

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II
2010 APR 16 PM 2:11
REGIONAL HEARING
CLERK

In the Matter of:

MUNICIPALITY OF TOA ALTA
P. O. Box 82
Toa Alta, Puerto Rico 00954-0082

RESPONDENT

Proceeding pursuant to Section 309(g)(2)(B) of
the Clean Water Act, 33 U.S.C. § 1319(g)

**PROCEEDING TO ASSESS
CLASS II CIVIL PENALTY**

**DOCKET NUMBER
CWA-02-2009-3459**

CONSENT AGREEMENT AND FINAL ORDER

Complainant, the United States Environmental Protection Agency (EPA), having issued the Complaint herein on March 30, 2009, against the Municipality of Toa Alta (Respondent), and

Complainant and Respondent (collectively, the Parties) having agreed that settlement of this matter is in the public interest, and that entry of this Consent Agreement and Final Order (CA/FO) 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(g)(2)(B) of the Clean Water Act (the Act), 33 U.S.C. § 1319(g)(2)(B).
2. On March 30, 2009, EPA issued a Complaint against Respondent alleging violations of Sections 308 and 402 of the Act, 33 U.S.C. §§ 1318 and 1342, for its failure to submit a Notice of Intent (NOI) requesting permit coverage under the National Pollutant Discharge Elimination System General Permit for Discharges from Small Municipal Separate Storm Sewer Systems (NPDES MS4 General Permit) from the Municipality of Toa Alta's Small MS4 into the Río La Plata, a water of the United States.

3. The Complaint was based on Administrative Compliance Order (ACO), Docket Number CWA-02-2008-3125, which was issued on February 16, 2008, and required Respondent to among others: (a) submit a NOI within ten (10) days from the receipt of the ACO; (b) develop, submit and implement a Storm Water Management Plan (SWMP) within ninety five (95) calendar days from the receipt of the ACO; and (c) submit a compliance cost report.
4. On October 2, 2009, Respondent submitted a NOI requesting coverage under the NPDES MS4 General Permit.
5. On December 14, 2009, EPA, Region 2, assigned NPDES MS4 General Permit tracking number PRR040052 to Respondent.
6. Since October, 2009, the Parties worked together in order reach a prompt, amicable resolution to this matter.
7. 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 C.F.R. Part 22.
8. The Complaint was public noticed. No public comment was received.

II. TERMS OF THE SETTLEMENT

9. This CA/FO shall apply to and be binding upon Respondent, its officers, directors, employees, successors and assigns, including, but not limited to, subsequent purchasers.
10. 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.
11. 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 CA/FO.
12. 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.

III. PAYMENT OF PENALTY

13. Pursuant to Section 309(g) of the Clean Water Act, 33 U.S.C. § 1319(g), based upon 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 THOUSAND DOLLARS (\$40,000.00).

14. Respondent agrees to pay the above stated amount in *eight payments*, as follows:
- a. an initial payment of FIVE THOUSAND DOLLARS (\$5,000.00) shall be made ninety (90) calendar days from the date that the attached Final Order is signed by the Regional Administrator of EPA Region 2;
 - b. a second payment of FIVE THOUSAND DOLLARS (\$5,000.00) shall be made one hundred and eighty (180) calendar from the date that the attached Final Order is signed by the Regional Administrator of EPA Region 2;
 - c. a third payment of FIVE THOUSAND DOLLARS (\$5,000.00) shall be made within two hundred and seventy (270) calendar days from the date that the attached Final Order is signed by the Regional Administrator of EPA Region 2;
 - d. a fourth payment of FIVE THOUSAND DOLLARS (\$5,000.00) shall be made within three hundred and sixty (360) calendar days from the date that the attached Final Order is signed by the Regional Administrator of EPA Region 2;
 - e. a fifth payment of FIVE THOUSAND DOLLARS (\$5,000.00) shall be made within four hundred and fifty (450) calendar days from the date that the attached Final Order is signed by the Regional Administrator of EPA Region 2;
 - f. a sixth payment of FIVE THOUSAND DOLLARS (\$5,000.00) shall be made within five hundred and forty (540) calendar days from the date that the attached Final Order is signed by the Regional Administrator of EPA Region 2;
 - g. a seventh payment of FIVE THOUSAND DOLLARS (\$5,000.00) shall be made within six hundred and thirty (630) calendar days from the date that the attached Final Order is signed by the Regional Administrator of EPA Region 2; and
 - h. an eighth and final payment of FIVE THOUSAND DOLLARS (\$5,000.00) shall be made within seven hundred and twenty (720) calendar days from the date that the attached Final Order is signed by the Regional Administrator of EPA Region 2.
15. For purposes of settlement, Respondent consents to the issuance of this CA/FO, to the payment of the civil penalty cited in the foregoing paragraph.

III. A. Penalty

16. Respondent shall pay the penalty, FORTY THOUSAND DOLLARS (\$40,000.00), 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.

CHECK PAYMENTS:

US Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. 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 Pearson
Telephone Number: (314) 418-4087.

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

Yolianne Maclay
Environmental Engineer
Multimedia Permits and Compliance Branch
Caribbean Environmental Protection Agency
U.S. Environmental Protection Agency, Region 2
Centro Europa Building, Suite 417
1492 Ponce de León Ave.
San Juan, PR 00907-4127
Fax number: (787) 289-7104,

Roberto M. Durango, Esq.
Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 2
Centro Europa Building, Suite 417
1492 Ponce de León Ave.

San Juan, PR 00907-4127
Fax number: (787) 729-7748,

and

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

17. Payments must be received at the above address in accordance with the payment schedule established in paragraph 14. 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 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 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 Act, 33 U.S.C. § 1319(g)(9), if payments are 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 may also be required to pay attorneys fees and costs for collection proceedings in connection with nonpayment.
18. 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

19. This CA/FO is being voluntarily entered into by the parties in full and final settlement of Respondent's liability for federal civil penalties for the violations and facts alleged in the Complaint and this CA/FO.
20. Respondent has read the Consent Agreement, understands its terms, finds it to be reasonable and consents to its issuance and its terms. Respondent consents to the issuance of the accompanying Final Order. Respondent agrees that all terms of settlement are set forth herein.
21. Respondent explicitly and knowingly consents to the assessment of the civil penalty as set forth in this Consent Agreement and agrees to pay the penalty in accordance with the terms of this Consent Agreement.
22. In computing any period of time under this Consent Agreement, where the last day would fall on a Saturday, Sunday, federal or Commonwealth holiday, the period shall run until the close of business of the next working day.
23. The provisions of this Consent Agreement shall be binding upon Respondent, its officials, authorized representatives and successors or assigns, including but not limited to, subsequent purchasers.
24. Respondent knowingly and explicitly waives its right under Section 309(g)(2), (8) of the Act, 33 U.S.C. § 1319(g)(2), (8), to request or to seek any hearing on or judicial review of any of the allegations herein asserted, on this Consent Agreement or the Findings of Fact and Conclusions of Law herein, or on the accompanying Final Order.
25. 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 of EPA, or the Director of CEPD 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.
26. Issuance of the CA/FO does not constitute a waiver by EPA of its right to enforce the substantive legal requirements underlying this penalty assessment, either administratively or judicially pursuant to Section 309(a)–(c) of the Act, 33 U.S.C. §§ 1319(a)–(c) for violations that occur subsequent to the date of this Final Order. Pursuant to Section 309(g)(7) of the Act, 33 U.S.C. § 1319(g)(7), issuance or compliance with this CA/FO does not waive, extinguish or otherwise

affect Respondent's obligation to comply with all applicable requirements of the Act, of regulations promulgated thereunder, and of any legal order or permit issued thereunder.

27. Each undersigned signatory to this Consent Agreement certifies that he or she is duly and fully authorized to enter into and ratify this Consent Agreement and all the terms and conditions set forth in this Consent Agreement.
28. Each party hereto agrees to bear its own costs and fees in this matter.
29. Respondent consents to service upon Respondent by a copy of the CA/FO by an EPA employee other than the Regional Hearing Clerk.
30. In any collection action, the validity, amount, and appropriateness of the penalty and of this CA/FO shall not be subject to review.

FOR RESPONDENT:

BY:

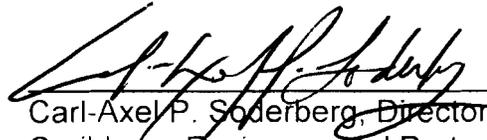

Authorized Signature

NAME: Honorable Luis R. Collazo Rivera
Mayor
Municipality of Toa Alta
P. O. Box 82
Toa Alta, PR 00954-0082

TITLE: Mayor

DATE: 03/29/2010

FOR COMPLAINANT:

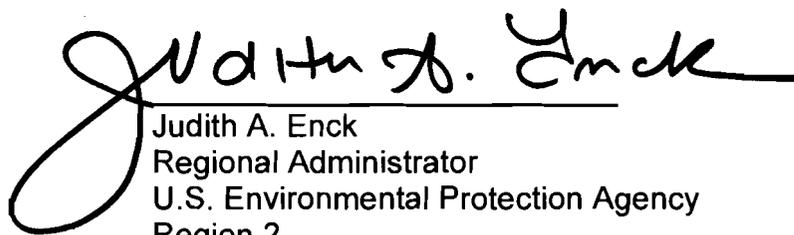


Carl-Axel P. Soderberg, Director
Caribbean Environmental Protection Division
U.S. Environmental Protection Agency,
Region 2
Centro Europa Building, Suite 417
1492 Ponce de León Avenue
San Juan, PR 00907-4127

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. Environmental Protection Agency, Region 2, New York, New York.

DATED: 4/16/10



Judith A. Enck
Regional Administrator
U.S. Environmental Protection Agency
Region 2
290 Broadway, Floor 26
New York, NY 10007-1866

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the Clean Water Act, 33 U.S.C. § 1319(g)

PREHEARING EXCHANGE

DOCKET NUMBER
CWA-02-2009-3459

CERTIFICATE OF SERVICE

I certify that I have this day caused to be sent the foregoing **Consent Agreement and Final Order** in the following manner to the respective addressees below:

Copy by **Fax and Federal Express** to:

Judge William B. Moran
U.S. Environmental Protection Agency
Office of Administrative Law Judges
Franklin Court Building
1099 14th Street, N.W. Suite 350
Washington, D.C. 20460
Ph: 202.564.6255 / Fax (202) 565-0044

Original and copy by **Hand** to:

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

Copy by **Certified Mail Return Receipt** to:

Attorneys for Respondent:

Hans Valiente, Esq. and Ricardo Robles Caraballo, Esa.
Counsel, Municipality of Toa Alta
Lcdo. Ricardo Robles Caraballo & Asociados
PO Box 2130
Bayamón, Puerto Rico 00960

Date: 4-16-2010

