

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

IN THE MATTER OF:

Pepsi Cola Puerto Rico Bottling
Company LLC

RESPONDENT

MOTION

DOCKET NUMBER CWA-02-2010-3462

U.S. ENVIRONMENTAL
PROTECTION AGENCY
2011 SEP -7 A 11: 17
REGIONAL HEARING
CLERK

**Informative Motion Regarding Progress Made in Filing an Executed
Consent Agreement and Final Order and
Request for Extension of Time to File**

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

Pursuant to the July 19, 2011 Order issued by the Chief Administrative Law Judge, Honorable Susan L. Biro, Complainant and Pepsi Cola Puerto Rico Bottling Company LLC (Respondent) (together the "Parties") have until September 6, 2011, to file the fully executed Consent Agreement and Final Order (CAFO).

The CAFO has been set into concurrence for approval and signature. The Respondent and the Complainant have signed the CAFO (see *Attachment A, pages 15 and 16*). The concurrence process has finalized in EPA Region 2's San Juan office and

has been partially completed in EPA Region 2's New York office.

Due to weather conditions that prevailed in the New York area caused by Tropical Storm Irene early last week, the EPA Region 2's New York office remained closed on August 29, 2011 (the Agency was on alert and started taking all precautionary measures to address the emergency and its aftermath since Friday, August 26, 2011). Once the Agency resumed operations on Tuesday, August 30, 2011, EPA Region 2 staff focused on addressing matters related to the emergency.

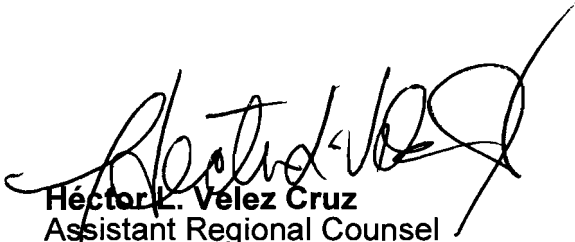
The CA/FO is in the Regional Administrator's office for concurrence, approval and signature of the Final Order (final stage). Once this process concludes, the fully executed CA/FO will immediately be filed.

This Motion has been filed today in order to have the Chief Administrative Law Judge, Honorable Susan L. Biro, take notice of the progress made in the approval process to file a fully executed CA/FO.

In light of the above, Complainant requests the Honorable Chief Administrative Law Judge to grant the Parties fifteen (15) additional days from the September 6, 2011 deadline, until September 21, 2011, in order to file the duly executed CA/FO and notify its execution to the Presiding Officer.

This Motion was discussed today, September 6, 2011, with Pedro Reyes Bibiloni, Esq., attorney for the Respondent, who agreed to the filing of this motion.

Respectfully submitted, in San Juan, Puerto Rico, this 6th day of September, 2011.



Héctor L. Velez 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@epa.gov

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION II

IN THE MATTER OF:

**Pepsi Cola Puerto Rico Bottling
Company LLC**

RESPONDENT

MOTION

DOCKET NUMBER CWA-02-2010-3463

CERTIFICATE OF SERVICE

I certify that I have this day caused to be sent the foregoing *Informative Motion Regarding Progress Made in Filing an Executed Consent Agreement and Final Order and Request for Extension of Time to File*, dated September 6, 2011, 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, **Overnight Mail** to:

Attorney for Respondent:
Pedro Reyes Bibiloni, Esq.
Fiddler González & Rodríguez, P.S.C
254 Muñoz Rivera Ave. Corner Chardon Street
Hato Rey, P.R. 00918
PO Box 363507
San Juan, P.R. 00936-3507
Telephone 787-759-3208
Mobile 787-379-9756
Fax 787-759-3108

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

Chief Administrative Law Judge
Honorable Susan L. Biro
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

Name

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
Region 2**

IN THE MATTER OF:

Pepsi Cola Puerto Rico Distributing LLC
P.O. Box 2600
Toa Baja, Puerto Rico 00949

RESPONDENT

**CONSENT AGREEMENT
AND
FINAL ORDER**

**DOCKET NUMBER
CWA-02-2010-3463**

CONSENT AGREEMENT AND FINAL ORDER

Complainant, the United States Environmental Protection Agency (EPA), having issued the Complaint herein on September 30, 2010, against Respondent Pepsi Cola Puerto Rico Distributing LLC (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 (CAFO) 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 violated Sections 301 and 402 of the Act, 33U.S.C. §§ 1311 and 1342, by failing to: develop a complete and adequate storm water pollution prevention plan (SWPPP) as required by the National Pollutant Discharge Elimination System (NPDES) Storm Water Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity (2000 MSGP); implement adequate and proper best management practices (BMPs) at its facility in Toa Baja, Puerto Rico, as required by the 2000 MSGP; maintain existing BMPs implemented at the facility as required by the 2000 MSGP; submit an individual NPDES permit application as required by 40 C.F.R. § 122.21, or file a complete and accurate Notice of

| CONCURRENCES | | | | | | | | | | | | |
|--------------|-----------|--------------|----------|------------|--------------|-----------|------------|-----------|---------|-----------|-----------------------------------|--|
| Name: | H. Vélez | | Init: | HV | | Date: | 08/23/2011 | | | Filename: | Pepsi CAFO 8-19-11 FINAL cnc.docx | |
| Symbol | CEPD/MPCB | CEPD/MPCB | ORC - CT | ORC - CT | CEPD - D | ORC | DRA | ORA | RA | | | |
| Surname | J. López | T. Rodríguez | H. Vélez | G. Carafio | C. Soderberg | E. Schaaf | G. Paviou | L. Plevin | J. Enck | | | |
| Date | 8/23/11 | 8/23/11 | 8/23/11 | 8/23/11 | 08/23/11 | | | | | | | |

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
Region 2**

IN THE MATTER OF:

Pepsi Cola Puerto Rico Distributing LLC
P.O. Box 2600
Toa Baja, Puerto Rico 00949

RESPONDENT

**CONSENT AGREEMENT
AND
FINAL ORDER**

**DOCKET NUMBER
CWA-02-2010-3463**

CONSENT AGREEMENT AND FINAL ORDER

Complainant, the United States Environmental Protection Agency (EPA), having issued the Complaint herein on September 30, 2010, against Respondent Pepsi Cola Puerto Rico Distributing LLC (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 (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 violated Sections 301 and 402 of the Act, 33U.S.C. §§ 1311 and 1342, by failing to: develop a complete and adequate storm water pollution prevention plan (SWPPP) as required by the National Pollutant Discharge Elimination System (NPDES) Storm Water Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity (2000 MSGP); implement adequate and proper best management practices (BMPs) at its facility in Toa Baja, Puerto Rico, as required by the 2000 MSGP; maintain existing BMPs implemented at the facility as required by the 2000 MSGP; submit an individual NPDES permit application as required by 40 C.F.R. § 122.21, or file a complete and accurate Notice of

Intent form seeking coverage under EPA's 2008 Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity (2008 MSGP) by the January 5, 2009 deadline; and for its illegal discharges of pollutants from its facility into waters of the United States without NPDES permit coverage.

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 C.F.R. Part 22.
4. This action was public noticed. No public comment was received.
5. On February 7, 2011, Respondent filed an answer to the Complaint, denying certain facts, admitting others, raising affirmative defenses and requesting a hearing in this matter.
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 CA/FO.
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.

II. TERMS OF SETTLEMENT

9. Pursuant to Section 309(g) of the Clean Water Act, 33 U.S.C. § 1319(g), the nature of the violations, Respondent's agreement to perform a Supplemental Environmental Project (SEP) with a total expenditure of not less than SIXTY ONE THOUSAND THREE HUNDRED TWENTY SEVEN DOLLARS (\$61,327.00), and other relevant factors, EPA has determined that an appropriate civil penalty to settle this action is in the amount of TWELVE THOUSAND (\$12,000.00) DOLLARS. Respondent shall pay this civil penalty in accordance with paragraphs 11-12 of this Consent Agreement.

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 and consents to the performance of the SEP.

II. A. Penalty

11. No later than sixty (60) days after the date signature on the Final Order (at the end of this document), Respondent shall pay an initial penalty of THREE THOUSAND DOLLARS (\$3,000.00).
12. Thereafter, Respondent shall make 3 payments of THREE THOUSAND DOLLARS (\$3,000.00) each, in accordance with the following schedule:
 - a. the first of the 3 payments no later than the last day in the 5th month following the Effective Date;
 - b. the second of the 3 payments no later than the last day of the 8th month following the Effective Date; and
 - c. the third and final payment no later than the last day of the 11th month following the Effective Date.
13. Respondent shall pay the penalty of TWELVE THOUSAND (\$12,000.00) by cashiers' or certified checks, payable to the "Treasurer of the United States of America" or by wire transfers.
14. 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."

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

Jaime López
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,

Héctor L. Vélez Cruz, Esq.
Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 2
1492 Ponce de León Ave., Suite 417
San Juan, PR 00907-4127
Fax number: (787) 729-7748,

and

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

Payments must be received at the above address as specified in paragraphs 11-12, above.

- c. 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.
 - d. Further, if the payment is 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.
 - e. 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.
 - f. Respondent also may be required to pay attorneys fees and costs for collection proceedings in connection with nonpayment.
15. The penalty to be paid is a civil penalty assessed by the EPA and shall not be deductible from the Respondents' federal or state taxes.

II. B. Supplemental Environmental Project

16. Respondent shall complete the following SEP, which the Parties agree is intended to secure significant environmental and public health protection and improvement:
- a. As part of this project Respondent shall provide septic tank emptying service and clean-up for two hundred nineteen (219) housing units located in Candelas Ward, a low income and disadvantaged rural community in Cidra, Puerto Rico (see more details in the *SEP Proposal* attached hereto

as Exhibit A and incorporated herein by reference).

The purpose of this pollution reduction project is to eliminate the adverse impacts to public health and the environment caused by the illegal discharge of pollutants (household and sanitary waste water) from the overflowing residential units' septic tanks into the Candelas Creek, which is tributary of the La Plata River, a drinking water supply for the Puerto Rico Aqueduct and Sewer Authority. This poses a risk to the health and wellbeing of the residents of the community and the environment at large. The elimination of these discharges will reduce the adverse impact and overall risk to public health and will enhance, restore and protect the condition of the ecosystem of the Candelas Creek and its immediate geographic area.

- b. **Within thirty (30) days from the effective date of this CA/FO,** Respondent shall submit a Work Plan to accomplish the SEP stated in Paragraph 16.a. above, which includes, at a minimum:
- i. no later than thirty (30) days of the effective date of this CA/FO, Respondent shall obtain all necessary federal, state and local governmental permits and other authorizations, if applicable, to implement the SEP;
 - ii. planning (including operation and maintenance activities) and design methodology for septic tank emptying service; and
 - iii. schedule for all activities required to fulfill the Work Plan such that all activities are completed including submission of the SEP Completion Report by no later than December 1, 2011.
- Respondent may consult with EPA while developing the Work Plan, to ensure timely submission of an approvable Work Plan, including submittal of drafts of the Work Plan to EPA for EPA's review and comments. EPA shall cooperate with Respondent in this consultation process providing input and recommendations to assist Respondent in achieving a Work Plan that is reasonably acceptable to EPA.
- c. If EPA approves the Work Plan required by Paragraph 16.b. above, EPA shall provide written notice of the Work Plan approval.
- d. If EPA approves the Work Plan required by Paragraph 16.b. above, the EPA- approved Work Plan shall be incorporated by this reference into this Compliance Agreement and Final Order and shall be binding and enforceable.

- e. In the event that EPA disapproves the Work Plan, in whole or in part, within twenty (20) calendar days of receipt of EPA's disapproval, Respondent shall revise and re-submit such work plan for EPA review and approval.
 - f. Upon re-submission of the Work Plan, EPA will review it and will inform Respondent, in writing, of EPA's approval, modification and approval, or disapproval of the re-submitted Work Plan, in whole or in part, and the specific grounds for any disapproval.
 - g. If EPA elects to request modifications of the resubmitted Work Plan, EPA will permit Respondent the opportunity to object in writing to the notification of deficiency given pursuant to this paragraph within twenty (20) calendar days of receipt of such notification. EPA and Respondent shall have an additional twenty (20) calendar days from the receipt by EPA of the notification of objection to reach agreement on changes necessary to the Work Plan. If agreement cannot be reached on any such issue within this twenty (20) calendar day period, EPA shall provide a written statement of its decision on the adequacy of the Work Plan, which decision shall be final and binding upon Respondent.
 - h. Stipulated penalties shall be payable to the United States in the amount of two hundred (\$200.00) dollars per day for failure to submit an adequate Work Plan as stated in paragraph 16.b above, beginning on the date that Respondent receives EPA's disapproval, in writing, of the resubmitted Work Plan.
 - i. Respondent shall begin implementation of the Work Plan within twenty (20) calendar days of receipt of EPA's approval of the Work Plan.
 - j. The SEP as described in Paragraph 16.a above shall be achieved in accordance with this CA/FO and the final EPA approved Work Plan.
 - k. The SEP shall be completed no later than December 1, 2011.
17. In the event that either of the parties proposes a change to the SEP and/or final EPA approved Work Plan, Respondent shall submit for EPA approval, modification and approval, or disapproval, a modified Work Plan incorporating such proposed changes following the procedures in paragraphs 16. b-i above.
18. **Federal Tax:** For Federal Income Tax purposes Respondent agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP.
19. **SEP Cost:** The total expenditure for the SEP, at cost to the Respondent, shall be not less than SIXTY ONE THOUSAND THREE HUNDRED TWENTY SEVEN

DOLLARS (\$61,327.00). Respondent shall include documentation of the expenditures made in connection with the SEP as part of the SEP Completion Report.

20. **Certification:** Respondent hereby certifies that, as of the date of this CA/FO, Respondent is not required to perform or develop the SEP by any federal, state or local law or regulation; nor is Respondent or Third Party (if applicable) required to perform or develop the SEP by any other agreement, grant or as injunctive relief in this or any other case. Respondent further certifies that it has not received, and is not presently negotiating to receive, credit in any other enforcement action for the SEP.

21. **SEP Completion Report:** Respondent shall submit a SEP Completion Report to EPA within sixty (60) calendar days after the completion of all activities that are part of the Work Plan. The SEP Completion Report shall contain the following information:
 - a. a detailed description of the SEP as implemented;
 - b. a map of the SEP as implemented;
 - c. a description of any operating problems encountered and the solutions thereto;
 - d. itemized costs
In itemizing its costs in the SEP Completion Report, Respondent shall clearly identify and provide acceptable documentation for all eligible SEP costs. Where the SEP Completion Report includes costs not eligible for SEP credit, those costs must be clearly identified as such. For purposes of this paragraph, "acceptable documentation" includes invoices, purchase orders, or other documentation that specifically identifies and itemizes the individual costs of the goods and/or services for which payment is being made. Canceled drafts do not constitute acceptable documentation unless such drafts specifically identify and itemize the individual costs of the goods and/or services for which payment is being made;
 - e. the SEP shall be completed no later than December 1, 2011;
 - f. certification that the SEP has been fully implemented pursuant to the provisions of this CA/FO and Work Plan: and
 - g. description of the environmental, ecological and public health benefits resulting from implementation of the SEP (with a quantification of the benefits and pollutant reductions, if feasible).

22. In all documents or reports, including, without limitation, any SEP reports, submitted to EPA pursuant to this Consent Agreement, Respondent shall, by its officers, sign and certify under penalty of law that the information contained in such document or report is true, accurate, and complete by signing the following statement:

"I hereby 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."

23. **Periodic Reports/Submissions:** Respondent shall submit any additional reports or information required by the Work Plan to EPA in accordance with the schedule and requirements recited therein.
24. Respondent shall maintain legible copies of documentation of the underlying research and data for any and all documents or reports submitted to EPA pursuant to this Consent Agreement for a term of five (5) years after the implementation of the SEP and shall provide the documentation of any such underlying research and data to EPA not more than ten (10) working days after a request for such information.
25. **Public Statements:** Any public statement, oral or written, in print, film, or other media, made by Respondent making reference to the SEP shall include the following language: "This project was undertaken in connection with the settlement of an enforcement action taken by the U.S. Environmental Protection Agency for violations of the Clean Water Act." "Este proyecto fue realizado como parte de un acuerdo legal con relación a una acción de cumplimiento por violaciones a la Ley Federal de Agua Limpia presentada por la Agencia Federal de Protección Ambiental de los Estados Unidos."
26. **EPA's Acceptance of SEP Completion Report:**
- a. After receipt of the SEP Completion Report described in Paragraph 21 above, EPA will notify Respondent, in writing, regarding: (i) any deficiencies in the SEP Completion Report itself along with a grant of an additional thirty (30) days for Respondent to correct any deficiencies; or, (ii) indicate that EPA concludes that the project has been completed satisfactorily; or, (iii) determine that the project has not been completed satisfactorily and seek stipulated penalties in accordance with Paragraph 25 below.
 - b. If EPA elects to exercise option (i) above, i.e., if the SEP Completion Report is determined to be deficient but EPA has not yet made a final

determination about the adequacy of SEP completion itself, EPA shall permit Respondent the opportunity to object in writing to the notification of deficiency given pursuant to this Paragraph within ten (10) days of receipt of such notification. EPA and Respondent shall have an additional thirty (30) days from the receipt by EPA of the notification of objection to reach agreement on changes necessary to the SEP Completion Report. If agreement cannot be reached on any such issue within this thirty (30) day period, EPA shall provide a written statement of its decision on adequacy of the completion of the SEP to Respondent, which decision shall be reasonable and final and binding upon Respondent. Respondent agrees to comply with any requirements imposed by EPA as a result of any failure to comply with the terms of this CA/FO. In the event the SEP is not completed as contemplated herein, as determined by EPA, stipulated penalties shall be due and payable by Respondent to EPA in accordance with Paragraph 27 below.

27. Stipulated Penalties:

- a. In the event that Respondent fails to comply with any of the terms or provisions of this Agreement relating to the performance of the SEP described in Paragraph 16 above and/or to the extent that the actual expenditures for the SEP do not equal or exceed the cost of the SEP described in Paragraph 19 above, Respondent shall be liable for stipulated penalties according to the provisions set forth below:
 - i. If Respondent timely submits a Work Plan but the Work Plan fails to satisfy EPA requirements as detailed in Paragraph 16.b above, EPA shall provide written notice of the disapproval and the SEP shall not be performed and Respondent shall pay a stipulated penalty in the amount of \$61,327.00.
 - ii. For failure to submit an EPA-approvable Work Plan by its due date in accordance with Paragraph 16 above, Respondent shall pay a stipulated penalty in the amount of \$200 for each day after the Work Plan was due until it is submitted.
 - iii. If the SEP is satisfactorily completed in accordance with Paragraph 16 above but Respondent expends less than the agreed \$61,327.00 for the SEP project, Respondent shall pay a stipulated penalty equal to the difference between the amount of eligible SEP costs incurred by the Respondent and \$61,327.00.
 - iv. If the SEP is not completed in accordance with Paragraph 16 but:
 - (a) Respondent certifies, with supporting documentation, the amount of eligible costs expended on the SEP, and (b) EPA determines that the Respondent made good faith and timely efforts

to complete the project, then, Respondent shall pay a stipulated penalty that is the difference between the eligible SEP costs incurred by Respondent and \$61,327.00. If Respondent documents that it, together with the third party (if applicable), did all that they could to ensure timely completion of the SEP but the SEP is not timely completed because of action, or inaction, on the part of the state government or a court, then it shall be deemed that the Respondent made good faith and timely efforts to complete the SEP project.

- v. If Respondent halts or abandons work on the SEP as described in Paragraph 16(a) above and after the Work Plan has been approved by EPA, prior to its completion, Respondent shall pay a stipulated penalty of \$200 and shall also pay the difference of eligible costs incurred and \$61,327.00.
 - vi. For failure to submit the SEP Completion Report required by Paragraph 21 above, Respondent shall pay a stipulated penalty in the amount of \$200 for each day after the report was due until the report is submitted.
 - vii. For failure to submit any other report required by Paragraph 23 above, Respondent shall pay a stipulated penalty in the amount of \$200 for each day after the report was originally due until the report is submitted.
- b. The determinations of whether the SEP has been satisfactorily completed and whether the Respondent has made a good faith, timely effort to implement the SEP shall be in the sole discretion of EPA.
 - c. Respondent shall pay stipulated penalties within thirty (30) days after receipt of written demand by EPA for such penalties. Payment of stipulated penalties shall be made payable to the "Treasurer of the United States of America." Such check shall be mailed to:

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

The checks shall be 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.

A copy of the check and any transmittal letter shall be sent 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
1492 Ponce de León Ave. – 4th Floor
San Juan, PR 00907-4127
Fax number: (787) 289-7104,

and

Regional Hearing Clerk
U.S. EPA, Region 2
290 Broadway, 16th floor
New York, New York 10007.

Interest and late charges on stipulated penalties shall be paid as stated in Paragraph 14 above.

II. C. General Provisions

28. Respondent shall submit all notices and reports required by this CA/FO Order by first class mail to:

Yolianne Maclay
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.

29. 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.
30. 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.

31. This CA/FO 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.

32. **Force Majeure:**

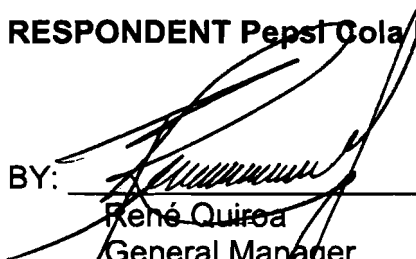
- a. If any event occurs which causes or may cause delays in the completion of the SEP as required under this Agreement, Respondent shall notify Complainant in writing not more than 10 days after the delay or Respondent's knowledge of the anticipated delay, whichever is earlier. The notice shall describe in detail the anticipated length of the delay, the precise cause or causes of the delay, the measures taken and to be taken by Respondent to prevent or minimize the delay, and the timetable by which those measures will be implemented. The Respondent shall adopt all reasonable measures to avoid or minimize any such delay. Failure by Respondent to comply with the notice requirements of this paragraph shall render this paragraph void and of no effect as to the particular incident involved and constitute a waiver of the Respondent's right to request an extension of its obligation under this Agreement based on such incident.
- b. If the parties agree that the delay or anticipated delay in compliance with this Agreement has been or will be caused by circumstances entirely beyond the control of Respondent, the time for performance hereunder may be extended for a period no longer than the delay resulting from such circumstances. In such event, the parties shall stipulate to such extension of time.
- c. In the event that the EPA does not agree that a delay in achieving compliance with the requirements of this CA/FO has been or will be caused by circumstances beyond the control of the Respondent, EPA will notify Respondent in writing of its decision and any delays in the completion of the SEP shall not be excused and stipulated penalties, if applicable, will be imposed.
- d. The burden of proving that any delay is caused by circumstances entirely beyond the control of the Respondent shall rest with the Respondent. Increased costs or expenses associated with the implementation of actions called for by this Agreement shall not, in any event, be a basis for changes in this Agreement or extensions of time under section (b) of this

paragraph. Delay in achievement of one interim step shall not necessarily justify or excuse delay in achievement of subsequent steps.

33. 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.
29. 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.
30. Each party shall bear its own costs and attorney fees in connection with the action resolved by this CA/FO.

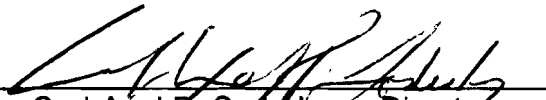
RESPONDENT Pepsi Cola Puerto Rico Distributing LLC:

BY: _____


René Quiroa
General Manager
PO Box 2600
Toa Baja, PR 00951-2600

DATE: 15/08/2011

COMPLAINANT:

BY: 

DATE: 05-23-11

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 0090

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

Judith A. Enck
Regional Administrator
United States Environmental
Protection Agency-Region 2
290 Broadway
New York, NY 10007-1866

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION II

IN THE MATTER OF:

**Pepsi Cola Puerto Rico Bottling
Company LLC**

RESPONDENT

**CONSENT AGREEMENT
AND
FINAL ORDER**

**DOCKET NUMBER
CWA-02-2010-3463**

CERTIFICATE OF SERVICE

I certify that I have this day caused to be sent the foregoing **Consent Agreement and Final Order**, dated August , 2011, 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, **Overnight Mail** to:

Attorney for Respondent:
Pedro Reyes Bibiloni, Esq.
Fiddler González & Rodríguez, P.S.C
254 Muñoz Rivera Ave. Corner Chardon Street
Hato Rey, P.R. 00918
PO Box 363507
San Juan, P.R. 00936-3507
Telephone 787-759-3208
Mobile 787-379-9756
Fax 787-759-3108

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

Chief Administrative Law Judge
Honorable Susan L. Biro
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

Name

FIDDLER GONZALEZ & RODRIGUEZ, P.S.C.

ATTORNEYS AND COUNSELORS AT LAW

PO Box 363507

SAN JUAN, PR 00936-3507

TELEPHONE (787) 753-3113

FAX (787) 759-3123

PEDRO REYES-BIBILONI
Direct Dial No. (787) 759-3208
Direct Fax No. (787) 759-3108
E-mail address: preyes@fgrlaw.com

254 MUÑOZ RIVERA AVENUE

CORNER CHARDÓN STREET

6TH FLOOR

HATO REY, PR 00918

7 de julio de 2011

Honorable Angel Luis Malavé Zayas
Alcalde
Municipio de Cidra
Apartado 729
Cidra, Puerto Rico 00739

**Asunto: Proyecto Ambiental Suplementario
Vaciado Pozos Sépticos Comunidad Candelas
Pepsi Cola Puerto Rico Distributing, LLC**

Estimado Señor Alcalde:

En nombre y representación de Pepsi Cola Puerto Rico Distributing LLC y según conversaciones telefónicas con el señor George Pereira y el Capitán Santiago, le confirmo el interés de nuestro cliente, Pepsi Cola Puerto Rico Distributing, LLC, de realizar un proyecto de beneficio ambiental consistente en sufragar el costo asociado con el vaciado de aproximadamente 236 pozos sépticos en la comunidad Candelas del Municipio de Cidra. La aportación total de Pepsi Cola Puerto Rico Distributing, LLC será de \$61,327.00 a ser pagados por nuestro cliente a la empresa Sani Plant Co., Inc. por el vaciado de dichos pozos sépticos.

La aportación de \$61,327.00 por parte de Pepsi Cola Puerto Rico Distributing, LLC para el vaciado de pozos sépticos en la comunidad Candelas del Municipio de Cidra es el proyecto ambiental suplementario acordado con y aprobado por la Agencia de Protección Ambiental (EPA, por sus siglas en ingles) como parte una acción legal iniciada por la EPA contra Pesi Cola Puerto Rico Distributing, LLC relacionada al manejo de aguas de escorrentía pluvial.

Según informado por la EPA, en la actualidad la mayoría de estos pozos sépticos pudieran estar descargando aguas usadas en la quebrada Candelas que es un tributario del Río La Plata, el cual cuerpo de agua es una fuente de basto de agua potable de la Autoridad de Acueductos y Alcantarillados (AAA).

Honorable Angel Luis Malavé Zayas
7 de julio de 2011
Página 2

A tales efectos, de contar con su aceptación, nuestro cliente contrataría la empresa Sani Plant para que realice el proyectado vaciado de dichos pozos sépticos en las residencias que sean identificadas con tal necesidad. Como parte de dicho esfuerzo, las aguas usadas generadas por el vaciado de los pozos sépticos, serán apropiadamente dispuesta por Sani Plant en una planta de tratamiento de la AAA, igualmente libre de costos para los residentes y el Municipio.

Según requerido por EPA, le solicito que me confirme por escrito la disponibilidad del Municipio de Cidra para informar a los residentes que como parte de un acuerdo con la EPA, Pepsi Cola Puerto Rico Distributing, LLC, en coordinación con el Municipio de Cidra, estará contratando a la empresa Sani Plant para realizar el vaciado sus pozos sépticos libre de costos para los residentes de la Comunidad Candelas y por supuesto para el Municipio de Cidra. Adicionalmente, solicitaríamos del Municipio la coordinación con los residentes para que éstos accedan al vaciado de sus pozos sépticos.

En espera de su pronta respuesta, quedo de usted.

Cordialmente,



Pedro Reyes Bibiloni

c. René Quiroa, Pepsi Cola Puerto Rico Distributing, LLC
Evelyn Huertas, EPA
Héctor Vélez, EPA

Aceptado: _____
Ángel Luis Malavé Zayas
Alcalde, Municipio de Cidra

PEDRO REYES-BIBILONI
Direct Dial No. (787) 759-3208
Direct Fax No. (787) 759-3108
E-mail address: preyes@fgriaw.com

July 5, 2011

By Hand

Héctor Vélez Cruz, Esq.
Office of Regional Counsel
Caribbean Environmental Protection Department
U.S. Environmental Protection Agency
Centro Europa Building, Suite 417
1492 Ponce de León Avenue
San Juan, Puerto Rico 00907-4127

**Re: Supplemental Environmental Project (SEP) Work Plan
In the Matter of Pepsi Cola Puerto Rico Bottling Company LLC
Docket No. CWA-02-2010-3463**

Dear Mr. Vélez:

As per our recent settlement telephone conversations, on behalf of Pepsi Cola Puerto Rico Distributing, LLC, formerly Pepsi Cola Puerto Rico Bottling, LLC, attached for your review and EPA's approval is a draft of the SEP proposed by Respondent in relation to the referenced matter.

Héctor Vélez Cruz, Esq.

August 23, 2011

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If you have any questions regarding this matter, please call me at your convenience.

Sincerely,

Pedro Reyes Bibiloni

- c. Mrs Evelyn Huertas, EPA
- Mr. René Quiroa
- Mr. José Coronado

Proposed Supplemental Environmental Project (SEP) Work Plan

Re: In the Matter of Pepsi Cola Puerto Rico Bottling Company LLC

Docket No. CWA-02-2010-3463

Protecting the Watersheds through

On-Site Systems pump outs

I. Background

Further to recent discussions with Environmental Protection Agency (EPA) representatives in regards to the above referenced case, Respondent's proposed Supplemental Environmental Project consists in providing cleanout service to residential septic systems currently impacting a water body located in a rural community known as the Candelas Community within the Municipality of Cidra, Puerto Rico. The Candelas Community is located nearby the Candelas creek which is tributary of the La Plata River which in itself is a source of drinking water supply for Puerto Rico Aqueduct and Sewer Authority PRASA).

Past housing development practices in rural communities of Puerto Rico were often not closely monitored by regulators. Past construction and development has created a legacy of communities without proper sewage disposal infrastructure. Most of these communities were built without the expectation of sanitary sewer directing waste to the wastewater treatment plant. Unfortunately, conditions in these rural areas of Puerto Rico are often not conducive to the proper operation of on-site wastewater disposal systems due to a variety of conditions such as high groundwater, steep slopes, clay soils and small lot sizes. The combination of these factors with a less than required regulatory presence has resulted in a situation where homeowners often find it difficult or impossible to properly dispose of all of the wastewater emanating from their residence. Many houses have been built with an underground tank without an adequate drainage field. Reconfiguration of properties to put in a drainage field is not considered a viable option due to cost, limitations of available property and underlying geological conditions.

The Candelas community, situated within the municipality of Cidra. The community is comprised of approximately 236 homes, on gently sloping land directly adjacent to the Candelas Creek, which is a tributary to Rio La Plata. It is highly developed, with a typical sub-division type pattern. Also included within the community are two convenience stores/bars and a church. The community encompasses an area of approximately 46.6 acres.

The community was built without sewers. A PRASA water supply is present and supplies water to all of the homes. Sewers for wastewater disposal are not present.

Homes were constructed with limited waste water disposal devices. These devices for the most part appear to consist of cesspools. These have been constructed at various locations on the properties. While it appears that most could be accessed for maintenance, maintenance does not appear to be occurring. However, even if proper maintenance did occur, lot sizes are generally too small for placement and operation of a leach field or trench for proper infiltration to the ground.

The limitations under which this community was constructed (i.e. geology -bedrock close to surface/soil conditions, and space -most homes constructed on small lots) have combined to result in wastewater disposal systems that are subject to frequent if not continuous failure. In some cases community members have constructed rudimentary sewage collection systems that transport their lavatory wastewater directly to and discharge to the Candelas Creek. In the majority of cases it appears that the operation of the on-site systems has simply been ignored. This is evidenced by the presence of household wastewater in streets and alleys throughout the community. In most cases, the gray waters and wastewater from laundry washing is discharged separately from the lavatory wastes, either directly to the ground surface in the vicinity of the house or directly to the street in front of it (see attached photos of affected area).

II. The Proposal

- A. Identify the locations of the On-Site Systems
- B. Coordinate access authorization with Cidra Department of Natural Resources
- C. Provide septic system cleanout service for 219 septic tanks through an independent contractor namely, Sani Plant Co. Inc. (see attached letter from Sani Plant).
- D. Submit a Report with the results of the cleanout services.

III. SEP Funding

SEP Funding is \$61,327.00. Each pump out is \$280.00/ household for a 4,000 gallons capacity tank.

IV. Timeframe

Approximately six months to establish, initiate and finish the operation.

V. SEP Contacts

The contact person for Respondent will be Pedro Reyes Bibiloni. All communications regarding the SEP should be directed to the following address: P.O. Box 363507 San Juan Puerto Rico 00936-3507, with copy to René Quiroa: Pepsi Cola Puerto Rico Distributing, LLC, P.O. Box 2600 Toa Baja, Puerto Rico 00949.

In addition, Respondent is will coordinate with the Mayor of Cidra, the Honorable Angel Respondent is not obligated by other statutory and/or regulatory requirement to perform this SEP. Respondent is committed to carry out this SEP once approved by EPA, as part of a Consent Agreement and Final Order (CAFO). The proposed SEP is consistent with the spirit and purpose of the NPDES permit system which is to protect the quality of the water. The proposed SEP will reduce the existing adverse impact to public health and environment that uncontrolled sanitary and household wastewater from the residences have created in the Candelas Creek, which in itself is a drinking water supply for PRASA.

The proposed SEP falls under the category of environmental restoration and protection. It will enhance the geographic area and environment by reducing the existing uncontrolled discharge of sanitary and household waste waters to the Candelas Creek and the La Plata River.

The proposed SEP also complies with the Mitigation Percentage and Mitigation Amount based on EPA's SEP Policy as follows:

- A. The SEP is clearly beneficial for the general public and the environment, since it will significantly reduce the adverse impact of uncontrolled sanitary and household wastewater discharges from overfilled septic systems into the Candelas Creek and the La Plata River.
- B. The SEP will benefit a low-income community such as the Candelas' Community. It is commonly known that in Puerto Rico's rural areas, uncontrolled sanitary wastewater discharges from overfilled septic systems represent a substantial pollution source for the Island's water bodies, including the Candelas Creek. Further, the SEP will reduce the associated health risk and improve the general well being of the area residents by eliminating discharges into the Candelas Creek from currently overfilled septic systems as herein proposed.
- C. As a low-income population, the Candelas Community is at greater risk of being exposed to environmental risks related to uncontrolled discharges of sanitary and household wastewaters and the ensuing pollution of the Candelas Creek, a pathway of possible direct exposure to children, flora and fauna. The proposed cleanout service SEP, herein proposed, SEP will significantly reduce/mitigate the aforementioned risk by reducing the existing uncontrolled wastewater discharges.

- D. Respondent will seek and incorporate, in coordination with EPA and the Municipality of Cidra, reasonable public input into the SEP.
- E. The SEP performance will reduce emissions and odors resulting from uncontrolled sanitary and household wastewaters potentially flowing into residential backyards, soils and eventually into the Candelas Creek and La Plata River.
- F. The SEP will provide for the safe handling/managing and disposal of the sanitary and household wastewaters vacuumed from serviced residential septic systems.
- G. The SEP is a pollution prevention project of outstanding quality as such qualifies for 100% mitigation percentage.

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