



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II
2010 AUG 25 AM 7:51
REGIONAL HEARING
CLERK

August 24, 2010

Fernando Molini, Esq.
1782 Glasgow Ave.
College Park
San Juan, Puerto Rico 00921

Certified Mail, Return Receipt
Requested

Re: In the Matter of Del Valle Group
Docket No. CWA—02-2007-3403

Dear Mr. Molini:

Enclosed please find a copy of the fully executed and issued Consent Agreement and Final Order in the above captioned matter. The original document has been filed with the Regional hearing Clerk.

Thank you for your efforts to help finally resolve this matter. I can be reached at 212 637-3235 or at gomes.diane@epa.gov, should you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "Diane T. Gomes".

Diane T. Gomes
Assistant Regional Counsel
U.S. Environmental Protection
Agency – Region 2

cc: Karen Maples, Regional Hearing Clerk (original and copy)

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 2

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. 2
2010 AUG 25 AM 7:52
REGIONAL HEARING
CLERK

IN THE MATTER OF:

**Del Valle Group
P.O. Box 2319
Toa Baja, PR 00951-2319**

Respondent

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

**CONSENT AGREEMENT
AND
FINAL ORDER**

DOCKET NO. CWA-02-2007-3403

CONSENT AGREEMENT AND ORDER

Complainant, the United States Environmental Protection Agency ("EPA"), having issued the Complaint herein on June 1, 2007, against Respondent Del Valle Group ("Respondent"), and

Complainant and Respondent having agreed that settlement of this matter is in the public interest, and entry of this Consent Agreement and Final Order without further litigation is the most appropriate means of resolving this matter;

NOW, THEREFORE, before the taking of any testimony, 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 of the Clean Water Act, 33 U.S.C. §1319.
2. The Complaint alleges that Respondent failed to comply with the terms of "NPDES General Permit for Discharges for Large and Small Construction Activities" ("CGP") which became effective on July 1, 2003 and expired on July 1, 2008. The general permit number for this CGP in Puerto Rico is PRR100000 which is the duly issued NPDES permit for the Commonwealth of Puerto Rico.
3. EPA notified the Commonwealth of Puerto Rico regarding this action and offered an opportunity for the Commonwealth to confer with EPA on the proposed penalty assessment, pursuant to 40 C.F.R. Part 22.
4. This action was public noticed. No public comment was received.

5. Respondent filed an Answer and requested a hearing in this matter. No hearing date has been set.
6. This Consent Agreement and Final Order shall apply to and be binding upon Respondent, its officers, directors, employees, successors and assigns, including, but not limited to, subsequent purchasers.
7. 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. Respondent waives any defenses it might have as to jurisdiction and venue, and, without admitting or denying the factual or legal allegations contained in the Complaint, consents to the terms of this Consent Agreement and Final Order.
8. Respondent hereby waives its right to a judicial or administrative hearing or appeal on any issue of law or fact set forth in the Complaint.

II. TERMS OF SETTLEMENT

9. Pursuant to §309(g) of the Clean Water Act, 33 U.S.C. §1319(g), the nature of the violations and other relevant factors, EPA has determined that an appropriate civil penalty to settle this action is in the amount of FORTY THOUSAND (\$40,000.00) DOLLARS.
10. For purposes of settlement, Respondent consents to the issuance of this Consent Agreement and consents to the payment of the civil penalty cited in the foregoing Paragraph.

II.A. Penalty

11. Respondent shall pay the penalty of **FORTY THOUSAND (\$40,000.00) 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, in accordance with the schedule set forth below:

First Installment	\$15,000.00	No later than forty-five (45) calendar days after the date of the signature of the Final Order (at the end of this document).
Second Installment	\$12,500 plus interest= \$12,607.53	February 1, 2011
Third Installment	\$12,500 plus interest= \$12,603.77	December 1, 2011

Each check shall be mailed to the address below:

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

Respondents shall also send copies of these payments to each of the following:

Henry Mazzucca, P.E., Chief
Compliance Section
Water Compliance Branch
U.S. EPA, Region 2
290 Broadway, 20th Floor
New York, NY 10007

and

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

The respective due dates by which payments shall be received shall hereafter be referred to as the "due date".

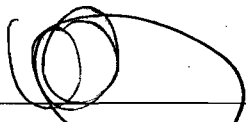
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- a. failure to pay the penalty in full according to the above provisions will result in a referral of this matter to the United States Department of Justice or the United States Department of the Treasury for collection;
 - b. further, if the payment is not received on or before the due date, interest will be assessed at the annual rate established by the Secretary of Treasury pursuant to the Debt Collection Act, 31 U.S.C. §3717, on the overdue amount from the due date through the date of payment. In addition, a late payment handling charge of \$15.00 will be assessed for each 30 day period (or any portion thereof) following the due date in which the balance remains unpaid. A 6% per annum penalty also will be applied on any principal amount not paid within 90 days of the due date;
 - c. in addition, pursuant to Section 309(g)(9) of the Clean Water Act, 33 U.S.C. §1319(g)(9), if payment is not received by the due date, a quarterly nonpayment penalty will be imposed for each calendar quarter during which such nonpayment persists. The quarterly nonpayment penalty is 20% of the aggregate amount of penalties and quarterly nonpayment penalties which are unpaid as of the beginning of such quarter;

- d. Respondent also may be required to pay attorneys fees and costs for collection proceedings in connection with nonpayment.
- e. The penalty to be paid is a civil penalty assessed by the EPA and shall not be deductible from the Respondent's federal or state taxes.

II.B. General Provisions

- 12. The Respondent waives any right it may have pursuant to 40 C.F.R. §22.8 to be present during discussions with or to be served with and to reply to any memorandum or communication addressed to the Director or 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 final accompanying Final Order.
- 13. 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 Respondents 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.
- 14. This Consent Agreement and Order shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state, or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit.
- 15. This Consent Agreement and Order constitutes a settlement by EPA of all claims for civil penalties pursuant to the Clean Water Act for the violations alleged in the Complaint. Nothing in this Consent Agreement and Final Order is intended to nor shall be construed in any way to resolve any criminal liability of the Respondent. Compliance with this Consent Agreement and Final Order shall not be a defense to any actions subsequently commenced pursuant to Federal laws and regulations administered by EPA, and it is the responsibility of Respondent to comply with such laws and regulations.
- 16. Each undersigned representative of the parties to this Consent Agreement certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this Consent Agreement and to execute and legally bind that party to it.
- 17. Each party shall bear its own costs and attorney's fees in connection with the action resolved by this Consent Agreement and Final Order.

RESPONDENT:

BY:  _____

Del Valle Group
P.O. Box 2319
Toa Baja, PR 00951-2319

DATE: JUNE 28 / 2010

COMPLAINANT:

BY:  _____

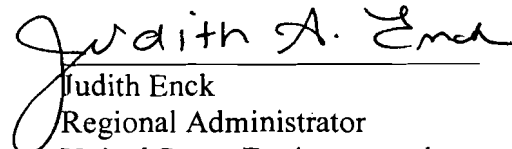
Dore LaPosta, Director
Division of Enforcement and
Compliance Assistance
U.S. EPA, Region 2
290 Broadway, 21st Floor
New York, NY 10007-1866

DATE: August 17, 2010

III. FINAL ORDER

The Regional Administrator of the U.S. Environmental Protection Agency Region 2, ratifies the foregoing Consent Agreement. The Agreement entered into by the parties is hereby approved, incorporated herein, and issued as an Order. The effective date of this Order shall be the date of filing with the Regional Hearing Clerk, U.S. EPA Region 2, New York, NY.

8-18-10
Date



Judith Enck
Regional Administrator
United States Environmental
Protection Agency – Region 2
290 Broadway
New York, NY 10007-1866

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 2

In The Matter of

**Del Valle Group
P.O. Box 2319
Toa Baja, PR 00951-2319**

Respondent.

Proceeding pursuant to Section 309(g) of

DOCKET NO. CWA-02-2002-3403

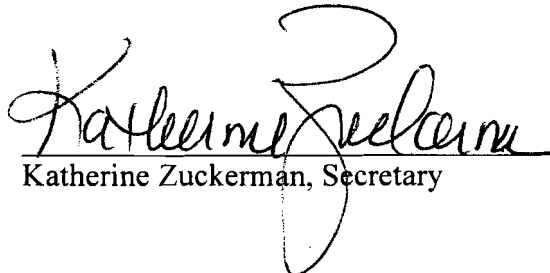
CERTIFICATE OF SERVICE

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 Fernando Molini, Esq.
Return Receipt Requested 1782 Glasgow Avenue
College Park
San Juan, Puerto Rico 00921

Original and One Copy Regional Hearing Clerk
By Internal Mail (pouch): U.S. Environmental Protection Agency
290 Broadway, 16th floor
New York, New York 10007-1866

Date: 8/24/10


Katherine Zuckerman, Secretary