

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2**

In the Matter of:

P.D.C.M. Associates, S.E.
P. O. Box 190858
San Juan, Puerto Rico 00919-0858

RESPONDENT

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

**CONSENT AGREEMENT
AND FINAL ORDER**

**DOCKET NUMBER
CWA-02-2016-3452**

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U.S. Environmental
Protection Agency-Region 2

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 (“CWA” or “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). The EPA Administrator has duly delegated this authority to the Regional Administrator of EPA Region 2, which authority has been duly re-delegated to the undersigned Director of the Caribbean Environmental Protection Division (“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 Act, 33 U.S.C. § 1319(g); and 40 C.F.R. § 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 sets 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 C.F.R. §§ 22.18 (b)(2) and (3).

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

4. P.D.C.M. Associates, S.E. is a special civil partnership duly organized and existing under the laws of the Commonwealth of Puerto Rico, having an address at 246 Campo Rico Avenue, Carolina, Puerto Rico 00982, and sharing common ownership with Regency Park Associates, S.E., with Mr. Israel Kopel serving as the principal partner and President of both entities. (Hereinafter, P.D.C.M and Regency Park Associates are collectively referred to as “Respondent”).

5. Respondent is a “person” pursuant to Section 502(5) of the CWA, 33 U.S.C. § 1362(5).
6. Respondent is the owner of a neighborhood strip mall known as Plaza Aquarium (“Plaza Aquarium” or “Facility”), located at the intersection of State Road 159 and State Road 165, in the municipality of Toa Alta, Puerto Rico.
7. Plaza Aquarium has a sewage collection system that conveys sewage from the commercial activities within the strip mall into an on-site sewage treatment plant (the “STP”), which Respondent owns and operates.
8. At all relevant times, Respondent operated the STP.
9. Section 502(6) of the Act, 33 U.S.C. § 1362(6), defines "pollutant" as including, among others, solid waste, dredged spoil, rock, sand, cellar dirt, sewage, sewage sludge and industrial, municipal and agricultural waste discharged into water.
10. The sewage generated from Plaza Aquarium’s commercial activities is a pollutant pursuant to Section 502(6) of the CWA, 33 U.S.C. § 1362(6).
11. At all relevant times, Respondent discharged treated or partially treated sewage from the STP through a pipeline into an unnamed tributary of the Mavilla River.
12. Section 502(14) of the Act, 33 U.S.C. § 1362(6), defines the term “point source” as any discernible, confined and discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged. This term does not include agricultural stormwater discharges and return flows from irrigated agriculture.
13. Respondent’s STP is a “point source” pursuant to Section 502(14) of the CWA, 33 U.S.C. § 1362(14).
14. Section 502(7) of the Act, 33 U.S.C. § 1362(7), defines "navigable waters" as the waters of the United States, including the territorial seas.
15. The Mavilla River is a water of the United States pursuant to Section 502(7) of the CWA, 33 U.S.C. § 1362(7).
16. At all relevant times, Respondent’s STP, which discharged pollutants into the Mavilla River, was subject to the provisions of the CWA, 33 U.S.C. § 1251 et seq.
17. Section 301(a) of the Act, 33 U.S.C. § 1311(a), provides in part that “[e]xcept as in compliance with [CWA § 402], the discharge of any pollutant by any person shall be unlawful.”

18. Section 402 of the Act, 33 U.S.C. § 1342, defines the National Pollutant Discharge Elimination System (“NPDES”) as the national program for, among other things, issuing and enforcing permits.
19. Section 402 of the Act, 33 U.S.C. § 1342, authorizes the Administrator of EPA to issue permits for the discharge of pollutants subject to certain requirements of the Act and conditions which the Administrator determines are necessary.
20. Pursuant to 40 C.F.R. § 122.21(a)(1), any person who discharges or proposes to discharge pollutants, and who does not have an effective permit, must submit a complete application to EPA.
21. Pursuant to 40 C.F.R. § 122.21(a)(2)(i), all applicants for EPA-issued permits must submit applications on EPA permit application forms.
22. Pursuant to 40 C.F.R. § 122.21(d)(2), permittees with current effective permits shall submit a new application 180 days before the existing permit expires [except when EPA grants permission to submit an application later than the deadline for submission otherwise applicable, but no later than the permit expiration date].
23. On November 13, 2002, EPA issued to Respondent the National Pollutant Discharge Elimination System (“NPDES”) permit number PR0026069 pursuant to Section 402 of the Act, 33 U.S.C. § 1342 (the “Permit”).
24. The Permit became effective on December 1, 2002, and expired on November 30, 2007.
25. The Permit authorized Respondent to discharge treated sewage from the STP through outfall serial number 001 into an unnamed tributary of Mavilla River.
26. The Permit established discharge limitations, monitoring requirements, reporting requirements, special conditions, and general conditions.
27. Pursuant to Part II.B.2 (Duty to Reapply) of the Permit, the authorization to discharge pollutants shall terminate on the expiration date, unless the permittee submits a renewal application no later than one hundred eighty (180) days prior to its expiration date.
28. On August 14, 2008, EPA conducted an inspection at the Facility. The inspection revealed that Respondent:
 - a. had not submitted its renewal NPDES permit application one hundred eighty (180) days before the Permit expired on November 30, 2007, therefore, the NPDES Permit was not administratively extended after it expired on November 30, 2007. Accordingly, Respondent was not authorized to discharge pollutants from the STP into waters of the United States after December 1, 2007;

- b. was discharging pollutants from the STP into an unnamed creek tributary of Mavilla River without an NPDES permit; and
 - c. continued implementing the monitoring requirements of the expired NPDES Permit.
29. On September 17, 2008, Respondent submitted an application to renew its NPDES permit.
30. On April 20, 2009, EPA issued to Respondent an Administrative Compliance Order (the “2009 ACO”), Docket Number CWA-02-2009-3109, requiring Respondent to, among other things, submit a compliance plan that incorporated ordered provisions with the result that discharges from the STP into waters of the United States would comply with the effluent limits included in its expired Permit. Respondent was required to implement the compliance plan by November 3, 2009.
31. Based on the reports required by the 2009 ACO and submitted by Respondent, EPA determined that between May 2009 and July 2011 Respondent did not provide adequate operation and maintenance (“O&M”) to the STP.
32. In August and September 2012, EPA issued two Administrative Orders (Docket Number CWA-02-2011-3116 and Docket Number CWA-02-2011-3124), which, among other things, required Respondent to provide adequate O&M to the STP, repair the discharge outfall, conduct a comprehensive engineering study of the STP, and select, design, and construct structures and appurtenances, with the goal of permanently ceasing the discharge of pollutants from the STP into waters of the United States.
33. Respondent achieved regulatory compliance with the CWA when it ceased its discharges from the STP into waters of the United States on September 19, 2012, and implemented a hauling system of the sewage from the STP to a PRASA facility.
34. Respondent discharged pollutants into a tributary of the Mavilla River, a water of the United States, without a NPDES permit in violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).
35. Based upon the findings of facts and conclusions of law set forth in paragraphs 4 through 34 above, the Respondent is subject to the jurisdiction of the CWA.

III. CONSENT AGREEMENT

36. Paragraphs 4 through 34 are re-alleged and incorporated herein by reference.
37. EPA and Respondent agree that it is in the public interest to resolve the issues alleged in this Consent Agreement and Final Order (“CA/FO” or “Order”) without further litigation and the expense and effort that litigation entails.

38. Based upon the foregoing and pursuant to Section 309(g) of the CWA, 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:

IV. TERMS OF SETTLEMENT

39. For the purpose of this proceeding, Respondent:
- a. admits the jurisdictional allegations of this CA/FO;
 - b. neither admits nor denies the factual allegations contained herein;
 - c. waives its right to contest the allegations, a judicial or administrative hearing, or to appeal this CA/FO;
 - d. agrees that the effective date of this Order shall be the date the Regional Administrator signs the Final Order accompanying this CA/FO (refer to Section VIII of this document);
 - e. consents to the payment of the civil penalty in the amount of Forty Five Thousand Dollars (\$45,000), as stated in Section V, below; and
 - f. consents to the performance of a Supplemental Environmental Project valued at no less than Two Hundred Ten Thousand Dollars (\$210,000.00), as described in Section VI, below.

V. PAYMENT OF CIVIL PENALTY

40. Respondent shall pay a civil penalty in the amount of forty five thousand dollars (\$45,000) by check payable to the "Treasurer of the United States of America," electronically (i.e. wire or automated clearinghouse) or by on line payment.
41. Respondent shall pay the amount stated in paragraph 40 above by making installment payments for up to 6 months from the effective date of this Order.
42. No later than thirty (30) calendar days from the effective date of this Order, Respondent shall make an initial payment of twenty five thousand dollars (\$25,000.00).
43. Thereafter, Respondent shall make two (2) additional payments of ten thousand dollars (\$10,000.00) each, plus the applicable interest, in accordance with the following schedule:
- a. the first \$10,033.33 of the two additional payments no later than ninety (90) calendar days from the effective date of this Order; and
 - b. the last and final payment of \$10,025.00 no later than one-hundred and eighty (180) calendar days from the effective date of this Order.

44. Respondent shall clearly identify, regardless of the form of payment, the name and docket number of the case, set forth in the caption on the first page of this document. The payment methods are described below:

a. If Respondent chooses to pay by cashiers' or certified check, the check shall be mailed mail to:

BY U.S. POSTAL SERVICE

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

BY OVERNIGHT MAIL

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

b. If Respondent chooses to pay electronically, the transfer shall be made to:

i. BY WIRE TRANSFER

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."

or

ii. BY AUTOMATED CLEARINGHOUSE (ACH) (also known as REX or remittance express)

ACH for receiving US currency
PNC Bank
808 17th Street, NW
Washington, DC 20074
ABA = 051036706
Transaction Code 22 - checking
Environmental Protection Agency
Account 310006—CTX Format
Contact: Jesse White
Tel.: (301) 887-6548

45. Online Payment Option is available through the Department of Treasury. This payment option can be accessed through WWW.PAY.GOV. Enter sfo 1.1 in the search field. Open form and complete required fields.
46. Respondent shall send proof of payments made in accordance to the instructions in paragraph 44 above, to each of the following:

Héctor Ortiz
Enforcement Officer
Multimedia Permits and Compliance Branch
Caribbean Environmental Protection Agency
United States Environmental Protection Agency Region 2
City View Plaza II
48 CARR 165 STE 7000
Guaynabo, PR 00968-8073,

Evelyn Rivera-Ocasio, Esq.
Assistant Regional Counsel for Caribbean Programs
Office of Regional Counsel
United States Environmental Protection Agency, Region 2
City View Plaza II
48 Carr. 165 STE 7000
Guaynabo, PR 00968-8073,

and

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

47. 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.
48. 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 ninety (90) days of the due date.

49. 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. Respondent may also be required to pay attorney's fees and costs for collection proceedings in connection with nonpayment.
50. 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.

VI. SUPPLEMENTAL ENVIRONMENTAL PROJECT

51. Respondent shall complete the Supplemental Environmental Project ("SEP") as set forth in this Section. Respondent and EPA agree that this SEP is intended to secure significant environmental protection.
52. Description of the SEP: The Respondent shall transfer ownership of approximately 24 acres (approximately 25 "cuerdas") of land (the "SEP Parcel") to the Puerto Rico Department of Natural and Environmental Resources ("PRDNER").
 - a. The SEP Parcel owned by Respondent comprises of various lots that will be segregated and grouped for the proposed transfer, which are part of the proposed buffer zone adjacent to a nature reserve known as the "Joyuda Lagoon", located on the southwest coast of Puerto Rico, in the municipality of Cabo Rojo. Respondent will also provide an access easement of approximately 2 acres (approximately 2.0675 "cuerdas") in favor of the PRDNER to allow for public access to the SEP Parcel, and if necessary, to other lots in the area. See Attachment I, which consists of a preliminary survey and aerial view showing the SEP Parcel area to be transferred, including the required easement, incorporated herein by reference.
 - b. The Joyuda Lagoon is a nature reserve designated as such in 1980 by the Puerto Rico Planning Board, pursuant to Commonwealth of Puerto Rico law, and is managed by the PRDNER.
 - c. PRDNER has stated that the SEP Parcel proposed for transfer has direct ecological value as a buffer zone to support the Joyuda Lagoon Nature Reserve. PRDNER has agreed in principle to accept the title to the SEP Parcel, subject to the applicable approvals for segregation, grouping, donation, and recording requirements provided by the laws and regulations of the Commonwealth of Puerto Rico.
 - d. Respondent shall transfer the title to the SEP Parcel to the PRDNER by means of a deed which is compliant with Puerto Rico law. The applicable deed shall specify that the transfer is for conservation purposes to perpetually protect the SEP Parcel, and to advance the goals of natural resource preservation by allowing the PRDNER to conduct any of the activities authorized by the PRDNER's Enabling Act for the conservation,

education and nature reserve passive uses of the SEP Parcel so as to enhance the Joyuda Lagoon Natural Reserve.

- e. The implementation of this SEP will assist PRDNER in meeting its goal of protecting and managing the Joyuda Lagoon Nature Reserve.
- 53. SEP Cost: The Respondent shall expend no less than Two Hundred Ten Thousand Dollars (\$210,000.00). Respondent shall include documentation of the valuation and/or appraisal and any expenditures made in connection with the SEP as part of the SEP Completion Report, as required in paragraph 64 below.
- 54. SEP Completion date: The Respondent shall complete the transfer of the land to PRDNER by no later than three hundred sixty five (365) days from the effective date of this Consent Agreement.
- 55. Respondent shall begin implementation of the SEP commencing upon the effective date of this Consent Agreement.
- 56. Within fifteen (15) days from the effective date of this Consent Agreement, Respondent shall submit to EPA an outline or scope of work detailing the activities necessary to be undertaken to complete the SEP described in paragraph 52 above.
- 57. Respondent is responsible for the satisfactory completion of the SEP in accordance with the requirements of this Consent Agreement, including Attachment I.
- 58. Respondent shall be responsible at its own cost for any services associated with, or required to complete, the transfer of title including, but not limited to, services provided by a licensed surveyor, attorney fees, notary fees, administrative matters such as executing and filing any documentation at any Commonwealth of Puerto Rico departments, agencies and/or municipalities, or payment of recording fees and taxes. Respondent shall not seek any compensation or consideration from the Commonwealth of Puerto Rico, including but not limited to PRDNER, for the SEP Parcel.
- 59. Respondent may use contractors or consultants to complete the SEP.
- 60. With regard to the SEP, Respondent certifies the truth and accuracy of each of the following:
 - a. that all cost information provided to the EPA in connection with the EPA's approval of the SEP is complete and accurate and that Respondent in good faith estimates that the cost to implement the SEP is at least Two Hundred Ten Thousand Dollars (\$210,000.00);
 - b. that, as of the date of execution of this Consent Agreement, Respondent is not required to perform or develop the SEP by any federal, state, or local law or regulation, and is not required to perform or develop the SEP by agreement, grant, or as injunctive relief awarded in any other action in any forum;

- c. that the SEP is not a project that Respondent was planning or intending to construct, perform or implement other than in settlement of the claims resolved in this Consent Agreement;
 - d. that it has not received and will not receive credit for the SEP in any other enforcement action;
 - e. that it will not receive any reimbursement from any portion of the SEP from another person or entity;
 - f. that for federal and state income taxes purposes, Respondent agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP;
 - g. that it is not a party to any open federal financial assistance transaction that could be characterized as funding or could be used to fund the same activity as the SEP described in paragraph 52 above; and
 - h. that it has asked the PRDNER whether it is a party to an open federal financial assistance transaction that is funding or could fund the same activity as the SEP and has been informed by the PRDNER that it is not a party to such a transaction.
61. Progress Reports: Respondent shall submit to EPA Progress Reports describing the progress achieved in implementing the SEP. Each Progress Report shall cover a 120 day period, and the periods shall run consecutively. The first period shall begin on the effective date of this Consent Agreement. The Respondent shall be required to submit each Progress Report no later than fifteen (15) days after the expiration of each one-hundred and twenty (120) day period.
62. At a minimum, the Progress Report shall include the following:
- a. the specific activities undertaken during the reporting period, detailing the current status of SEP implementation; and
 - b. a description of any concerns Respondent encountered in the process of implementing the activities detailed in the outline and/or scope of work submitted pursuant to paragraph 56 above, and the actions taken by Respondent to minimize setbacks in completion any activity.
63. Extension of the SEP completion date: Respondent may request an extension of time if it anticipates that it would not complete the SEP by the completion date specified in paragraph 54 above, due to causes beyond its control.
- a. Respondent shall submit in writing any request for extension of time pursuant to this paragraph as close to the time when it becomes aware or should have known that an event might cause a delay in the timely completion of the SEP. Such request shall be

submitted no later than five (5) working days after Respondent first knew or should have known that the event might impact the SEP completion date. Within ten (10) days thereafter, Respondent shall provide in writing to EPA an explanation and description of the reasons for the delay, all actions taken or to be taken to prevent or minimize the delay, and the date it estimates that the SEP would be completed.

- b. If EPA agrees that the request for extension of time of the SEP completion date is attributable to causes beyond Respondent's control, it will provide its approval to the request in writing and stipulated penalties shall not accrue for such period.
 - c. If EPA does not agree that the request for extension of time of the SEP completion date is attributable to causes beyond Respondent's control, it will notify to the Respondent in writing of its decision, and stipulated penalties shall begin to accrue pursuant to paragraph 73 below.
64. SEP Completion Report: Respondents shall submit a SEP Completion Report to EPA within sixty (60) calendar days from the SEP completion date specified in paragraph 54 above. The SEP Completion Report shall contain the following information:
- a. a detailed description of the SEP, as implemented;
 - b. copy of the Puerto Rico Treasury Department approval of the deed of donation of land to the PRDNER;
 - c. final survey of the site donated to the PRDNER;
 - d. copy of the segregation authorization from the Puerto Rico Permit Management Office;
 - e. simple copy of the filing and minutes of the corresponding deed executed between PRDNER and Respondent and any complimentary or supplemental documents, filed at the Puerto Rico Property Registry, confirming the actual transfer of title of the SEP parcel;
 - f. a description of any problems that arose during completion of the SEP and the solutions thereto;
 - g. an itemization of the costs expended (including the value of the SEP Parcel and easement);
 - h. in itemizing its costs in the SEP Completion Report, Respondents shall clearly identify and provide acceptable documentation for all eligible SEP costs. Where the SEP Completion Report includes costs not eligible for SEP credit, those costs must be clearly identified as such. For purposes of this paragraph, "acceptable documentation" includes invoices, purchase orders, or other documentation that specifically identifies and itemizes the individual costs of the goods and/or services for which payment is being made. Canceled drafts do not constitute acceptable documentation unless such drafts

specifically identify and itemize the individual costs of the goods and/or services for which payment is being made;

- i. certification that the SEP has been fully implemented pursuant to the provisions of this Consent Agreement; and
 - j. a description of the environmental and public health benefits resulting from implementation of the SEP.
65. EPA may, in its sole discretion, require information in addition to that described in the preceding paragraph, in order to evaluate Respondent's SEP Completion Report.
66. In all documents and/or reports submitted to EPA pursuant to this Consent Agreement, Respondent shall, by its officers, sign and certify under penalty of law that the information contained in such document or report is true, accurate, and complete by signing the following statement:
- “I hereby certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.”
67. EPA's Acceptance of SEP Completion Report: After receipt of the SEP Completion Report described in paragraph 64 above, EPA will notify Respondent, in writing, regarding: (i) any deficiencies in the SEP Completion Report itself, along with a grant of an additional thirty (30) days for Respondent to correct any deficiencies; or, (ii) indicate that EPA concludes that the SEP has been completed satisfactorily; or, (iii) determine that the SEP has not been completed satisfactorily and seek stipulated penalties in accordance with paragraph 73 below.
68. If EPA elects to exercise option (i) above, that is, if the SEP Completion Report is determined to be deficient but EPA has not yet made a final determination about the adequacy of SEP completion itself, EPA shall allow Respondent the opportunity to object in writing to the notification of deficiency given pursuant to this paragraph within twenty (20) calendar days of receipt of such notification. EPA and Respondent shall have an additional thirty (30) days from the receipt by EPA of the notification of objection to reach agreement on changes necessary to the SEP Completion Report.
69. If agreement cannot be reached on any such issue within the thirty (30) calendar day period pursuant to paragraph 68, EPA shall provide a written statement of its decision on adequacy of the completion of the SEP to Respondent, which decision shall be reasonable and final and binding upon Respondent. Respondent agrees to comply with any requirements imposed by EPA as a result of any failure to comply with the terms of this Consent Agreement.

70. In the event the SEP is not completed as contemplated herein, as determined by EPA, stipulated penalties shall be due and payable by Respondent to EPA in accordance with paragraph 73 below.
71. The determinations of whether the SEP has been satisfactorily completed and whether the Respondent has made a good faith, timely effort to implement the SEP, shall be in the sole discretion of EPA.
72. Public Statements: Any public statement, oral or written, in print, film, or other media, made by Respondent making reference to the SEP, shall include the following language:

"This project was undertaken in connection with the settlement of an enforcement action taken by the U.S. Environmental Protection Agency for violations of the Clean Water Act."

The public statement shall also be made in Spanish as follows:

"Este proyecto fue realizado como parte de un acuerdo legal con relación a una acción de cumplimiento por violaciones a la Ley Federal de Agua Limpia presentada por la Agencia Federal de Protección Ambiental de los Estados Unidos."

73. Stipulated Penalties. In the event that Respondent fails to comply with any of the terms or provisions of this Consent Agreement relating to the performance of the SEP described in paragraph 52 above and in Attachment I and/or to the extent that the actual expenditures for the SEP do not equal or exceed the cost of the SEP described in paragraph 52 above, Respondent shall be liable for stipulated penalties according to the provisions set forth below:
- a. for failure to submit any Progress Report in accordance to paragraph 61 above, Respondent shall pay a stipulated penalty in the amount of three hundred and fifty (\$350.00) dollars for each day until the report is submitted;
 - b. for failure to submit the SEP Completion Report required by paragraph 64 above, Respondent shall pay a stipulated penalty in the amount of five hundred (\$500) dollars for each day after the SEP Completion Report was due until the report is submitted;
 - c. if the SEP is satisfactorily completed in accordance with paragraph 54 above, but Respondent's SEP value of the parcel and easement and expenses incurred is less than the agreed \$210,000.00, Respondent shall pay a stipulated penalty equal to the difference between the amount of eligible SEP costs incurred by the Respondent and \$210,000.00;
 - d. if the SEP is not satisfactorily completed in accordance with paragraph 54 above; but (a) Respondent certifies, with supporting documentation, the amount of eligible SEP value and costs expended on the SEP, and (b) EPA determines that the Respondent made good faith and timely efforts to complete the project, then, Respondent shall pay a stipulated

penalty that is the difference between the eligible SEP costs incurred by Respondent and \$210,000.00; and

- e. if Respondent halts or abandons work on the SEP as described in paragraph 52 above, Respondent shall pay a stipulated penalty of Two Hundred Ten Thousand Dollars (\$210,000.00).
- 74. Respondent shall pay stipulated penalties within thirty (30) calendar days after receipt of written demand by EPA for such penalties. Payment of stipulated penalties shall be made payable to the "Treasurer of the United States of America." Respondent shall use the same methods of payment described in paragraph 44 above.
- 75. Interest and late charges on stipulated penalties shall be paid as stated in paragraphs 48 – 49 above.
- 76. Respondent shall send proof of stipulated penalty payments as specified in paragraph 46 above.
- 77. The EPA may, in the unreviewable exercise of its discretion, reduce or waive stipulated penalties otherwise due under this Consent Agreement.
- 78. Failure to pay the stipulated 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. Interest and late charges on stipulated penalties shall be paid as stated in paragraphs 48 – 49 above.

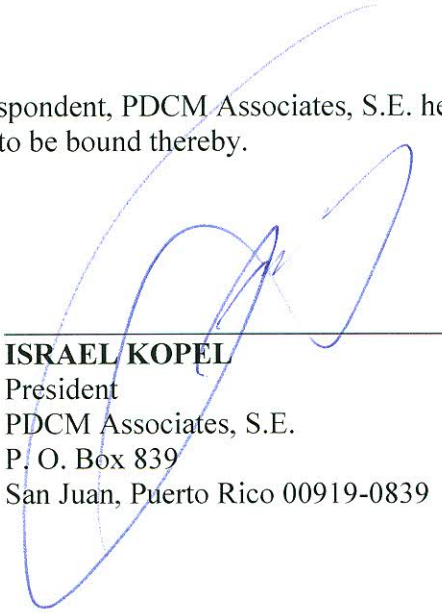
VII. GENERAL PROVISIONS

- 79. The provisions of this CA/FO shall be binding upon Respondent, its officers, directors, agents, servants, authorized representatives and successors or assigns, including but not limited to, subsequent purchasers. No transfer of ownership or operation shall relieve Respondent of its obligation to comply with this CA/FO.
- 80. 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.
- 81. 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 of the statutes and regulations upon which this agreement is based, or for Respondent's violation of any applicable provision of law.

82. This CA/FO 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.
83. This CA/FO constitutes a settlement by EPA of all claims for civil penalties pursuant to the CWA for the violations by the Respondent alleged herein. Nothing in this CA/FO is intended to nor shall be construed to operate in any way to resolve any criminal liability of the Respondent. Compliance with this CA/FO 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.
84. Each undersigned representative of the parties to this CA/FO certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this CA/FO and to execute and legally bind that party to it.
85. Each party shall bear its own costs and attorney's fees in connection with the action resolved by this CA/FO.

For Respondent, PDCM Associates, S.E. hereby consents to the issuance of the Consent Agreement and agrees to be bound thereby.

BY:



ISRAEL KOPEL
President
PDCM Associates, S.E.
P. O. Box 839
San Juan, Puerto Rico 00919-0839

DATE:

8/9/16

For Respondent, Regency Park Associates, S.E. hereby consents to the issuance of the Consent Agreement and agrees to be bound thereby.

BY:



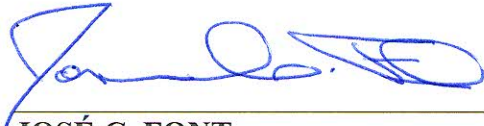
ISRAEL KOPEL
President
Regency Park Associates, S.E.
P. O. Box 839
San Juan, Puerto Rico 00919-0839

DATE:

8/9/16

For the Complainant, the United States Environmental Protection Agency:

BY:



JOSÉ C. FONT

Acting Director

Caribbean Environmental Protection Division

US Environmental Protection Agency-Region 2

City View Plaza II

48 Carr. 165 STE 7000

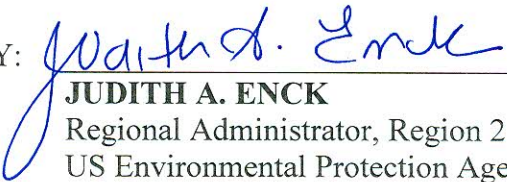
Guaynabo, PR 00968-8073

DATE:

Sept 21, 2016

VIII. 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.

BY: 
JUDITH A. ENCK
Regional Administrator, Region 2
US Environmental Protection Agency
290 Broadway
New York, New York 10007

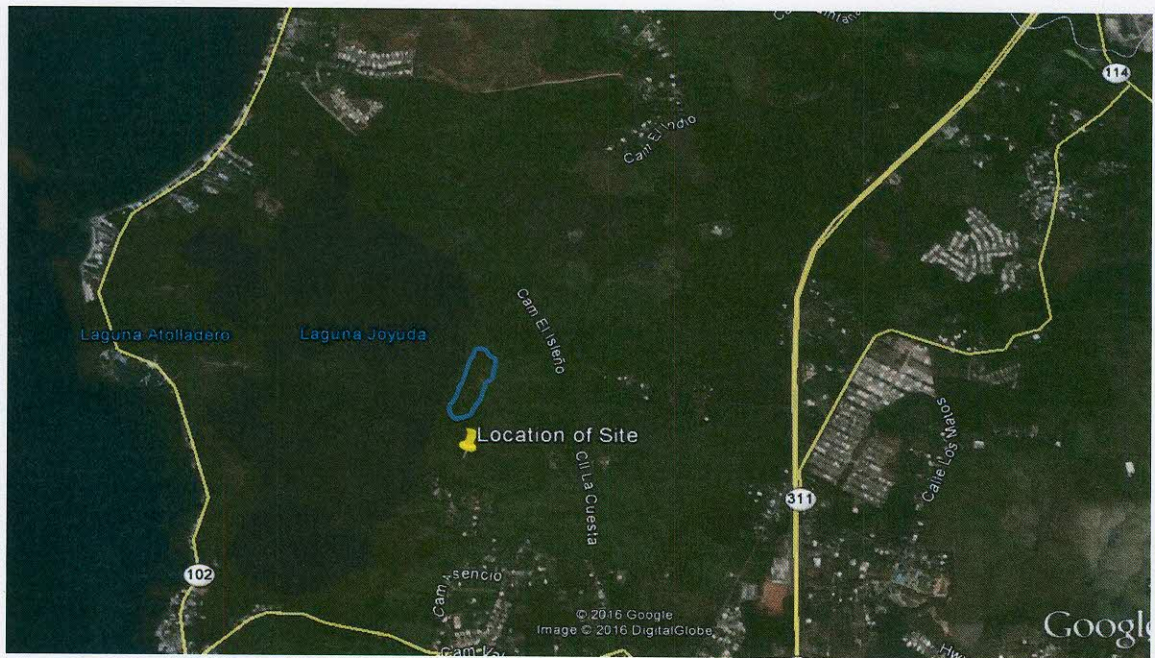
DATE: 9/29/16

ATTACHMENT I

AERIAL VIEW OF THE LAGOON AND HYDRAULIC CONNECTION TO THE CARIBBEAN SEA



APPROXIMATE LOCATION OF THE 20 ACRES OF LAND TO BE DONATED TO PRDNER (BLUE)



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION II

In the Matter of:

P.D.C.M. Associates, S.E.
P. O. Box 190858
San Juan, Puerto Rico 00919-0858

RESPONDENT

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

**CONSENT AGREEMENT
AND
FINAL ORDER**

DOCKET NUMBER CWA-02-2016-3452

CERTIFICATE OF SERVICE

I certify that I have this day caused to be sent the foregoing **Consent Agreement and Final Order**, dated September 29, 2016, and bearing the above-referenced docket number, in the following manner to the respective addressees below:

ORIGINAL AND COPY HAND DEIVERED TO:

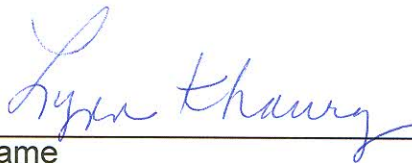
Karen Maples, Regional Hearing Clerk
Region 2
U.S. Environmental Protection Agency
290 Broadway, 16th Floor
New York, NY 10007-1866

COPY TO RESPONDENT BY CERTIFIED MAIL, RETURN RECEIPT TO:

Mr. Israel Kopel Amster
P.D.C.M. Associates, S.E.
P.O. Box 190858
San Juan, Puerto Rico 00919-0858

9/30/14

Date



Name