

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
Region 2**

IN THE MATTER OF:

Venegas Construction Corporation
472 Ave. Tito Castro, Suite 201
Ponce, Puerto Rico 00716-4702

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-02-2010-3401

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REGION 2
2010 FEB 23 AM 9:22
REGIONAL HEARING
OFFICE

CONSENT AGREEMENT

WHEREAS, the United States Environmental Protection Agency ("EPA"), having informed Venegas Construction Corporation ("Respondent") that it intended to initiate enforcement proceedings against Respondent, and

WHEREAS EPA and Respondent having agreed that settlement of the proposed enforcement action is in the public interest, and that 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. STATUTORY AND REGULATORY AUTHORITIES

1. This Consent Agreement and Final Order is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency (EPA) by Section 309(g)(2)(B) of the Clean Water Act ("Act" or "CWA"), 33 U.S.C. §1319(g)(2)(B). The Administrator has delegated this authority to the Regional Administrator of EPA, Region 2.
2. Pursuant to Section 309(g)(2)(B) of the Act, and in accordance with 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"), 40 C.F.R. Part 22 (2001), EPA assesses a civil penalty against Respondent, as a result EPA's determination that the Respondent is in violation of Sections 301 and 402 of the Act, 33 U.S.C. §1311 and §1342, respectively, for the unlawful discharge of pollutants into navigable waters without authorization by a National Pollutant Discharge Elimination System ("NPDES") permit and violations of the applicable Construction General Permit ("CGP").

3. Section 301(a) of the Act, 33 U.S.C. §1311(a), provides in part that "except as in compliance with this section and sections . . . 1342, and 1344 of [the Act], the discharge of any pollutant by any person shall be unlawful."
4. 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.
5. Section 402 of the Act, 33 U.S.C. §1342, authorizes the Administrator to issue a National Pollutant Discharge Elimination System ("NPDES") permit for the discharge of any pollutant, or combination of pollutants, subject to certain requirements of the Act and such conditions as the Administrator determines are necessary.
6. Section 402 (p) of the Act, 33 U.S.C. §1342(p), requires a permit with respect to a discharge associated with industrial activity.
7. The Administrator of EPA has promulgated regulations at 40 C.F.R. §122.26(a)(1)(ii) and §122.26(b)(14), which require operators to obtain a NPDES permit for storm water discharges associated with industrial activity, including construction activity.
8. The regulations at 40 C.F.R. §122.26(b)(14)(x) and 40 C.F.R. §122.26(b)(15)(i) regulate storm water discharges associated with construction sites which include clearing, grading and excavation activities that result in the disturbance of one (1) or more acres of total land area. Construction sites that are less than one acre, but are part of a common plan that is greater or equal to one acre are required to apply for coverage under the CGP. See 40 C.F.R. §122.26(a)(1)(ii) and §122.26(b)(14)(x) and §122.26(b)(15)(i).
9. EPA issued the "NPDES General Permit for Discharges from Large and Small Construction Activities," Permit No. PRR100000 on July 1, 2003 ("CGP"). This permit was published in the Federal Register (68 FR 39087). It became effective on July 1, 2003 and it expired on July 1, 2008. EPA has reissued the CGP and the 2008 CGP became effective on June 30, 2008 and will expire on June 30, 2010.
10. The Act and its implementing regulations and applicable NPDES permit contain the following definitions:
 - a) "Navigable waters" means the waters of the United States and territorial seas, pursuant to Section 502(7) of the Act, 33 U.S.C. §1362(7). "Waters of the United States" means, but are not limited to, waters which are currently used or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide and including wetlands, rivers, streams (including intermittent streams) (40 C.F.R. §122.2).
 - b) "Pollutant" means, but is not limited to, solid waste, dredged spoil, rock, sand, cellar dirt, sewage, sewage sludge, and industrial, municipal and agricultural

waste discharged into water, pursuant to Section 502(6) of the Act, 33 U.S.C. §1362(6).

- c) "Point source" means "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, ..." pursuant to Section 502(14) of the Act, 33 U.S.C. §1362(14).
- d) "Discharge of a pollutant" means any addition of any pollutant to navigable waters from any point source, pursuant to Section 502(12) of the Act, 33 U.S.C. §1362(12).
- e) "Person" means, but is not limited to, an individual, corporation, partnership or association, pursuant to Section 502(5) of the Act, 33 U.S.C. §1362(5).
- f) "Operator," for the purpose of the NPDES storm water general permit for construction activities and in the context of storm water associated with construction activity, is defined at Appendix A of the CGP to mean any party associated with a construction project that meets either of the following two (2) criteria:
 - i. The party has operational control over construction plans and specifications including the ability to make modifications to those plans and specifications; or
 - ii. The party has day-to-day operational control of those activities at a project which are necessary to ensure compliance with a storm water pollution prevention plan for the site or other permit conditions. See Appendix A of the CGP.

11. Sections of the CGP pertinent to this action are listed below:

- a) Part 3.1.B of the CGP requires that the Storm Water Pollution Prevention Plan ("SWPPP") must identify all potential sources of pollution which may reasonably be expected to affect the quality of storm water discharges from the construction site. It further requires that the SWPPP describe practices to be used to reduce pollutants in storm water discharges from the construction site and that the SWPPP must assure compliance with the terms and conditions of the permit.
- b) Part 3.1.D of the CGP specifies that the SWPPP must be implemented as written from commencement of construction activity until final stabilization is complete.
- c) Part 3.3 of the CGP specifies components that are to be included in a SWPPP.
- d) Part 3.3.C of the CGP requires a legible site map, showing the entire site as part of the SWPPP.

- e) Part 3.4.A and part 3.6 of the CGP requires storm water best management practices (BMPs) for exposed soils.
- f) Part 3.4.B of the CGP requires that the SWPPP include a description of interim and permanent stabilization practices for a site, including a schedule of when the practices will be implemented.
- g) Part 3.4.C of the CGP requires that the SWPPP include dates when major grading activities occur; dates when construction activities temporarily or permanently cease on a portion of a site; and dates when stabilization measures are initiated.
- h) Part 3.4.D of the CGP requires that the SWPPP must include a description of structural practices to divert flows from exposed soils, retain/detain flows or otherwise limit runoff and the discharge of pollutants from exposed areas of the site.
- i) Part 3.4.E of the CGP requires that SWPPP include a description of all post-construction storm water management measures that will be installed during the construction process to control pollutants in storm water discharges after construction operations have been completed.
- j) Part 3.4.G of the CGP requires that the SWPPP describe measures to minimize, to the extent practicable, off-site vehicle tracking of sediments onto paved surfaces and the generation of dust.
- k) Parts 3.6 and 3.13 of the CGP require that erosion and sediment control measures and other protective measures identified in the SWPPP must be maintained in effective operating condition.
- l) Part 3.7 and 1.3.C-6 of the CGP requires that the SWPPP include documentation of permit eligibility related to endangered species.
- m) Part 3.10.A of the CGP requires that the site be inspected at least once every 7 calendar days, or at least once every 14 calendar days and within 24 hours of the end of a storm event of .5 inches or greater.
- n) Part 3.10.G of the CGP requires that a site inspection report be completed for each site inspection conducted and that these records be retained on-site with the SWPPP for a period of 3 years.
- o) Part 3.11.C of the CGP requires that based on the results of an inspection, the SWPPP must be modified as necessary to include additional or modified BMPs designed to correct problems identified. Revisions to the SWPPP must be completed within 7 calendar days following the inspection.
- p) Part 3.12.B of the CGP requires that a sign containing the Notice of Intent (NOI) information must be conspicuously posted near the main entrance of the construction site.

- q) Part 3.13.A of the CGP requires that all control measures must be properly selected, installed, and maintained in accordance with any relevant manufacturer specifications and good engineering practices. It further mandates that if periodic inspections or other information indicates a control has been used improperly, or incorrectly, the operator must replace or modify the control for site situations as soon as possible.

II. JURISDICTIONAL FINDINGS

12. Venegas Construction Corporation (“Respondent”) is a person within the meaning of Section 502(5) of the CWA, 33 U.S.C. §1362(5).
13. At all relevant times, Respondent was the operator of the construction sites.
14. The construction sites (hereafter referred to individually as “Site A” through “Site F”, and collectively as the “Sites”) are located at:
- A. Modern. Ext. Sábalo Gardens (NPDES Tracking Nos. PRR10BB12, PRR10BB11, and PRR10BC95)**
Ave. Carolina Km. 157.4
Mayaguez, Puerto Rico 00680
 - B. Mejoras a la Avenida Emilio Fagot (NPDES Tracking No. PRR10BE03)**
Desde Caribbean School a San Anton
Ponce, Puerto Rico 00716
 - C. Mejoras a la Avenida 25 de Julio (NPDES Tracking No. PRR10BA89)**
Desde PR-116 Hasta Ave. Esperanza Proyecto #00095
Guanica, Puerto Rico 00653
 - D. Escuela Sup. Vocacional (tiene alterna) (NPDES Tracking No. PRU201320)**
Llorens Torres y Ave. Hostos PR-2
Mayaguez, Puerto Rico 00680
 - E. Mejoras a la Ave. Ceiba (NPDES Tracking No. PRR10BE04)**
Desde PR-52 Hasta Ave. Fagot
Ponce, Puerto Rico 00716
 - F. Residencial la Meseta (NPDES Tracking No. PRR10BE03)**
Carr. PR-2, Km. 78.8 Urb. Marisol
Arecibo, Puerto Rico 00612
15. Construction Site A disturbed approximately 15.67 acres of land. Site B disturbed approximately 13.5 acres of land. Site C disturbed approximately 2.75 acres of land. Site D disturbed approximately 5.75 acres of land. Site E disturbed approximately 6.75 acres of land. Site F disturbed approximately 12.75 acres of land.

16. Weather data indicates the following:
- a) for the period of construction at Site A, there was 1.25 inches of rain in the area of the Site beginning on May 28, 2005 and subsequent wet weather flow events, as well;
 - b) for the period of construction at Site B there was 0.56 inches of rain in the area of the Site beginning on September 24, 2005 and subsequent wet weather flows, as well;
 - c) for the period of construction at Site C there was 0.51 inches of rain in the area of the Site on April 12, 2004, and subsequent wet weather flows, as well;
 - d) for the period of construction at Site D there was 2.30 inches of precipitation in the area of the Site on April 9, 2004, and subsequent wet weather flows, as well;
 - e) for the period of construction at Site E there was 0.64 inches of precipitation in the area of the Site on September 15, 2005, and subsequent wet weather flows, as well;
 - f) for the period of construction at Site F there was 1.60 inches of precipitation in the area of the Site on June 10, 2005, and subsequent wet weather flows, as well.
17. Each one of the Sites was, and is, at all relevant times, a point source as defined at Section 502(14) of the Act, 33 U.S.C. §1362(14).
18. Storm water runoff from Site A discharges to the Sábalo Creek, which is adjacent to the facility, and then flows into the Caribbean Sea. Storm water from Site B discharges into the Portugues River. Storm water from Site C discharges into the Bahia de Guanica and the Carribbean Sea. Storm water from Site D discharges into the Yaguez River. Storm water from Site E discharges into the Bucana River. Storm water from Site F discharges into the Atlantic Ocean.
19. The creeks, rivers, bay, and sea referenced in Paragraph 18, above, all are waters of the United States.
20. Based on the foregoing, Respondent was required to obtain authority to discharge pursuant to the terms of the applicable CGP.

III. FINDINGS OF VIOLATION

CLAIM ONE- UNPERMITTED DISCHARGES

21. Complainant re-alleges Paragraphs 12 - 20 above, and Complainant makes the following Findings with regard to each of the Sites.

SITE A- Modern. Ext. Sábalos Gardens

22. Respondent commenced construction activities at Site A on or about May 16, 2005.
23. Respondent failed to obtain NPDES permit coverage under the CGP until May 27, 2006.
24. Based on the findings in Paragraphs 22 - 23 above, Respondent was in violation of Section 301 of the CWA at Site A from at least May 16, 2005 through May 27, 2006.

SITE B- Mejoras a la Avenida Emilio Fagot

25. Respondent commenced construction activities at Site B on or about September 20, 2005.
26. Respondent failed to obtain NPDES permit coverage under the CGP until June 7, 2007
27. Based on the findings in Paragraphs 25 - 26 above, Respondent was in violation of Section 301 of the CWA at Site B from at least September 20, 2005 through June 7, 2007.

SITE C- Mejoras a la Avenida 25 de Julio

28. Respondent commenced construction activities at Site C on or about January 10, 2004.
29. Respondent failed to obtain NPDES permit coverage under the CGP until May 12, 2006.
30. Based on the findings in Paragraphs 28 - 29, above, Respondent was in violation of Section 301 of the CWA at Site C from at least January 10, 2004 through May 12, 2006
[Note: EPA is assessing penalties only for the past 5 years because the applicable statute of limitations precludes EPA from assessing penalties based on violations that occurred more than 5 years before the date of the enforcement action.]

SITE D- Escuela Sup. Vocacional

31. Respondent commenced construction activities at Site D on or about January 28, 2002.
32. Respondent failed to obtain NPDES permit coverage under the CGP prior to construction completion on August 31, 2006.
33. Based on the findings in Paragraphs 31 - 32, above, Respondent was in violation of Section 301 of the CWA at Site D from at least January 28, 2002 through August 31, 2006. *[Note: EPA is assessing penalties only for the past 5 years because the applicable statute of limitations precludes EPA from assessing penalties based on violations that occurred more than 5 years before the date of the enforcement action.]*

SITE E- Mejoras a la Ave. Ceiba

34. Respondent commenced construction activities at Site E on or about December 15, 2005.

35. Respondent failed to obtain NPDES permit coverage under the CGP until June 7, 2007.
36. Based on the findings in Paragraphs 34 - 35 above, Respondent was in violation of Section 301 of the CWA at Site E from at least December 15, 2005 through June 7, 2007.

SITE F- Residencial la Meseta

37. Respondent commenced construction activities at Site F on June 1, 2005.
38. Respondent failed to obtain NPDES permit coverage under the CGP until July 31, 2006.
39. Based on the findings in Paragraphs 37 - 38, above, Respondent was in violation of Section 301 of the CWA at Site F from at least June 1, 2005 through July 31, 2006.

CLAIM TWO- FAILURE TO IMPLEMENT THE CGP

40. Complainant re-alleges Paragraphs 12 - 20 above, and Complainant makes the following Findings with regard to each of the Sites.

SITE A- Sábalos Gardens

41. On January 25, 2007, a representative of EPA Region 2 conducted a Compliance Evaluation Inspection ("CEI") at Site A.
42. At the time of the January 25, 2007, CEI, the EPA inspector noted the following violations of the CGP (which implements the CWA):
 - a) Failure to post required sign (CGP Part 3.12.B and 3.1.D of the CGP);
 - b) Failure to conduct site inspections and/or maintain the required documentation (CGP Part 3.10);
 - c) Failure to install inlet protection at several catch basins (CGP Part 3.1);
 - d) Failure to maintain storm water controls (CGP Part 3.6 of the CGP);
 - e) Failure to maintain off-site tracking of sediment (CGP Part 3.4.G and CGP Part 3.1.D relating to SWPPP requirements);
 - f) Failure to implement Best Management Practices ("BMPs") (CGP Part 3.1 and Part 3.4);
 - g) Failure to address concrete mixer washwater in the SWPPP (CGP Part 3.13.A).
43. In June 2006, EPA reviewed Respondent's SWPPP for Site A and discovered that the SWPPP did not meet the requirements of the CGP, as follows:

- a) The SWPPP did not contain a schedule to temporarily stabilize Site A (CGP Part 3.4.C, Part 3.13.D, and Part 3.4.B);
- b) The SWPPP did not include adequate controls or maintenance measures (CGP Part 3.4.E);
- c) The SWPPP did not include Endangered Species Act documentation (CGP Part 3.7 and Part 1.3.C.6);
- d) The site map contained in the SWPPP did not show drainage patterns, stabilization practices, borrow or equipment storage areas, or, areas of final stabilization (CGP Part 3.3 of the CGP);
- e) The SWPPP did not incorporate flow diversion measures (CGP Part 3.4.D);
- f) The SWPPP included blank inspection forms but did not include inspection reports which are required to be retained (CGP Part 3.10.G);
- g) The SWPPP was not updated or modified to reflect changes at Site A that affected the storm water discharge (CGP Part 3.11.C).

SITE B- Emilio Fagot Ave.

44. In June 2006, EPA reviewed Respondent's SWPPP for Site B and discovered that the SWPPP did not meet the requirements of the CGP, as follows:
- a) The SWPPP did not include a Site Map (CGP Part 3.3 C);
 - b) The SWPPP failed to fully describe pollution sources such as portable toilets, fuel storage, paints, solvents, and fuel tanks (CGP Part 3.1.B).

SITE C- La Avenida 25 de Julio

45. In June 2006, EPA reviewed Respondent's SWPPP for Site C and discovered that the SWPPP did not meet the requirements of the CGP, as follows:
- a) The SWPPP did not include Endangered Species Act documentation (CGP Parts 3.7 and 1.3.C.6).

SITE D- La Escuela Superior Vocacional

46. In June 2006, EPA reviewed Respondent's SWPPP for Site D and discovered that the SWPPP did not meet the requirements of the CGP, as follows:
- b) The SWPPP did not include Endangered Species Act documentation (CGP Parts 3.7 and 1.3.C.6).

SITE E- La Avenida la Ceiba

47. In June 2006, EPA reviewed Respondent's SWPPP for Site E and discovered that the SWPPP did not meet the requirements of the CGP, as follows:
- a) The SWPPP failed to fully describe pollution sources such as portable toilets, fuel storage, paints, solvents, and fuel tanks (CGP Part 3.1.B);
 - b) The SWPPP did not contain a Site map (CGP Part 3.3);
 - c) The SWPPP did not include Endangered Species Act documentation (CGP Parts 3.7 and 1.3.C.6).

SITE F- Residencial la Meseta

48. In June 2006, EPA reviewed Respondent's SWPPP for Site F and discovered that the SWPPP did not meet the requirements of the CGP, as follows:
- a) The SWPPP failed to fully describe pollution sources such as portable toilets, fuel storage, paints, solvents, and fuel tanks (CGP Part 3.1.B);
 - b) The SWPPP did not contain a Site map (CGP Part 3.3);
 - c) The SWPPP did not include Endangered Species Act documentation (CGP Parts 3.7 and 1.3.C.6).
49. Based on the Findings in Paragraphs 41-48, above, Respondent violated Sections 301 and 402 of the Act, 33 U.S.C. §1311 and §1342, by failing to obtain and/or comply with the applicable CGP which implements the CWA.

V. TERMS OF SETTLEMENT

- 1. This proceeding for the assessment of a civil penalty is initiated by EPA pursuant to Section 309 of the Clean Water Act, 33 U.S.C. §1319.
- 2. EPA notified the Commonwealth of Puerto Rico regarding this action, pursuant to 40 C.F.R. Part 22.
- 3. This action was public noticed, pursuant to C.F.R. Part 22. No comments were received.
- 4. 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.
- 5. Respondent stipulates that EPA has jurisdiction over the subject matter alleged in this enforcement action and that the action 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, consents to the terms of this Consent Agreement and Final Order.

6. 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.
7. Pursuant to §309(g) of the Clean Water Act, 33 U.S.C. §1319(g), the nature of the violations, Respondent's agreement to perform a Supplemental Environmental Project ("SEP") and other relevant factors, EPA has determined that an appropriate civil penalty to settle this action is in the amount of THIRTY THOUSAND (\$30,000.00) DOLLARS.
8. 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 and consents to the performance of the Supplemental Environmental Project.

V. A. Penalty

9. No later than forty-five (45) days after the date of issuance of the executed Final Order, Respondent shall pay the penalty of THIRTY THOUSAND (\$30,000.00) 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. This check shall be mailed to:

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

Respondents shall also send copies of this payment 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, NY 10007

Payment must be received at the above address no later than 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".

- 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.
10. 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.

V. B. Supplemental Environmental Project ("SEP")

11. Respondent shall complete the following supplemental environmental project ("SEP"), which the parties agree is intended to secure significant environmental or public health protection and improvement:
- a. Respondent shall conduct an Environmental Quality Assessment for the determination of the presence of untreated wastewaters, if any, in Sábalos Creek, and the preliminary identification of the domestic, commercial and/or industrial activities that are impacting Sábalos Creek in Mayaguez, Puerto Rico.
 - b. The purpose of this Environmental Quality Assessment is to conduct monitoring of the Sábalos Creek to assess whether there is untreated wastewater in Sábalos Creek and if so identify sources of untreated wastewater discharges. Sábalos Creek flows adjacent to Sábalos Gardens (Site A).

12. **Within sixty (60) calendar days** after the date of issuance of the executed Final Order, Respondent shall submit a Work Plan to accomplish the SEP stated in Paragraph 11, above, which includes, at a minimum:
 - a. Field Investigation: Determine the presence of untreated wastewaters, if any, in Sábalos Creek, and preliminarily identify domestic, commercial and/or industrial activities that are impacting Sábalos Creek. Selection of the initial 4 sampling points, in which all analytical parameters will be tested. For identifying potential sampling locations it is important to locate the larger storm sewers that discharge into Sábalos Creek and determine whether there is flow during dry weather and an estimate of the flow rate. Dry weather flows that have a sewage odor may provide indication into problem locations that would be appropriate sampling points.
 - b. A Quality Assurance Project Plan (“QAPP”) which identifies proper sampling equipment, sampling containers, sampling methods, parameters to be sampled, number of samples, preservation techniques and reagents for the samples to be collected in accordance with wastewater sampling methods in 40 C.F.R. Part 136 and also methods for identifying sampling points and potential untreated wastewater discharge locations. (Information on QAPP development and guidance can be found on the web at <http://www.epa.gov/QUALITY/qapps.html>).
 - c. Selection of the secondary sampling points and parameters, based on the results obtained from the initial sampling. This task is intended to narrow down the parameters affecting the creek and follow them upstream in an attempt to identify their sources. Also provide a written description of the process for choosing secondary sampling locations.
 - d. A health and safety plan to ensure that proper personal protective equipment is worn and proper methods employed to ensure the safety of the field crew.
 - e. If EPA approves the Work Plan, EPA shall provide written notice of the Work Plan approval.
13. If EPA approves the Work Plan, the EPA- approved Work Plan shall be incorporated by this reference into this Compliance Agreement and Final Order and shall be binding and enforceable.
14. Respondent shall begin implementation of the Work Plan within forty five (45) days of receipt of EPA’s written approval of the Work Plan.
15. The SEP shall be achieved in accordance with the EPA-approved Work Plan.
16. **The SEP shall be completed no later than August 31, 2010.**

17. **SEP Cost:** The total expenditure, at cost to the Respondent, shall be not less than TWENTY THOUSAND (\$20,000.00) DOLLARS in performance of this SEP and in accordance with the Work Plan. Respondent shall include documentation of the expenditures made in connection with the SEP as part of the SEP Completion Report.
18. **Certification:** Respondent hereby certifies that, as of the date of this Consent Agreement and Final Order ("CA/FO"), Respondent is not required to perform or develop the SEP by any federal, state or local law or regulation; nor is Respondent or Third Party (if applicable) required to perform or develop the SEP by any other agreement, grant or as injunctive relief in this or any other case. Respondent further certifies that it has not received, and is not presently negotiating to receive, credit in any other enforcement action for the SEP.
19. **SEP Completion Report:** Respondent shall submit a SEP Completion Report to EPA by no later than September 30, 2010. The SEP Completion Report shall contain the following information:
 - a. a detailed description of the SEP as implemented;
 - b. a final sampling report containing a table of sampling results, analytical, methods and preservation methods used, chain of custody sheets;
 - c. findings, recommendations and conclusions of this Environmental Quality Assessment SEP, that includes, but is not limited to an identification of whether there are untreated wastewaters from residential, commercial, or industrial sources entering Sábalo Creek, and estimate of the volume and the source of such wastewater. A map of Sábalo Creek with sample locations (and latitude and longitude in decimal degrees), and areas where potential untreated wastewater discharges have been identified;
 - d. itemized costs
In itemizing its costs in the SEP Completion Report, Respondent 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, and;
 - e. certification that the SEP has been fully implemented pursuant to the provisions of this Consent Agreement and Final Order, and;
 - f. description of the environmental, ecological and public health benefits resulting from implementation of the SEP.

20. **Periodic Reports/Submissions:** Respondent shall submit any additional reports or information required by the final Work Plan to EPA in accordance with the schedule and requirements recited therein.
21. Respondent shall maintain legible copies of documentation of the underlying research and data for any and all documents or reports submitted to EPA pursuant to this Consent Agreement for a term of five (5) years after the implementation of the SEP and shall provide the documentation of any such underlying research and data to EPA not more than ten (10) working days after a request for such information.
22. In all documents or reports, including, without limitation, any SEP 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.”
23. **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." This statement should also be made in Spanish, where appropriate (i.e., in Puerto Rico). “Este proyecto fue pagado por Venegas Construction, Corp. como parte de un acuerdo legal con el gobierno de los Estados Unidos en representación de la Agencia de Protección Ambiental Federal.”
24. Respondent hereby agrees **not** to claim any funds expended in the performance of the SEP as a deductible business expense for purposes of Federal taxes. In addition, Respondent hereby agrees that, within thirty (30) days of the date it submits its Federal tax reports for the calendar year in which the above-identified SEP is completed, it will submit to EPA certification that any funds expended in the performance of the SEP have not been deducted from Federal taxes.
25. **EPA Acceptance of SEP Completion Report:**
- a. After receipt of the SEP Completion Report described in Paragraph 19 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 project has been completed satisfactorily; or, (iii) determine that the project has not been completed satisfactorily and seek stipulated penalties in accordance with Paragraph 26, below.

- b. If EPA elects to exercise option (i) above, i.e., 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 permit Respondent the opportunity to object in writing to the notification of deficiency given pursuant to this Paragraph within ten (10) 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. If agreement cannot be reached on any such issue within this thirty (30) day period, EPA shall provide a written statement of its decision on adequacy of the completion of the SEP to Respondent, which decision shall be 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 and Final Order. 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 26, herein.

26. **Stipulated Penalties:**

- a. In the event that Respondent fails to comply with any of the terms or provisions of this Agreement relating to the performance of the SEP described in Section V.B above and/or to the extent that the actual expenditures for the SEP do not equal or exceed the cost of the SEP described in Paragraphs 11 - 13 above, Respondent shall be liable for stipulated penalties according to the provisions set forth below:
- i. If Respondent timely submits a Work Plan but the Work Plan fails to satisfy EPA requirements as detailed in Paragraph 12 above, EPA shall provide written notice of the disapproval and the SEP shall not be performed and Respondent shall pay a stipulated penalty in the amount of \$20,000.
 - ii. If Respondent submits an EPA-approvable Work Plan but it is not submitted by sixty (60) calendar days after the date of issuance of the executed Final Order, the SEP shall not be performed and Respondent shall pay a stipulated penalty in the amount of \$20,000.
 - iii. If the SEP is satisfactorily completed in accordance with Paragraphs 11 - 13, above, but Respondent expends less than the agreed to \$20,000 for the SEP project, Respondent shall pay a stipulated penalty equal to the difference between the amount of eligible SEP costs incurred by the Respondent and \$20,000.
 - iv. If the SEP is not completed in accordance with Paragraphs 11 - 13 but EPA determines that the Respondent: a) made good faith and timely efforts to complete the project, and, b) certifies, with supporting documentation, the amount of eligible costs expended on the SEP,

Respondent shall pay a stipulated penalty that is the difference between the eligible SEP costs incurred by Respondent and \$20,000.

- v. If Respondent halts or abandons work on the SEP as described in Paragraphs 11 - 13, above, after the Work Plan has been approved by EPA and prior to its completion, Respondent shall pay a stipulated penalty of \$10,000 and shall also pay the difference between the eligible costs incurred and \$20,000.
 - vi. For failure to submit the SEP Completion Report required by Paragraph 19, above, Respondent shall pay a stipulated penalty in the amount of \$50 for each day after the report was due until the report is submitted.
 - vii. For failure to submit any other report required by Paragraph 20, above, Respondent shall pay a stipulated penalty in the amount of \$75 for each day after the report was originally due until the report is submitted.
- b. 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.
 - c. Respondent shall pay stipulated penalties within thirty (30) 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."

Such check shall be mailed to:

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

Respondent shall also send copies of each payment 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, NY 10007

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.

Interest and late charges on stipulated penalties shall be paid as stated in Paragraph 9 above.

V. C. General Provisions

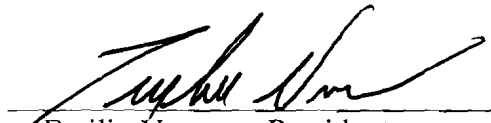
27. Respondent shall transmit all notices, reports and submissions required by this Consent Agreement and Final Order, and shall transmit objections pursuant to Paragraph 25.b. (if any), by first class mail to:

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

28. 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 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.
29. 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.
30. 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 in connection with the SEP undertaken pursuant to this Agreement.
31. This Consent Agreement and Final 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 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.

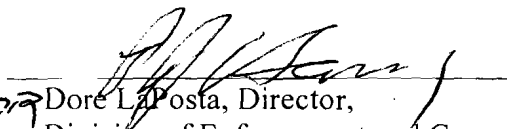
32. Each undersigned representative of the parties to this Consent Agreement certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this Consent Agreement and to execute and legally bind that party to it.
33. Each party shall bear its own costs and attorney's fees in connection with the action resolved by this Consent Agreement and Order.

RESPONDENT:

BY: 
Emilio Venegas, President
Venegas Construction Corporation

DATE: Sept 15, 2009

COMPLAINANT:


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

DATE: 11/19/09

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.

11/23/09
Date


George Pavlou
Acting Regional Administrator
United States Environmental
Protection Agency-Region 2
290 Broadway
New York, NY 10007-1866