affairs Director  
Municipality of Cayey  
PO Box 371330  
Cayey, PR 00737-1330

I further certify that, on the date noted below, I caused to be mailed, by EPA internal mail (pouch), the original and a copy of this **"Consent Agreement and Final Order"** to:

Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 2  
290 Broadway, 16<sup>th</sup> floor  
New York, NY 10007-1866

I further certify that, on the date noted below, I caused to be mailed, by EPA internal mail (pouch), a copy of this **"Consent Agreement and Final Order"** to:

Honorable Susan L. Biro  
U.S. Environmental Protection Agency  
1099 14<sup>th</sup> Street, N.W., Suite 350  
Washington, DC 20005

12 2010  
Date

Mildred N. Baez  
Signature

MILDRED N. BAEZ  
Print Name

SECRETARY - ORC/WTSB  
Title