

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

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In the Matter of:)

Puerto Rico Aqueduct and Sewer Authority,)

Respondent.)

Docket No. CAA-02-2012-1213

CONSENT AGREEMENT AND
FINAL ORDER

Under Section 113 of the Clean Air
Act, 42 U.S.C. §7413

CONSENT AGREEMENT

PRELIMINARY STATEMENT

Complainant, the United States Environmental Protection Agency ("EPA"), Region 2, and Respondent, Puerto Rico Aqueduct and Sewer Authority, by their undersigned representatives, hereby consent and agree as follows:

REGIONAL HEARING
CLERK
2013 AUG 28 P 3:22
U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II

1. EPA initiated this proceeding for the assessment of civil penalties pursuant to Section 113(d) of the Clean Air Act ("CAA"), 42 U.S.C. § 7413(d), by issuing an Administrative Complaint, Docket No. CAA-02-2012-1213 (the "Complaint"), against Respondent on September 20, 2012.
2. Respondent is the owner and/or operator of the Ponce Regional Wastewater Treatment Plant located at PR Road #2, Km 259.3, Ponce, Puerto Rico ("Ponce Facility"), the Mayaguez Regional Wastewater Treatment Plant located at PR Road #342, Km 0.5, Mayaguez, Puerto Rico ("Mayaguez Facility"), and the Puerto Nuevo Regional Wastewater Treatment Plant located at Ave. Kennedy, Km 2.0 Calle Marginal, San Juan, Puerto Rico ("Puerto Nuevo Facility"), collectively, the "Facilities."
3. The Complaint charged Respondent with one count for violations of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), and the regulations promulgated thereunder at 40 C.F.R. Part 68, for failure to fully comply with the requirements for a Program 3 risk management plan at the Facilities.

GENERAL PROVISIONS

4. As required by 40 C.F.R. § 22.18(b), for the purposes of this proceeding, Respondent:
 - a. Admits the jurisdictional allegations set forth in the Complaint;

- b. Neither admits nor denies the factual allegations contained in the Complaint;
- c. Consents to the assessment of the civil penalty specified in the Settlement section below, on the terms specified in that section;
- d. Consents to the issuance of the Consent Agreement and attached Final Order; and
- e. Waives any right to contest the Complaint's allegations and any right to appeal the attached Final Order.

SETTLEMENT

5. Pursuant to Section 113(d) of the CAA, Respondent agrees to pay a civil penalty of **ninety nine thousand seven hundred dollars (\$99,700.00)**, as described below. Such payment shall be made by cashier's or certified check or by Electronic Fund Transfer ("EFT"). Payment of the penalty must be received by EPA **on or before forty-five (45) calendar days** after the date of signature of the Final Order at the end of this document (hereinafter referred to as the "due date").

If the payment is made by check, then the check shall be made payable to the "Treasurer, United States of America" and shall be mailed to:

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

The check shall be identified with a notation listing the following: "In the Matter of Puerto Rico Aqueduct and Sewer Authority" and shall bear thereon "Docket Number CAA-02-2012-1213." Respondent shall simultaneously furnish proof that such payment has been made to:

Jocelyn Scott, Esq.
Assistant Regional Counsel
U.S. Environmental Protection Agency
290 Broadway, 17th Floor
New York, New York 10007-1866

and

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

If Respondent chooses to make the payment by EFT, then Respondent shall provide the following information to its remitter bank:

- a. Amount of Payment: \$99,700.00
- b. SWIFT address: FRNYUS33, 33 Liberty Street, New York, NY 10045
- c. Account Code for Federal Reserve Bank of New York receiving payment: 68010727
- d. Federal Reserve Bank of New York ABA routing number: 021030004
- e. Field Tag 4200 of the Fedwire message should read: "D 68010727 Environmental Protection Agency"
- f. Name of Respondent: Puerto Rico Aqueduct and Sewer Authority
- g. Case Number: CAA-02-2012-1213

If payment is made by EFT, Respondent shall simultaneously send a letter to each of the above addressees which references the date of the EFT, the payment amount, the name of the case, the case number, and Respondent's name and address.

6. If Respondent fails to make full and complete payment of the civil penalty that it is required to pay by this CA/FO, this case may be referred by EPA to the United States Department of Justice and/or the United States Department of the Treasury for collection. In such an action, pursuant to Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5), and 31 U.S.C. § 3717, Respondent shall pay the following amounts:
 - a. Interest. If Respondent fails to make payment, or makes partial payment, any unpaid portion of the assessed penalty shall bear interest at the rate established pursuant to 31 U.S.C. § 3717 and 26 U.S.C. § 6621 from the payment due date.
 - b. Handling Charges. Pursuant to 31 U.S.C. § 3717(e)(1), a monthly handling charge of fifteen dollars (\$15.00) shall be paid if any portion of the assessed penalty is more than thirty (30) days past the payment due date.
 - c. Attorney Fees, Collection Costs, Nonpayment of Penalty. If Respondent fails to pay the amount of an assessed penalty on time, pursuant to Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5), in addition to such assessed penalty and interest and handling assessments, Respondent shall also pay the United States' enforcement expenses, including but not limited to attorney fees and costs incurred by the United States for collection proceedings, and a quarterly non-payment penalty for each calendar quarter during which such a failure to pay persists. Such non-payment penalty shall be ten percent (10%) of the aggregate amount of Respondent's outstanding penalties and non-payment penalties accrued from the beginning of such quarter.

7. The penalties specified in Paragraph 5, above, shall represent civil penalties assessed by EPA and shall not be deductible for purposes of State or Federal taxes.
8. Respondent certifies that it has already come into compliance at the Facilities regarding some of the violations of Section 112(r)(7) of the CAA and 40 C.F.R. Part 68 alleged in the Complaint. Within 180 days of the date of signature of the Final Order at the end of this document, Respondent agrees to come fully into compliance regarding the remainder of the violations described in paragraphs 28, 31, 36, 37, 47, 49, 55, 57, 71, 72, 76, and 77 of the Complaint. Note: The citation referenced in paragraph 77 of the Complaint is incorrect. The correct citation is 40 CFR 68.95(a)(4).
9. Respondent shall submit a report to EPA which will include information and documentation demonstrating compliance at the Facilities regarding all the violations alleged in the Complaint, including information showing the actions taken to correct all violations alleged in the Complaint, and an estimate of the costs of the actions taken to come into compliance. This report shall be submitted to EPA for approval within 180 days of the date of signature of the Final Order at the end of this document. The report shall include the following certification, signed by an officer of Respondent:

I 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.

The report shall be sent to:

Jocelyn Scott, Esq.
U.S. Environmental Protection Agency
Office of Regional Counsel
290 Broadway - 17th Floor
New York, New York 10007-1866
scott.jocelyn@epa.gov

and

Francesco Maimone
U.S. Environmental Protection Agency
Emergency and Remedial Response Division
Response and Prevention Branch
2890 Woodbridge Avenue
Edison, New Jersey 08837.
maimone.francesco@epa.gov

10. EPA will review the report and documentation submitted pursuant to Paragraphs 8 and 9, above. If EPA determines that the actions taken or documentation provided are insufficient to demonstrate compliance with the requirements of Section 112(r)(7) of the CAA and 40 C.F.R. Part 68 at any of the Facilities, EPA shall so notify Respondent in writing, and Respondent shall undertake all actions directed by EPA in its written comments within thirty (30) days of receipt of EPA's comments.
11. If Respondent fails to comply with any of the requirements specified in Paragraphs 8 through 10 of this Consent Agreement within the time periods required, Respondent shall be liable to EPA for a stipulated penalty, commencing on the first day of noncompliance and continuing through the final date of completion of the activity. Reasonable extensions of time may be granted where practicable by EPA for good cause, provided Respondent notifies EPA in writing at least five (5) working days prior to the due date of the facts that it contends constitute good cause for an extension of the due date. Simultaneous penalties shall accrue for separate violations of this Consent Agreement.
12. Stipulated penalties for noncompliance with any of the requirements of Paragraphs 9 through 10 herein shall accrue in the amounts specified below:

Period of Noncompliance	Penalty Per Day
1 st through 30 th day	\$250
31 st through 60 th day	\$500
61 st day and beyond	\$750

13. The Director of the Emergency and Remedial Response Division may, in his or her sole discretion, reduce or waive any stipulated penalty that has accrued if Respondent has in writing demonstrated to EPA's satisfaction good cause for such action by EPA.
14. Respondent shall pay stipulated penalties that have accrued, as discussed in Paragraphs 11 and 12, above, within thirty (30) calendar days of Respondent's receipt from EPA of a written demand for payment of the penalties. All stipulated penalty payments shall be made in accordance with the payment instructions contained in Paragraph 5, above. Stipulated penalties shall accrue as provided above, regardless of whether EPA has notified Respondent of the violation or has made a demand for payment, but need only be paid upon demand. Failure to pay any stipulated penalty demanded by EPA according to the above provisions, may result in the referral of this matter to the United States Department of Justice or the United States Department of the Treasury for collection or other appropriate action.
15. Full and complete satisfaction of the requirements of this Consent Agreement and Final Order shall resolve Respondent's liability for Federal civil penalties for the violations and facts alleged in the Complaint.
16. 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. This CA/FO

shall not affect the right of the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. 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.

17. This CA/FO and any provision herein is not intended to be an admission of liability in any adjudicatory or administrative proceeding except in an action, suit, or proceeding to enforce this CA/FO or any of its terms and conditions.
18. Respondent explicitly waives any right to request a hearing and/or contest any allegations in this Consent Agreement and explicitly waives any right to appeal the attached Final Order.
19. 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 Regional Administrator, Deputy Regional Administrator, or Regional Judicial Officer, where the purpose of such discussion, memorandum, or communication is to recommend that such official accept this Consent Agreement and issue the attached Final Order.
20. Each party hereto shall bear its own costs and attorneys' fees in the action resolved by this CA/FO.
21. This CA/FO shall be binding on Respondent and its successors and assignees.
22. Each of the undersigned representatives to this CA/FO certifies that he or she is duly authorized by the party whom he or she represents to enter into the terms and conditions of the CA/FO and to execute and legally bind that party to it.
23. Respondent consents to service upon Respondent of a copy of this CA/FO by any EPA employee, in lieu of service made by the Regional Hearing Clerk.

In the Matter of Puerto Rico Aqueduct and Sewer Authority, Docket No. CAA-02-2012-1213

For Respondent:
Puerto Rico Aqueduct and Sewer Authority



Signature

Date: 20/Ago/2013

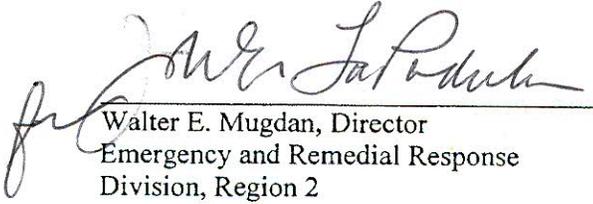
Alberto M. Lázaro Castro, P.E., BCEE
Name (Printed or Typed)

Executive President
Title (Printed or Typed)



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For Complainant:
U.S. Environmental Protection Agency

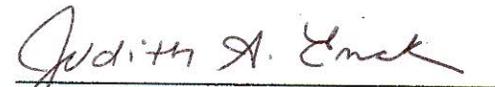

Walter E. Mugdan, Director
Emergency and Remedial Response
Division, Region 2

Date: 8/22/13

FINAL ORDER

The Regional Administrator of the U.S. EPA, Region 2, ratifies the foregoing Consent Agreement. The Consent Agreement entered into by and between the parties is hereby approved, incorporated herein, and issued, as a Final Order.

8/22/13
DATE


Judith Enck
Regional Administrator
U.S. EPA, Region 2

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

In the Matter of

Puerto Rico Aqueduct and Sewer Authority

Respondent

Docket No. CAA-02-2012-1213

CERTIFICATE OF SERVICE

I certify that I have this day caused to be sent the foregoing **Consent Agreement and Final Order**, dated August 22, 2013, and bearing the above-referenced docket number, in the following manner to the respective addressees below:

original and copy by overnight mail to:

Sybil Anderson
Headquarters Hearing Clerk
U.S. EPA, Office of Administrative Law Judges
1099 14th Street, NW
Suite 350W, Franklin Court
Washington, DC 20005

copy by email to:

M. Lisa Buschmann, Administrative Law Judge
U.S. EPA, Office of Administrative Law Judges
1099 14th Street, NW
Suite 350W, Franklin Court
Washington, DC 20005
oaljfiling@epa.gov

copy by email to:

Puerto Rico Aqueduct & Sewer Authority
P.O. Box 7066
San Juan, Puerto Rico 00916-7066
Attn: Jorge Marrero Narváez
Jorge.MARRERO@acueductospr.com

8/22/13
Date

Jeha Lewis
Name

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