

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
Region 2**

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II
2009 FEB 24 PM 10:56
REGIONAL HEARING
CERK

IN THE MATTER OF:

Caram Construction, Inc.,

Respondent

La Alborada Residential Development

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-02-2009-3452

Complainant, the United States Environmental Protection Agency ("EPA"), having issued the Complaint herein on June 2, 2009 against Respondent, Caram Construction, Inc., ("Respondent"), and

Complainant and Respondent having agreed that settlement of this matter 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. PRELIMINARY STATEMENT

1. EPA initiated this proceeding for the assessment of a civil penalty, pursuant to Section 309 of the Clean Water Act, 33 U.S.C. § 1319.
2. The Complaint alleges that storm water runoff with sediments was being discharged from La Alborada Residential Development, (Respondent's "project") into the Hicatea Creek, a water of the United States.

3. Respondent's Storm Water Pollution Prevention Plan ("SWPPP") for the project failed to provide for a combination of sediment and erosion control measures to achieve maximum pollutant removal as required in Part 3.13 of the "NPDES General Permit for Discharges from Large and Small Construction Activities" ("CGP" or "construction permit").
4. The Complaint alleges that Respondent failed to:
 - a) implement erosion, sediment and storm water management controls at the development, as required in Part 3 of the construction permit;
 - b) conduct inspections required in accordance with Part 3.10 of the CGP;
 - c) provide temporary stabilization to slopes and other areas where cleaning, grading and excavation activities occurred at the site, in accordance with Part 3.13.D of the CGP;
 - d) provide adequate sediment and erosion control measures in accordance with the SWPPP and Part 3.13.E of the CGP;
 - e) provide and maintain adequate storm water management practices, such as a sedimentation basin as required by its SWPPP and Part 3.13 of the CGP; and
 - f) remove control off-site accumulations of sediment that impacted the Hicatea Creek. Such sediment accumulations were not removed at a frequency that would help minimize off-site impacts as required by Section 3.13.B of the CGP.
5. EPA notified the Commonwealth of Puerto Rico regarding this action and offered an opportunity for the Commonwealth of Puerto Rico to confer with EPA on the proposed penalty assessment, pursuant to 40 CFR Part 22.
6. This action was public noticed. No public comment was received.
7. Respondent filed an Answer and requested a hearing in this matter.
8. 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.
9. Respondent stipulates that EPA has jurisdiction over the subject matter alleged in the Complaint and that the Complaint 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 contained in the Complaint, consents to the terms of this Consent Agreement and Final Order.

10. 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.

II. TERMS OF SETTLEMENT

11. Pursuant to § 309(g) of the Clean Water Act, 33 U.S.C. § 1319(g), the nature of the violations, and other relevant factors, EPA has determined that an appropriate civil penalty to settle this action is in the amount of **FORTY-SIX THOUSAND AND SEVEN HUNDRED DOLLARS (\$46,700)**.
12. 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.

III. PAYMENT OF PENALTY

11. Respondent shall pay the penalty of FORTY-SIX THOUSAND AND SEVEN HUNDRED DOLLARS (\$46,700) in the following manner:
 - a. Within thirty days (30) from the date the final Order is signed Respondent shall pay **\$16,700**,
 - b. Within sixty days (60) from the date the Final Order is signed, respondent shall pay **\$15,000** and
 - c. Within ninety days (90) from the date the Final Order is signed, Respondent shall make the final payment of **\$15,000**.
12. Respondent shall make each payment 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 or by wire transfer. The dates by which payments must be received shall hereafter be referred to as the "due dates". Respondent shall perform payments pursuant to the following:

CHECK PAYMENTS

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

WIRE TRANSFERS

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York NY 10045

Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"

OVERNIGHT MAIL

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

Respondent shall also send copies of each payment to each of the following:

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

and

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


- 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 payments are 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 dates 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 dates;
 - c. in addition, pursuant to Section 309(g)(9) of the Clean Water Act, 33 U.S.C. § 1319(g)(9), if payments are not received by the due dates, 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; and
 - d. Respondent also may be required to pay attorneys fees and costs for collection proceedings in connection with nonpayment.
13. 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.

IV. General Provisions

14. 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.


15. 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.
16. This Consent Agreement and Order shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit, nor shall it be construed to constitute EPA approval of the equipment or technology installed by Respondent, if any, in connection with the SEP undertaken pursuant to this Agreement.
17. 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.
18. 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.
19. 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: 
NAME: CARLOS LOPEZ
TITLE: CEO
Caram Construction, Inc.

DATE: 01-20-2010

COMPLAINANT:

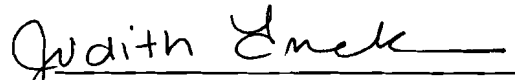
BY: 
Carl Axel-Peter Soderberg
Director
Caribbean Environmental Protection Division
U.S. EPA, Region 2

DATE: 2-9-2010

III. FINAL ORDER

The Director of the Caribbean Environmental Protection Division 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.

2-16-10
Date


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

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 2

In The Matter of

Caram Construction, Inc.

Respondent

La Alborada Residential Development

DOCKET NO. CWA-02-2009-3452

CERTIFICATE OF SERVICE

I certify that, on the date noted below, I served the foregoing fully executed Consent Agreement and Final Order, bearing the above-referenced docket number, in the following manner.

Copy by Certified Mail
Return Receipt Requested:

Fernando Molini-Vizcarrondo, Esq.
PMB 604
89 De Diego Avenue, Suite 105
San Juan, PR 00927

Original and One Copy
By Federal Express:

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

Date: 2/23/10



ORC/CT Administrative Assistant