

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region 2

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II
2012 SEP 11 A 10 50
REGIONAL HEARING
CLERK

In the Matter of:

Municipality of Moca
P.O. Box 1571
Moca, Puerto Rico 00676-1571

Docket No. CAA-02-2011-1216

Respondent

Informative Motion

COMES NOW Complainant, the U.S. Environmental Protection Agency ("EPA" or "Complainant"), and the Municipality of Moca ("Respondent") through the undersigned attorneys, and respectfully allege, pray and request as follows:

1. Complainant informs this Honorable Court that the process of concurrence, which involves the signature of several persons both in Puerto Rico and New York, has been finalized.
2. Complainant herein submits the fully executed Consent Agreement and Final Order (CA/FO).

Certificate of Service

I hereby certify that a true copy of this Motion was served to: Alberto Ramos, Esq., P.O. Box 750, Mercedita, Puerto Rico, 00715-0750.

Respectfully submitted, in Guaynabo, Puerto Rico, this 7th day of September, 2012.



Carolina Jordán-García, Esq.
Office of Regional Counsel - Caribbean Team
U.S. Environmental Protection Agency - Region 2
City View Plaza II - Suite 7000
48 Rd. 165 Km. 1.2
Guaynabo, PR 00968-8069 Fax (787) 729-7748
jordan-garcia.carolina@epa.gov

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2**

In the Matter of:

Municipality of Moca
P.O. Box 1571
Moca, Puerto Rico 00676-1571

Respondent

**Consent Agreement and
Final Order**

Docket No.: CAA-02-2011-1216

Preliminary Statement

The United States Environmental Protection Agency ("EPA") issues this Consent Agreement and the attached Final Order under the authority of the Clean Air Act ("CAA" or "Act"), 42 U.S.C. § 7401 *et seq.*, at Section 113(d), 42 U.S.C. § 7413(d), and in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22 ("CROP"). The Complainant in this matter is the Director of the Caribbean Environmental Protection Division ("Director"), EPA, Region 2. The Complainant is delegated the authority to issue CAA Section 113(d) Complaints and Consent Agreements on behalf of EPA Region 2, the Commonwealth of Puerto Rico, and the Territory of the U.S. Virgin Islands. The Regional Judicial Officer of EPA Region 2 is duly delegated the authority to execute CAA Section 113(d) Final Orders.

On September 29, 2011, EPA issued a Complaint and Notice of Opportunity to Request a Hearing CAA-02-2011-1216 (“Complaint”) to the Municipality of Moca (“Respondent”) for civil monetary penalties. In the Complaint, EPA alleged that Respondent violated 42 U.S.C. § 7414, (Section 114 of the Act), by failing to produce all of the information requested by EPA’s May 2009 Section 114 Information Request.

In accordance with 40 C.F.R. § 22.18(b), Complainant and Respondent have agreed to resolve the Complaint by entering into this Consent Agreement and by the issuance of a Final Order.

For purposes of this proceeding Respondent: (1) admits that EPA has jurisdiction over the subject matter as alleged herein; (2) neither admits nor denies specific factual allegations contained in the Complaint; (3) consents to the terms of agreement set forth in this Consent Agreement; and (4) consents to the issuance of the attached Final Order.

Consent Agreement

Based on the foregoing, and in accordance with federal laws and regulations, it is agreed that:

1. Pursuant to Section 113(d) of the Act, Respondent shall pay a civil penalty in the amount of THIRTY THOUSAND DOLLARS (\$30,000) in accordance with paragraphs 2 and 3 of this Consent Agreement.
2. Respondent shall make an initial penalty of TEN THOUSAND DOLLARS (\$10,000) within thirty (30) days from the date the Regional Judicial Officer approves and issues this Consent Agreement as a Final Order (“Effective Date”).
3. Thereafter, Respondent shall make two (2) payments of TEN THOUSAND

DOLLARS (\$10,000) each, in accordance with the following schedule:

- a. the first of the two (2) payments no later than the last day in the 6th month following the Effective Date;
 - b. the second and final payment no later than the last day of the 12th month following the Effective Date; and
4. Respondent shall make the penalty payments by cashiers' or certified checks, payable to the "Treasurer of the United States of America" or by wire transfers.
 5. Respondent shall clearly identify, with either form of payment, the name and docket number of this case, set forth in the caption on the first page of this document.
 - a. Respondent shall mail the checks to:

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

OVERNIGHT MAIL:

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

- b. Alternatively, Respondent shall make wire transfers to:

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."

6. Within five (5) days of making each payment, Respondent shall send a copy of each check or a record of each wire transfer, identifying whether the payment is the first, second or third payment to each of the following individuals:

Carolina Jordán-García, Esq.
Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 2
City View Plaza II - Suite 7000
48 Rd. 165 Km. 1.2
Guaynabo, PR 00968-8069

and

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

7. If Respondent fails to make full and complete payment of the \$30,000 penalty that is required by this Consent Agreement and Final Order, 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, as set forth in this Consent Agreement, 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 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 nonpayment penalty for each quarter during which such a failure to pay persists. Such nonpayment penalty shall be ten percent of the aggregate amount of Respondent's outstanding penalties and nonpayment penalties accrued from the beginning of such quarter.
8. This Consent Agreement and attached Final Order constitute a settlement by EPA of all claims for civil penalties pursuant to the Clean Air Act for violations alleged in the Complaint. Nothing in this Consent Agreement and attached Final Order is intended to, nor shall be construed to operate in any way to resolve any criminal liability of the Respondent, or to affect the right of the United States to pursue appropriate injunctive or other equitable relief for any violations of law. Compliance with this Consent Agreement and attached 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 the Respondent to comply with such laws and regulations.
9. This Consent Agreement is being entered into voluntarily and knowingly by the parties in full settlement of Respondent's alleged violations of the Act, set forth in the Complaint.
10. Respondent has read the Consent Agreement, finds it reasonable and consents to the terms and issuance as a Final Order.

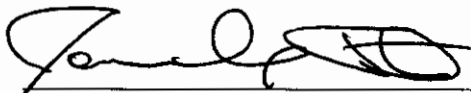
11. Respondent explicitly waives its right to request a hearing and/or contest allegations in this Consent Agreement and explicitly waives its right to appeal the attached Final Order.
12. Respondent waives any right it may have pursuant to 40 C.F.R. § 22.8 to be present during discussions with, or to be served with and to reply to any memorandum or communication addressed to, the Presiding 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.
13. Each party to this Consent Agreement shall bear its own costs and attorneys fees in the action resolved by this Consent Agreement and attached Final Order.
14. This Consent Agreement shall be binding on Respondent and its successors and assignees.
15. Each of the undersigned representative(s) to this Consent Agreement certifies that he or she is duly authorized by the party whom he or she represents to enter into the terms and conditions of this Consent Agreement and bind that party to it.

FOR RESPONDENT:

BY: Jose Enrique Gub's Pateu
José E. Avilés, Mayor
Municipality of Moca
P.O.Box1571
Moca, Puerto Rico

DATE: 16/Agosto/2012

FOR COMPLAINANT:



José C. Font, Acting Director
Caribbean Environmental Protection Division
U.S. Environmental Protection Agency - Region 2
City View Plaza II - Suite 7000
48 Rd. 165 Km. 1.2
Guaynabo, PR 00968-8069

DATE: September 6, 2012

In the matter of Municipality of Moca
In a proceeding under Section 113(d) of the Clean Air Act, 42 U.S.C. § 7413(d)
CAA-02-2011-1216

FINAL ORDER

The Regional Judicial Officer of EPA, Region 2, concurs in the foregoing Consent Agreement, in the matter of Municipality of Moca, CAA-02-2011-1216. The Consent Agreement, entered into by the parties, is hereby approved and issued, as a Final Order, effective immediately.



Helen S. Ferrara
Regional Judicial Officer
U.S. Environmental Protection Agency - Region 2

Date: Spt 7, 2012

In the matter of Municipality of Moca.

In a proceeding under Section 113(d) of the Clean Air Act, 42 U.S.C. § 7413(d)

CAA-02-2011-1216

CERTIFICATE OF SERVICE

I certify that I have this day caused to be sent the foregoing *Consent Agreement and Final Order*, dated August , 2012, and bearing the above-referenced docket number, in the following manner to the respective addressees below:

Original and copy by facsimile, **Overnight Mail** to:

Karen Maples
Regional Hearing Clerk
Region II
U.S. Environmental Protection Agency
290 Broadway, 16th Floor
New York, NY 10007-1866
Fax (212) 637-3202

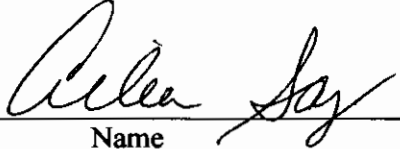
Copy by facsimile, **Certified Mail** and return receipt to:

Attorney for Respondent:
Alberto Ramos, Esq.
P.O. Box 750
Mercedita, Puerto Rico, 00715-0750

Copy by facsimile, **Overnight Mail** to:

Administrative Law Judge
Honorable Lisa Buschmann
Office of Administrative Law Judges
U.S. Environmental Protection Agency
1099 14th Street, N.W., Suite 350
Washington, D.C. 20005
Fax (202) 565-0044

9/7/2012
Date


Name