

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2

In the Matter of:

**Puerto Rico Electric Power Authority,**  
San Juan Plant  
P. O. Box 363549  
San Juan, PR 00936-3549

**Respondent**

In a proceeding under Section 113(d) of the  
Clean Air Act 42 U.S.C. § 7413(d)

**CONSENT AGREEMENT  
AND FINAL ORDER**

CAA-02-2010-1235

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REG. II  
2011 APR -5 A 10: 54  
REGIONAL HEARING  
CLERK

**Preliminary Statement**

The United States Environmental Protection Agency (EPA) issues this Consent Agreement and the attached Final Order under the authority of the Clean Air Act ("CAA" or "Act"), 42 U.S.C. § 7401 et seq., at 42 U.S.C. § 7413(d), Section 113(d), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22 (Consolidated Rules of Practice). The Complainant in this matter is the Director of the Caribbean Environmental Protection Division (Director), EPA, Region 2. The Complainant is delegated the authority to issue CAA Section 113(d) Complaints and Consent Agreements on behalf of EPA Region 2, which includes the State of New York, the State of New Jersey, the Commonwealth of Puerto Rico, and the Territory of the U.S. Virgin Islands. The Regional Administrator of EPA Region 2 is duly delegated the authority to execute CAA Section 113(d) Final Orders.

On September 22, 2010, the United States Department of Justice granted EPA's request for a waiver of the CAA Section 113(d) 12-month limitation on EPA's authority to initiate an administrative action against Puerto Rico Electric Power Authority (Respondent).

Pursuant to 40 C.F.R. § 22.13(a), any proceeding subject to the Consolidated Rules of Practice is commenced by filing with the Regional Hearing Clerk a complaint conforming to § 22.14. On September 23, 2010, EPA issued a Complaint and Notice of Opportunity to Request a Hearing CAA-02-2010-1235 (Complaint) to Respondent for civil monetary penalties. In the Complaint, EPA alleged that Respondent violated 40 C.F.R. Part 60 Subpart A, 40 C.F.R. §§ 60.1 - 60.19 the "New Source Performance Standards General Provisions," and 40 C.F.R. Part 60, Subpart GG, 40 C.F.R. §§ 60.330-60.335, the "Standards of Performance for Stationary Gas Turbines" (NSPS Subpart GG) promulgated pursuant to Sections 111 and 114 of the Act.

In accordance with 40 C.F.R. § 22.18(b), Complainant and Respondent have agreed to resolve the Complaint by entering into this Consent Agreement and by the issuance of a Final Order.

For purposes of this proceeding Respondent: (1) admits that EPA has jurisdiction over the subject matter as alleged herein; (2) neither admits nor denies specific factual allegations contained in the Complaint; (3) consents to the terms of agreement set forth in this Consent Agreement; and (4) consents to the issuance of the attached Final Order.

### **Consent Agreement**

Based on the foregoing, and in accordance with federal laws and regulations, it is agreed that:

1. Pursuant to Section 113(d) of the Act, Respondent shall pay a civil penalty in the amount of SIXTY EIGHT THOUSAND DOLLARS (\$68,000.00) in accordance with paragraphs 2 and 3 of this Consent Agreement.
2. Respondent shall pay an initial penalty of SEVENTEEN THOUSAND DOLLARS (\$17,000.00) within sixty (60) days from the date the Regional Administrator executes this Consent Agreement as a Final Order (Effective Date).
3. Thereafter, Respondent shall make 3 payments of SEVENTEEN THOUSAND DOLLARS (\$17,000.00) each, in accordance with the following schedule:
  - a. the first of the 3 payments no later than the last day in the 8<sup>th</sup> month following the Effective Date;
  - b. the second of the 3 payments no later than the last day of the 12<sup>th</sup> month following the Effective Date; and
  - c. the third and final payment no later than the last day of the 16<sup>th</sup> month following the Effective Date.
4. Respondent shall pay the penalty of SIXTY EIGHT THOUSAND DOLLARS (\$68,000.00) by cashiers' or certified checks, payable to the "Treasurer of the United States of America" or by wire transfers.

5. Respondent shall clearly identify, with either form of payment, the name and docket number of this case, set forth in the caption on the first page of this document

a. Respondent shall mail the checks to:

US Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
PO Box 979077  
St. Louis, MO 63197-9000.

**OVERNIGHT MAIL:**  
U.S. Bank  
1005 Convention Plaza  
Mail Station SL-MO-C2GL  
ATTN Box 979077  
St. Louis, MO 63101  
Contact: Natalie Pearson  
314-418-4087.

b. Alternatively, Respondent shall make wire transfers to:

**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."

6. Within five (5) days of making each payment, Respondent shall send a copy of each check or a record of each wire transfer, identifying whether the

payment is the first, second, third, or fourth payment to each of the following individuals:

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

Héctor L. Vélez Cruz, Esq.  
Assistant Regional Counsel  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 2  
1492 Ponce de León Ave., Suite 417  
San Juan, PR 00907-4127  
Fax number: (787) 729-7748,

and

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

7. If Respondent fails to make full and complete payment of the \$68,000.00 penalty that is required by this Consent Agreement and Final Order, this case may be referred by EPA to the United States Department of Justice and/or the United States Department of the Treasury for collection. In such an action, pursuant to Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5), and 31 U.S.C. § 3717, Respondent shall pay the following amounts:

- a. Interest. If Respondent fails to make payment, or makes partial payment, any unpaid portion of the assessed penalty shall bear interest at the rate established pursuant to 31 U.S.C. § 3717 and 26 U.S.C. § 6621 from the payment Due Date.
- b. Handling Charges. Pursuant to 31 U.S.C. § 3717(e)(1), a monthly handling charge of fifteen dollars (\$15.00) shall be paid if any portion of the assessed penalty is more than thirty (30) days past the payment Due Date.
- c. Attorney Fees, Collection Costs, Nonpayment of Penalty. If Respondent fails to pay the amount of an assessed penalty on time, pursuant to 42 U.S.C. § 7413(d)(5), in addition to such assessed penalty and interest and handling assessments, Respondent shall also pay the United States' enforcement expenses, including but not limited to attorney fees and costs incurred by the United States for collection proceedings, and a quarterly nonpayment penalty for each quarter during which such a failure to pay persists. Such nonpayment penalty shall be ten percent of the aggregate amount of Respondent's outstanding penalties and nonpayment penalties accrued from the beginning of such quarter.

8. This Consent Agreement and attached Final Order constitute a settlement by EPA of all claims for civil penalties pursuant to the Clean Air Act for violations alleged in the Complaint. Nothing in this Consent Agreement and attached Final Order is intended to nor shall be construed to operate in any way to resolve any criminal liability of the Respondents, or to affect the right of the United States to pursue appropriate injunctive or other equitable relief for any violations of law. Compliance with this Consent Agreement and attached 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 the Respondents to comply with such laws and regulations.

9. This Consent Agreement is being entered into voluntarily and knowingly

by the parties in full settlement of Respondent's alleged violations of the Act set forth in the Complaint.

10. Respondent has read the Consent Agreement, finds it reasonable and consents to the terms and issuance as a Final Order.
11. Respondent explicitly waives its right to request a hearing and/or contest allegations in this Consent Agreement and explicitly waives its right to appeal the attached Final Order.
12. 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 Presiding Officer where the purpose of such discussion, memorandum, or communication is to recommend that such official accept this Consent Agreement and issue the attached Final Order.
13. Each party to this Consent Agreement shall bear its own costs and attorneys fees in the action resolved by this Consent Agreement and attached Final Order.
14. This Consent Agreement shall be binding on Respondent and its successors and assignees.
15. Each of the undersigned representative(s) to this Consent Agreement certifies that he or she is duly authorized by the party whom he or she represents to enter into the terms and conditions of this Consent Agreement and bind that party to it.


**FOR RESPONDENT:**

BY: by Miguel A. Cordero López  
Miguel A. Cordero López  
Executive Director  
Puerto Rico Electric Power Authority  
P.O. Box 364267  
San Juan, Puerto Rico 00936-4267

DATE: 3/16/11




**FOR COMPLAINANT:**

  
Carl-Axel P. Soderberg, Director  
Caribbean Environmental Protection Division  
U.S. Environmental Protection Agency - Region 2  
Centra Europa Building, Suite 417  
1492 Ponce de León Avenue  
San Juan, Puerto Rico 0090

DATE: 03/22/11

FINAL ORDER

The Regional Judicial Officer of EPA, Region 2, concurs in the foregoing Consent Agreement, in the matter of Puerto Rico Electric Power Authority CAA-02-2010-1235. The Consent Agreement, entered into by the parties, is hereby approved and issued, as a Final Order, effective immediately.

  
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Judith A. Enck  
Regional Administrator  
U.S. Environmental Protection Agency – Region 2

Date: 3/28/11

In the matter of Puerto Rico Electric Power Authority, San Juan Plant  
In a proceeding under Section 113(d) of the Clean Air Act, 42 U.S.C. § 7413(d),  
CAA-02-2010-1235

**CERTIFICATE OF SERVICE**

I certify that I have this day caused to be sent the foregoing *Consent Agreement and Final Order*, dated March , 2011, and bearing the above-referenced docket number, in the following manner to the respective addressees below:

Original and copy by facsimile, **Overnight Mail** to:

**Karen Maples**  
Regional Hearing Clerk  
Region II  
U.S. Environmental Protection Agency  
290 Broadway, 16<sup>th</sup> Floor  
New York, NY 10007-1866  
Fax (212) 637-3202.

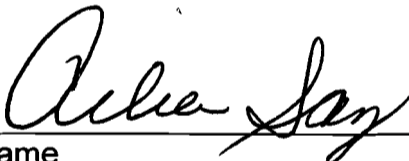
Copy by facsimile, **Certified Mail** and return receipt to:

Attorney for Respondent:  
**María Mercado, Esq.**  
P.O. Box 364267  
San Juan, P.R. 00936-4267  
Tel: (787) 521-4195  
Fax: (787) 521-4660.

Copy by facsimile, **Overnight Mail** to:

Chief Administrative Law Judge  
**Honorable Susan L. Biro**  
Office of Administrative Law Judges  
U.S. Environmental Protection Agency  
1099 14<sup>th</sup> Street, N.W., Suite 350  
Washington, D.C. 20005  
Fax (202) 565-0044.

4/4/2011  
Date

  
Name