

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2

In the Matter of:

**MUNICIPALITY OF LAS PIEDRAS**  
P. O. Box 68  
Las Piedras, Puerto Rico 00771

**RESPONDENT**

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

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

**DOCKET NUMBER  
CWA-02-2009-3456**

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REG. 2  
2010 JUN 16 AM 11:16  
REGIONAL HEARING  
CLERK

**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 Las Piedras (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 (CA/FO) 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 Small MS4 General Permit) from the Municipality of Las Piedras' Small MS4 into the Río Valenciano, a water of the United States.

3. The Complaint was based on Administrative Compliance Order (ACO), Docket Number CWA-02-2008-3118, 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 August 6, 2009, Respondent submitted a NOI requesting coverage under the NPDES Small MS4 General Permit.
5. On November 9, 2009, EPA, Region 2, assigned NPDES MS4 General Permit tracking number PRR040049 to Respondent.
6. On December 31, 2009, Respondent submitted the Storm Water Management Program, in compliance with the ACO.
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. The Complaint 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 and other relevant factors, EPA has determined that an appropriate civil penalty to settle this action is in the amount of THIRTY THREE THOUSAND DOLLARS (\$33,000.00).

14. Respondent agrees to pay the above stated amount in *six payments*, as follows:
- a. an initial payment of SIX THOUSAND DOLLARS shall be made ninety (90) calendar days from the date that the attached Final Order is signed by the Regional Judicial Officer of EPA Region 2;
  - b. a second payment of SIX THOUSAND DOLLARS shall be made one hundred and eighty (180) calendar from the date that the attached Final Order is signed by the Regional Judicial Officer of EPA Region 2;
  - c. a third payment of SIX THOUSAND DOLLARS shall be made within two hundred and seventy (270) calendar days from the date that the attached Final Order is signed by the Regional Judicial Officer of EPA Region 2;
  - d. a fourth payment of FIVE THOUSAND DOLLARS shall be made within three hundred and sixty (360) calendar days from the date that the attached Final Order is signed by the Regional Judicial Officer of EPA Region 2;
  - e. a fifth payment of FIVE THOUSAND DOLLARS shall be made within four hundred and fifty (450) calendar days from the date that the attached Final Order is signed by the Regional Judicial Officer of EPA Region 2; and
  - f. a sixth and final payment of FIVE THOUSAND DOLLARS shall be made within five hundred and forty (540) calendar days from the date that the attached Final Order is signed by the Regional Judicial Officer of EPA Region 2.
15. 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.

**III. A. Penalty**

16. Respondent shall pay the penalty, THIRTY THREE THOUSAND DOLLARS (\$33,000.00), 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.

**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.

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.

17. Payments must be received at the above address in accordance with the payment schedule established in paragraph 14. 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 payments are 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 payments are 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.
18. 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.

#### **IV. GENERAL PROVISIONS**

19. 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.
20. 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.
21. 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.

22. 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.
23. 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.
24. 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.
25. 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.
26. 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.
27. 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.
28. Each party hereto agrees to bear its own costs and fees in this matter.
29. Respondent consents to service upon Respondent by a copy of the CA/FO by an EPA employee other than the Regional Hearing Clerk.
30. 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 Miguel A. Lopez Rivera  
Mayor  
Municipality of Las Piedras  
P. O. Box 68  
Las Piedras, PR 00771

TITLE: Mayor

DATE: Junio 1, 2010

**FOR COMPLAINANT:**

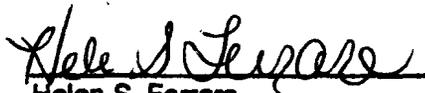
*for Iere Rodriguez*

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 Judicial Officer 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: June 11, 2010



Helen S. Ferrara  
Regional Judicial Officer  
U.S. EPA, Region 2  
290 Broadway, Floor 16  
New York, NY 10007-1866

**CERTIFICATE OF SERVICE**

I hereby certify that on this day I have caused to be sent the foregoing **Consent Agreement and Final Order**, dated June 11, 2010, and bearing the above-referenced docket number, in the following manner to the respective addressees below:

Copy by **Overnight** to:

**Judge Barbara A. Gunning**  
Administrative Law Judge  
Office of Administrative Law Judges  
U.S. Environmental Protection Agency  
Franklin Court Building  
1099 14<sup>th</sup> Street, N.W., Suite 350  
Washington, D.C. 20460  
Ph: 202.564.6255 / Fax (202) 565-0044

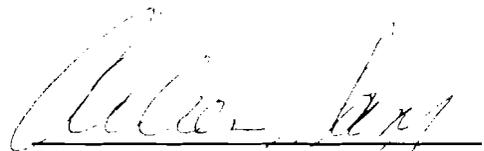
Original and copy by **Overnight** to:

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

Copy by **Certified Mail** to:

**Germán A. González, Esq.**  
Attorney for Respondent  
Luisa St. # 61, Suite 1-A  
San Juan, Puerto Rico 00907  
Tel. 787-723-3234  
Fax 787-723-3234  
E-mail: [eticorpo@yahoo.com](mailto:eticorpo@yahoo.com)

Date: 10/2/10



Aileen Sanchez  
Office of Regional Counsel

**Consent Agreement and Final Order  
In the Matter of Municipality of Las Piedras  
Docket Number CWA-02-2009-3456**