

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II
2009 FEB 27 PM 12: 12
REGIONAL HEARING
CLERK

IN THE MATTER OF:

INMOBILIARIA UNIBÓN, INC.
P.O. Box 9065983, San Juan,
Puerto Rico 00906

RESPONDENT

DOCKET NUMBER CWA-02-2008-3457

PROCEEDING PURSUANT TO SECTION
309(G) OF THE CLEAN WATER ACT,
33 U.S.C. § 1319(G), TO ASSESS
CLASS II CIVIL PENALTY

**Informative Motion and Second Request for Extension of Time to File
Executed Consent Agreement and Final Order**

COMES NOW Complainant, the U.S. Environmental Protection Agency (EPA) through the undersigned attorney, and respectfully alleges, prays and requests as follows:

On January 21, 2009, the Administrative Law Judge in this case, Honorable Barbara A. Gunning, granted Complainant and Inmobiliaria Unibón, Inc. (Respondent), (together, "the Parties") an extension of time of thirty (30) days to file the fully executed Consent Agreement and Final Order (CA/FO) for this case. The Parties have until February 27, 2009, to file the CA/FO.

As informed previously, the CA/FO's concurrence process involves the approval of several EPA officers located in Region 2's San Juan and New York offices for their review, concurrence and signature. The concurrence process has finalized in the San Juan office and the CA/FO is under review in the New York office pending for approval and signature of the Regional Administrator (see **Attachment 1** for a copy of the CA/FO that is under

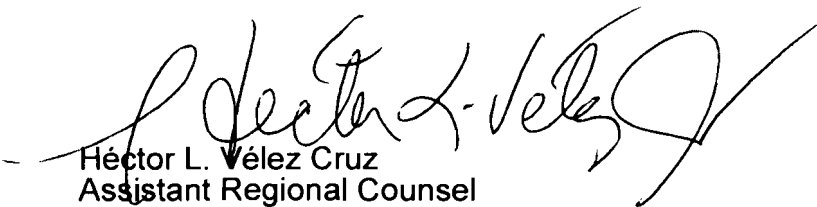
concurrence). Once this process concludes, the fully executed CA/FO will immediately be filed.

This Motion has been filed today in order to have the Administrative Law Judge, Honorable Barbara A. Gunning, take notice of the progress made in formalizing this agreement in a fully executed CA/FO.

In light of the above, due to the complexity of the review, concurrence, and approval process of the CA/FO within the Agency and the concurrence process between the Parties to finalize a fully executed CA/FO, and pursuant to Rule 22.7(b) of the Rules of Procedure, Complainant requests the Honorable Administrative Law Judge twenty (20) additional days, until March 19, 2009, in order to file the duly executed CA/FO and notify its execution to the Presiding Officer.

This Motion was discussed today, February 26, 2009, with Roberto Passalacqua, Esq., Respondent, who agreed to the filing of this motion.

Respectfully submitted, in San Juan, Puerto Rico, this 26th day of February, 2009.



Héctor L. Vélez Cruz
Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency, Region II
Centro Europa Bldg., Suite 207
1492 Ponce de León Ave.
San Juan, PR 00907-4127
(787) 977-5850 (office)
(787) 729-7748 (fax)
velez.hector@epamail.epa.gov

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION II

IN THE MATTER OF:

INMOBILIARIA UNIBÓN, INC.
P.O. Box 9065983, San Juan,
Puerto Rico 00906

RESPONDENT

DOCKET NUMBER CWA-02-2008-3457

MOTION

Certificate of Service

I certify that I have this day caused to be sent the foregoing *Informative Motion and Second Request for Extension of Time to File Executed Consent Agreement and Final Order*, dated February 26, 2009, 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 **Regular Mail** to:

Attorney for Respondent:
Roberto Passalacqua, Esq.
President Inmobiliaria Unibón, Inc.
P.O. Box 9065983
San Juan, P.R. 00906
Tel: (787) 462-5040
Fax: (787) 758-6967.


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

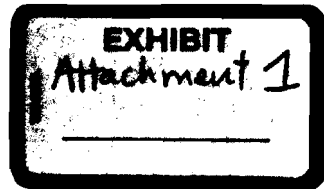
Administrative Law Judge:
Honorable Barbara A. Gunning
Office of Administrative Law Judges
U.S. Environmental Protection Agency
1099 14th Street, N.W., Suite 350
Washington, D.C. 20005
Fax (202) 565-0044.

Date

2/26/09

Name





**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
Region 2**

IN THE MATTER OF:

INMOBILIARIA UNIBÓN, INC.
P.O. Box 9065983, San Juan,
Puerto Rico 00906

RESPONDENT

**CONSENT AGREEMENT
AND
FINAL ORDER**

DOCKET NUMBER CWA-02-2008-3457

NPDES TRACKING NO. PRR10BC80

CONSENT AGREEMENT AND FINAL ORDER

Complainant, the United States Environmental Protection Agency (EPA), having issued the Complaint herein on May 12, 2008, against Respondent Inmobiliaria Unibón, Inc. (Respondent), and

Complainant and Respondent (together "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 of the Clean Water Act, 33 U.S.C. § 1319.
2. The Complaint alleges that Respondent:
 - a. did not submit an individual National Pollutant Discharge Elimination System (NPDES) permit application as required by 40 C.F.R. § 122.21, nor did it file a complete and accurate Notice of Intent form prior to commencement of construction activities as required by Part 2 of EPA's July 1, 2003 NPDES General Permit for Discharges from Large and Small Construction Activities" (the "Construction Permit"); and
 - b. discharged pollutants into waters of the United States without authorization of an NPDES permit.

3. 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.
4. This action was public noticed. No public comment was received.
5. On June 13, 2008, Respondent filed an Answer and requested a hearing in this matter.

II. TERMS OF SETTLEMENT

6. 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.
7. 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.
8. 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.
9. Pursuant to Section 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 EIGHTY-SEVEN THOUSAND DOLLARS (\$87,000.00).
10. 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 agrees to pay the above stated amount in *five payments*. The effective date of this Consent Agreement shall be the date the Regional Administrator signs the Final Order (due date) accompanying this Consent Agreement.

- a. An initial payment of SEVENTEEN THOUSAND FOUR HUNDRED DOLLARS (\$17,400.00) shall be made within forty-five (45) calendar days from the effective date of the Consent Agreement;
 - b. a second payment shall be made within one hundred sixty-five (165) calendar days from the effective date of the Consent Agreement in the amount of SEVENTEEN THOUSAND FOUR HUNDRED DOLLARS (\$17,400.00);
 - c. a third payment shall be made within two hundred eighty-five (285) calendar days from the effective date of the Consent Agreement in the amount of SEVENTEEN THOUSAND FOUR HUNDRED DOLLARS (\$17,400.00);
 - d. a fourth payment shall be made within four hundred five (405) calendar days from the effective date of the Consent Agreement in the amount of SEVENTEEN THOUSAND FOUR HUNDRED DOLLARS (\$17,400.00); and
 - e. a fifth and final payment shall be made within five hundred twenty-five (525) calendar days from the effective date of the Consent Agreement in the amount of SEVENTEEN THOUSAND FOUR HUNDRED DOLLARS (\$17,400.00).
12. Respondent shall pay the penalty of EIGHTY-SEVEN THOUSAND DOLLARS (\$87,000.00) by cashiers' or certified checks, 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. Respondent shall perform payment pursuant to the following:

CHECK PAYMENTS:

US 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 Pearson
314-418-4087.

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

Héctor Ortiz
Environmental Engineer
Multimedia, Permits and Compliance Branch
Caribbean Environmental Protection Agency
U.S. Environmental Protection Agency Region 2
1492 Ponce de León Ave. – 4th Floor
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 as set forth above, 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; 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.
14. 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.
15. This Consent Agreement and Order shall not relieve Respondent 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.
16. This CA/FO 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 CA/FO is intended to nor shall be construed to operate in any way to resolve any criminal liability of the Respondent. 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. 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.
18. Each party shall bear its own costs and attorney fees in connection with the action resolved by this Consent Agreement and Order.

RESPONDENT:

BY: _____
NAME OF SIGNATORY
TITLE OF SIGNATORY

DATE: _____

COMPLAINANT:

BY: _____
Carl-Axel P. Soderberg, Director
Caribbean Environmental Protection Division
U.S. Environmental Protection Agency - Region 2
Centra Europa Building, Suite 417
1492 Ponce de León Avenue
San Juan, Puerto Rico 00907-4127

DATE: _____

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.

Date

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