

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

ENVIRONMENTAL
PROTECTION AGENCY-REG. II

2013 DEC 30 P 2: 54

REGIONAL HEARING
CLERK

In the Matter of:
JR Corona, Inc.
P.O. Box 1297
San Lorenzo, Puerto Rico 00754

Respondent

JR Corona, Inc. Dairy Farm
NPDES Tracking No. PRU021007
JR Corona, Inc. Swine Farm
NPDES Tracking No. PRU021008

DOCKET NUMBER
CWA-02-2012-3354

**CONSENT AGREEMENT
AND FINAL ORDER**

Complainant, the United States Environmental Protection Agency (EPA), having issued the Complaint herein on September 28, 2012, against JR Corona, Inc., (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)(A) of the Clean Water Act ("CWA" or the "Act"), 33 U.S.C. § 1319(g)(2)(A).
2. Respondent is an owner/operator of an animal feeding operation located at State Road 928 Km 3.2, Valenciano Abajo Ward, Juncos, Puerto Rico (the Facility). The Facility is composed of the JR Corona, Inc., Swine Farm and the JR Corona,

Inc., Dairy Farm. Respondent is a “person” within the meaning of Section 502(5) of the Act.

3. On September 28, 2012, EPA issued a Complaint against Respondent alleging that it was discharging pollutants into an unnamed creek which discharges into Rio Valenciano which flows into Rio Gurabo, a tributary of the Rio Grande de Loiza which flows into the Atlantic Ocean, all of which are waters of the United States, without an NPDES permit in violation of Section 301(a) of the Act.
4. On September 20, 2011, an EPA representative conducted a Compliance Evaluation Inspection (the “Inspection”) at the Facility to determine if Respondent’s operation of the Facility was in compliance with the Act and the applicable NPDES regulations. At the time of the Inspection EPA found that: Respondent’s Facility did not have an NPDES permit; there were discharges from the Facility into the unnamed creek; Respondent did not have in place adequate operations of waste control facilities in order to prevent the discharge of animal waste to the unnamed creek; neither crops, vegetation, forage growth, nor post harvest residues were sustained over any portion of the Facility’s feeding areas; the manure storage lagoon and tank showed signs of exceeded volume capacity and significant evidence of overflows; and Respondent had failed to properly operate and maintain the manure storage treatment systems, which resulted in the discharge of pollutants into the unnamed creek.
5. The Inspection revealed that Respondent’s Facility is an animal feeding operation (AFO) as that term is defined in 40 C.F.R. 122.23(b)(1) and as that phrase is used in Section 502(14) of the Act.
6. Based on the size of the Facility, the distance from the Facility’s manure storage to the unnamed creek, and the slope and condition of the land across that distance, wastewater containing pollutants gathered from open feeding areas will discharge into the unnamed creek as a result of significant precipitation event.
7. On September 7, 2012, EPA issued a compliance order against Respondent to address the violations mentioned above. To EPA’s knowledge, manure discharges occurred at least on one instance on September 20, 2011, the date when EPA inspected the Facility. During this period of time, the Facility discharged pollutants directly into the unnamed creek and into Rio Valenciano. Respondent failed to provide effective operation and maintenance to the manure storage lagoon and the manure storage tank that resulted in discharges into the unnamed creek which discharges into Rio Valenciano.
8. Respondent asked for an extension of time to file its Answer to the Complaint.
9. On October 10, 2012, Respondent submitted information and documents regarding Complainant’s allegations.
10. On March 22, 2013, Respondent submitted its answer to the complaint.

11. Since March 2013, the Parties worked together in order reach a prompt, and amicable resolution to this matter.
12. In July 2013, the Parties reached an agreement dispositive of all matters asserted in the Complaint.
13. Respondent certified that, as of the date of execution of this CA/FO, it is in compliance with all the applicable regulations cited herein and in the Complaint.
14. On July 2, 2013, Respondent, through his technical Consultant, filed in EPA the NPDES Application – Form 2B.
15. Also in June, 2013, Respondent filed a revised Compliance Plan itemizing various corrective actions and dates for their completion.
16. 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.
17. The Complaint was public noticed. No public comment was received.

II. TERMS OF THE SETTLEMENT

18. 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.
19. 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.
20. 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.
21. 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

22. Pursuant to Section 309(g) of the Clean Water Act, 33 U.S.C. § 1319(g), based upon the nature of the violations, EPA has determined that an appropriate civil penalty to settle this action is in the amount of FIVE THOUSAND FIVE HUNDRED DOLLARS (\$5,500.00).
23. For purposes of settlement, Respondent consents to the issuance of this CA/FO

and to the payment of the civil penalty cited in the foregoing paragraph in the following manner:

- a. within thirty days (30) from the date the final Order is signed Respondent shall pay **\$3,000**;
 - b. within ninety days (90) from the date the Final Order is signed, Respondent shall pay **\$1,225**; and
 - c. within one hundred and fifty days (150) from the date the Final Order is signed, Respondent shall make the final payment of **\$1,225**.
24. Respondent shall make the above three payments 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 each payment to each of the following:

Jaime Lopez
Environmental Scientist
Multimedia Permits and Compliance Branch
Caribbean Environmental Protection Agency
U.S. Environmental Protection Agency, Region 2
City View Plaza II, Suite 7000
48 Road 165, Km. 1.2
Guaynabo, PR 00968-8069

Lourdes del Carmen Rodriguez, Esq.
Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 2
City View Plaza II, Suite 7000
48 Road 165, Km. 1.2
Guaynabo, PR 00968-8069

and

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

25. Payments must be received at the above address no later than the dates agreed by the Parties in paragraph 23, above. The dates by which each payment must be received shall hereafter be referred to as the “due dates”.
- 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 dates, 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.
- 26. 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.
- 27. Except as provided in paragraph 22 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:

Jaime Lopez
Environmental Scientist
Multimedia Permits and Compliance Branch
Caribbean Environmental Protection Agency
U.S. Environmental Protection Agency, Region 2
City View Plaza II, Suite 7000
48 Road 165, Km. 1.2
Guaynabo, PR 00968-8069

Lourdes del Carmen Rodriguez, Esq.
Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 2
City View Plaza II, Suite 7000
48 Road 165, Km. 1.2
Guaynabo, PR 00968-8069

FOR RESPONDENT:

German González, Esq.
Luisa St. #61, Apt. 1-A
San Juan, PR 00907

V. GENERAL PROVISIONS

28. 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.
29. 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.
30. 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.
31. 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.
32. 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.
33. 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.
34. 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.
35. 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.

36. 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.
37. Each party hereto agrees to bear its own costs and fees in this matter.
38. Respondent consents to service upon Respondent by a copy of the CA/FO by an EPA employee other than the Regional Hearing Clerk.
39. 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
JR Corona, Inc.
Respondent

NAME:

JOSE R. CORONAS

TITLE:

President

DATE:

11-9-2013

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FOR COMPLAINANT:



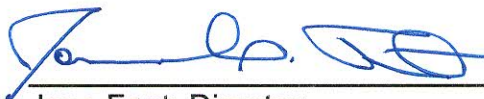
Jose Font, Director
Caribbean Environmental Protection Division
U.S. Environmental Protection Agency, R2
City View Plaza II, Suite 7000
48, Road 165, Km. 1.2
Guaynabo, PR 00968-8069

FINAL ORDER

The Division Director 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: _____

12/18/13



Jose Font, Director
Caribbean Environmental Protection Division
U.S. Environmental Protection Agency, R2
City View Plaza II, Suite 7000
48, Road 165, Km. 1.2
Guaynabo, PR 00968-8069

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 2

In The Matter of

JR Corona, Inc.

Respondent

DOCKET NO. CWA-02-2012-3354

CERTIFICATE OF SERVICE

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

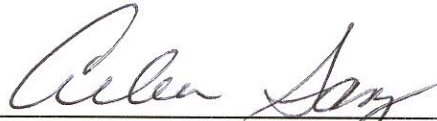
Copy by Certified Mail
Return Receipt Requested:

Germán González, Esq.
Luisa St. #61, Apt. 1-A
San Juan, PR 00907

Original and One Copy
By Express Mail :

Regional Hearing Clerk
U.S. Environmental Protection Agency, R2
290 Broadway, 16th floor
New York, New York 10007-1866

Date: 12/27/2013



ORC/CT Administrative Assistant

In the Matter of JR Corona, Inc.
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