

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II

2011 FEB -9 A 8:27

REGIONAL HEARING
CLERK

February 8, 2011

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

RE: *In the Matter of Cantera Las Lomas, Inc.*
Docket Number CWA-02-2011-3458
Consent Agreement and Final Order

Dear Ms. Maples:

Enclosed is an original and a copy version of a Consent Agreement and Final Order (CA/FO), in the above-referenced matter, fully executed on February 3, 2011.

Sincerely,


Eduardo J. Gonzalez, Esq.

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

In the matter of:

CANTERA LAS LOMAS, INC.
State Road 329, Km. 0.5
Barrio Retiro
San Germán, Puerto Rico 00683

RESPONDENT

**CONSENT AGREEMENT
AND
FINAL ORDER**

**DOCKET NUMBER
CWA-02-2011-3458**

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I. PRELIMINARY STATEMENT

1. This is a civil administrative proceeding for the assessment of a civil penalty instituted pursuant to Section 309(g) of the Clean Water Act (the "Act"), 33 U.S.C. § 1319(g).

2. The following Findings of Fact are made and Order issued pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency ("EPA") by the Act, as amended, 33 U.S.C. § 1251 *et. seq.*, and in particular Section 309(g) of the Act, 33 U.S.C. § 1319(g). This authority has been duly delegated by the Administrator to the Regional Administrator of Region 2 of EPA, which authority has been duly delegated to the undersigned Director of the Caribbean Environmental Protection ("CEPD") of Region 2 of EPA.

3. EPA is initiating and concluding this proceeding for the assessment of a civil penalty, pursuant to Section 309(g) of the Clean Water Act ("CWA" or "the Act"), 33 U.S.C. §1319(g); and 40 CFR §22.13(b) of the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits" ("CROP"), which set forth procedures for simultaneous commencement and conclusion of administrative civil penalty assessment proceedings through issuance of a consent agreement and final order pursuant to 40 CFR §22.18 (b)(2) and (3).

II. FINDINGS OF FACT

4. Cantera Las Lomas, Inc. ("Respondent") is a person within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5).

5. At relevant times, Respondent owned and operated a quarry known as "Cantera Las Lomas" (the "facility" or "quarry").

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7. Respondent began operations at the quarry on or about 1989.
 8. Respondent's quarry was and is, at all relevant times, a "point source" which "discharges pollutants" into a water of the United States known as "Rio Guanajibo," all within the respective definitions established in Section 502 of the Act, 33 U.S.C. § 1362(14).
 9. Respondent is therefore subject to the provisions of the Act, 33 U.S.C. § 1251 et seq.
 10. Section 308 of the Act, 33 U.S.C. § 1318, provides, in relevant part, that the Administrator of EPA may require the owner or operator of any point source to, among other things: maintain such records; make such reports; install, use and monitor such equipment; sample such effluents; and provide such other information as may reasonably be required in order to carry out Section 402 of the Act, 33 U.S.C. § 1342.
 11. On November 16, 1990, the Administrator of EPA promulgated storm water permit application regulations. The regulations require Respondent to apply for and obtain a National Pollutant Discharge Elimination System ("NPDES") permit for its storm water discharges associated with industrial activity from the quarry into waters of the United States. The regulation applicable to Respondent and its mining site are codified in 40 C.F.R. §§ 122.21 and 122.26.
 12. On May 3, 2006, EPA and Respondent entered into an Administrative Compliance Order on Consent ("AOC"), Docket Number CWA-02-2006-3059. The AOC was executed to bring Respondent into compliance with the NPDES storm water permit application regulations.
 13. The AOC required Respondent to submit a Notice of Intent ("NOI") within 30 days of publication in the Federal Register of the reissuance of the 2000 MSGP.
 14. On September 29, 2008, EPA issued and published in the Federal Register, the NPDES Storm Water Multi-Sector General Permit for Industrial Activities ("2008 MSGP"). The 2008 MSGP became effective on September 29, 2008, and expires on September 29, 2013.
 15. Based on the AOC and the 2008 MSGP, Respondent was required to file a NOI by October 29, 2008.
 16. On January 23, 2009, EPA personnel conducted a review of the EPA Caribbean Environmental Protection Division and a review of the EPA National Storm Water Processing Center database. EPA discovered during the review that Respondent failed to apply for coverage under the 2008 MSGP.

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17. On February 5, 2009, Respondent filed an inaccurate Notice of Intent to seek coverage under the 2008 MSGP.

18. Pursuant to Section 309(a) of the Act, 33 U.S.C. §1319(a), EPA issued on February 27, 2009, an Administrative Compliance Order ("ACO"), Docket Number CWA-02-2009-3117, against Respondent for its failure to apply for and obtain coverage under a National Pollutant Discharge Elimination System ("NPDES") permit for the discharges of storm water associated with industrial activity from the quarry into waters of the United States.

19. Respondent ceased quarry operations on February 20, 2009.

III. CONCLUSIONS OF LAW AND JURISDICTION

20. For the period of October 29, 2008 to February 5, 2009, Respondent owned and operated the quarry, and failed to apply for and obtain NPDES permit coverage for its storm water discharges associated with industrial activity from the quarry into Guanajibo River, a water of the United States, in violation of Sections 301 and 308 of the Act, 33 U.S.C. §§ 1311 and 1318, respectively.

21. EPA has jurisdiction over the subject matter of this action, pursuant to Section 309 of the Act, 33 U.S.C. § 1319, and over the Respondent.

IV. CONSENT AGREEMENT

22. Paragraphs 1 through 21 are re-alleged and incorporated herein by reference.

23. EPA and Respondent agree that it is in the public interest to resolve the issues alleged in this Consent Agreement without further litigation and the expense and effort that litigation entails.

24. Based upon the foregoing and pursuant to Section 309(g) of the Act, 33 U.S.C. § 1319(g), and the CROP, it is hereby agreed by and between EPA and Respondent, and Respondent voluntarily and knowingly agrees as follows:

V. TERMS OF SETTLEMENT

25. 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.

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26. No transfer of ownership or operation of the facility, whether in compliance with the procedures of this Paragraph or otherwise, shall relieve Respondent of its obligation to comply with this CA/FO.

27. Respondent shall provide a copy of this CA/FO to all officers, employees, and agents whose duties might reasonably include compliance with any provision of this CA/FO.

28. In any action to enforce this CA/FO, Respondent shall not raise as a defense the failure by any of its officers, directors, employees, agents, or contractors to take any actions necessary to comply with the provisions of this CA/FO.

29. For the purpose of this proceeding, Respondent stipulates that:

- a. EPA has jurisdiction over the subject matter alleged herein and that this Consent Agreement states a claim upon which relief can be granted against Respondent;
- b. Respondent waives any defenses they might have as to jurisdiction and venue, and, without admitting or denying the factual or legal allegations contained herein;
- c. Respondent hereby consents to the terms of this Consent Agreement and Final Order, without admitting or denying the factual or legal allegations contained herein;
- d. Respondent hereby waives its right to a judicial or administrative hearing or appeal on any issue of law or fact set forth herein; and,
- e. Respondent consents to the payment of the civil penalty cited in Paragraph 31 below.
- f. Respondent certifies that it has corrected the violations alleged in the ACO with respect to NOI modifications, amendment and implementation of a Storm Water Pollution Prevention Plan, and the establishment of sampling points, sampling protocols and inspection procedures.

30. Pursuant to § 309(g) of the Clean Water Act, 33 U.S.C. § 1319(g), the nature of the violations alleged herein and other relevant factors (and without Respondent admitting or denying the factual or legal allegations contained herein), Complainant and Respondent agree that an appropriate civil penalty to settle this proceeding is in the amount of *fifty thousand dollars (\$50,000.00)*.

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VI. PAYMENT OF CIVIL PENALTY

31. Respondent shall pay, by cashier's or certified check, a civil penalty in the amount of *fifty thousand dollars (\$50,000.00)* to the "Treasurer of the United States of America."

32. Respondent agrees to pay the above stated amount in *five (5) payments*. The effective date of this Consent Agreement shall be the date the Regional Administrator signs the Final Order accompanying this Consent Agreement.

- a. An *initial payment* in the amount of ten thousand dollars (**\$10,000.00**) shall be made within forty-five (45) calendar days from the effective date of this Consent Agreement.
- b. A *second payment* in the amount of ten thousand dollars (**\$10,000.00**) shall be made within one hundred thirty five (135) calendar days from the effective date of this Consent Agreement.
- c. A *third payment* in the amount ten thousand dollars (**\$10,000.00**) shall be made within two hundred twenty five (225) calendar days from the effective date of this Consent Agreement.
- d. A *fourth payment* in the amount of ten thousand dollars (**\$10,000.00**) shall be made within three hundred fifteen (315) calendar days from the effective date of this Consent Agreement.
- e. A *fifth payment* in the amount of ten thousand dollars (**\$10,000.00**) shall be made within four hundred five (405) calendar days from the effective date of this Consent Agreement.

These five (5) payments satisfy the totality of the civil penalty of *fifty thousand dollars (\$50,000.00)* that Respondent has requested to satisfy payment.

33. The checks shall be 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. Payment methods are described below:

CHECK PAYMENTS:
US Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000.

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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:

Eduardo J. González, Esq.
Water and General Law Branch
Office of Regional Counsel, 16th Floor
U.S. Environmental Protection Agency, Region 2
290 Broadway
New York, New York 10007-1866,

and

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

The initial payment must be received at the above address on or before 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").

34. Failure to pay the penalty in full according to the above provisions will result in referral of this matter to the United States Department of Justice or the United States Department of the Treasury for Collection.

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35. 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.

36. In addition, pursuant to Section 309(g)(9) of the Clean Water Act, 33 U.S.C. § 13198(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. You also may be required to pay attorneys fees and costs for collection proceedings in connection with nonpayment.

37. The penalty to be paid is a civil penalty assessed by the EPA and shall not be deductible from Respondent's federal or Commonwealth of Puerto Rico taxes.

VII. GENERAL PROVISIONS

38. The provisions of this Consent Agreement shall be binding upon Respondent, its officers, directors, agents, servants, authorized representatives and successors or assigns, including but not limited to, subsequent purchasers. 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 the 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 accompanying Final Order.

39. 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 Respondent's violation of this agreement or, except for the specific violations alleged herein, of the statutes and regulations upon which this agreement is based, or for Respondent's violation of any applicable provision of law.

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

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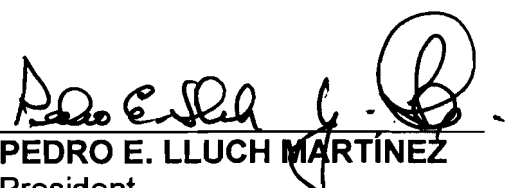
41. This Consent Agreement and Final Order constitute a settlement by EPA of all claims for civil penalties pursuant to the Clean Water Act for the violations alleged herein. Nothing in this Consent Agreement and Final Order is intended to nor shall be construed to operate in any way to resolve any criminal 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.

42. 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.

43. Each party shall bear its own costs and attorney's fees in connection with the action resolved by this Consent Agreement and Order.

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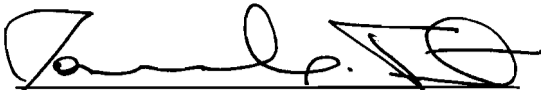
For Respondent: Cantera Las Lomas, Inc. hereby consents to the issuance of the ORDER and agrees to be bound thereby.

BY: 
PEDRO E. LLUCH MARTÍNEZ
President
Cantera Las Lomas, Inc.
P. O. Box 346
San Germán, Puerto Rico 00683-0346

DATE: 1-12-2011

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For the Complainant, the United States Environmental Protection Agency:

BY: 

DATE: JANUARY 14, 2011

for **CARL-AXEL P. SODERBERG**

Director

Caribbean Environmental Protection Division

U.S. Environmental Protection Agency, Region 2

Centro Europa Building, Suite 417

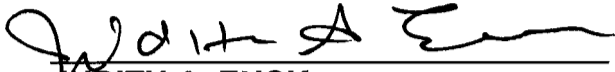
1492 Ponce de León Avenue.

San Juan, Puerto Rico 00907

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VII. FINAL ORDER

The Regional Administrator of the United States 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, United States Environmental Protection Agency, Region 2, New York, New York.



JUDITH A. ENCK

Regional Administrator
U.S. Environmental Protection Agency, Region 2
290 Broadway
New York, New York 10007-1866

DATE: 2/3/11

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