

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION II

RECEIVED BY OALJ  
2012 DEC 27 AM 11:28

IN THE MATTER OF:

**MOLINOS DE PUERTO RICO, INC.**  
P. O. Box 364948  
San Juan, Puerto Rico 00936-4948

**NPDES Permit Number PR0000817**

MOTION

**DOCKET NUMBER CWA-02-2012-3458**

**Motion in Response to Order to Show Cause, Status Report and  
Request for Extension of Time to File Executed Consent Agreement  
and Final Order**

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 December 21, 2012 Order issued by the Administrative Law Judge, Honorable M. Lisa Buschmann, Counsel for Complainant submits the following motion in the above captioned matter.

The Complainant and the Molinos de Puerto Rico, Inc. (Respondent) (herein together the "Parties") have been actively participating in good faith negotiations, including conference calls, in order to expedite a final settlement of this matter.

On November 5, 2012, Complainant presented Respondent with a settlement offer.

On December 14, 2012, the Complainant and the Respondent reached an agreement dispositive of all matters asserted in the Administrative Complaint, including a penalty, and as to the final language and terms of the Consent Agreement and Final Order (CA/FO).

The CA/FO has been set into concurrence for approval and signature. The Respondent has signed the CA/FO (see **Attachment A, page 7**). Once the concurrence process finalizes in EPA Region 2's San Juan office, it will be sent to EPA Region 2's New York office for continuance of the review and concurrence process and for signature of the Final Order by the Regional Administrator. Once this process concludes, the fully executed CA/FO will immediately be filed.

Due to an oversight in dealing with these settlement negotiations, the undersigned attorney was delayed in the completion of the prehearing brief. Respondent's counselors expressed no objection and agreed to the inclusion of Complainant's request in the filing of this motion.

This Motion has been filed today in order to have the Administrative Law Judge, Honorable M. Lisa Buschmann, take notice of the efforts made by the Parties in

reaching a settlement dispositive of all matters asserted in the administrative complaint and in the progress of filing an executed CA/FO.

In light of the above, and that there is no undue delay, bad faith or dilatory motive that can affect Respondent's rights under law, and there is no prejudice or additional burden to Respondent, and due to the complexity of the review and concurrence process within the Agency and between the Parties in order to finalize a fully executed CA/FO, the Complainant requests the Honorable Presiding Officer to allow the Parties until **January 28, 2013**, in order to file the duly executed CA/FO and notify its execution to the Presiding Officer, or in the alternative, to file Complainant's Initial Prehearing Exchange.

This Motion was discussed today, December 21<sup>st</sup>, 2012, with José A. Cepeda Rodríguez, Esq., attorney for Respondent, who agreed to the filing of this motion.

Respectfully submitted, in San Juan, Puerto Rico, this 21<sup>st</sup> day of December, 2012.



**Héctor L. Vélez Cruz, Esq.**  
US Environmental Protection Agency, R2  
Centro Europa Building, 417  
1492 Ponce de Leon  
San Juan, PR 00907  
Tel. 787-977-5819  
Fax. 787-729-7748  
[Velez.Hector@epamail.epa.gov](mailto:Velez.Hector@epamail.epa.gov)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION II

RECEIVED BY OALJ  
2012 DEC 27 AM 11:20

IN THE MATTER OF:

**MOLINOS DE PUERTO RICO, INC.**  
P. O. Box 364948  
San Juan, Puerto Rico 00936-4948

**NPDES Permit Number PR0000817**

MOTION

**DOCKET NUMBER CWA-02-2012-3458**

CERTIFICATE OF SERVICE

I certify that I have this day caused to be sent the foregoing *Motion in Response to Order to Show Cause, Status Report and Request for Extension of Time to File Executed Consent Agreement and Final Order*, dated December 21<sup>st</sup>, 2012, and bearing the above-referenced docket number, in the following manner to the respective addressees below:

Original and copy by email, Overnight Mail to:

**Sybil Anderson**

Headquarters Hearing Clerk  
U.S. EPA, Office of Administrative Law Judges  
1099 14<sup>th</sup> Street, N.W.  
Suite 350 W, Franklin Court  
Washington, D.C. 20005

Copy by email Overnight Mail to:

Attorney for Respondent Molinos de Puerto Rico, Inc.

**José A. Cepeda, Esq.**

The Hato Rey Center, Suite 906, 268 Ponce de León Ave., Hato Rey, PR 00918  
Tel: (787) 758-8574 / Fax: (787) 281-8554 / [cepedapr@cepedalaw.com](mailto:cepedapr@cepedalaw.com)

Copy by email Overnight Mail to:

Administrative Law Judge

**Honorable M. Lisa Buschmann**

U.S. EPA, Office of Administrative Law Judges, 1099 14<sup>th</sup> Street, N.W., Suite 350 W, Franklin Court  
Washington, D.C. 20005

Fax (202) 565-0044 / [oaljfilings@epa.gov](mailto:oaljfilings@epa.gov)

12/21/2012  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Name

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
Region 2

RECEIVED BY DALJ  
2012 DEC 27 AM 11:28

In the Matter of:

**MOLINOS DE PUERTO RICO, INC.**  
P. O. Box 364948  
San Juan, Puerto Rico 00936-4948

**CONSENT AGREEMENT  
AND  
FINAL ORDER**

**NPDES Permit Number PR0000817**

**DOCKET NUMBER  
CWA-02-2012-3458**

**CONSENT AGREEMENT AND ORDER**

Complainant, the United States Environmental Protection Agency (EPA), having issued the Complaint herein on September 6, 2012, against Molinos de Puerto Rico, 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 (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, 33 U.S.C. §§ 1311 and 1342, by failing to obtain National Pollutant Discharge Elimination System (NPDES) permit coverage for storm water discharges associated with industrial activities at its facility located in Guaynabo, Puerto Rico (Facility) and for its discharges of pollutants (stormwaters) into waters of the United States without NPDES permit coverage.

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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 October 3, 2012, 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.

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## 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 and other relevant factors, EPA has determined that an appropriate civil penalty to settle this action is in the amount of FIFTY THOUSAND (\$50,000.00) DOLLARS.
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.

### II. A. Penalty

11. No later than sixty (60) days after the Effective Date of this Order, as defined in the Final Order (at the end of this document), Respondent shall pay an initial penalty of TWELVE THOUSAND FIVE HUNDRED DOLLARS (\$12,500.00).
12. Thereafter, Respondent shall make 3 payments of TWELVE THOUSAND FIVE HUNDRED DOLLARS (\$12,500.00) each, in accordance with the following schedule:

- a. the first of the 3 payments no later than the last day in the 5<sup>th</sup> month following the Effective Date;
- b. the second of the 3 payments no later than the last day of the 8<sup>th</sup> month following the Effective Date; and
- c. the third and final payment no later than the last day of the 11<sup>th</sup> month following the Effective Date.
13. Respondent shall pay the penalty of FIFTY THOUSAND (\$50,000.00) DOLLARS 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:

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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."

**ACH (also known as REX or remittance express)**  
Automated Clearinghouse (ACH) for receiving US currency  
PNC Bank  
808 17<sup>th</sup> Street, NW  
Washington, DC 20074  
Contact – Jesse White 301-887-6548  
ABA = 051036706  
Transaction Code 22 - checking  
Environmental Protection Agency  
Account 310006—CTX Format

**ON LINE PAYMENT:**

There is now an On Line Payment Option, available through the Dept. of Treasury. This payment option can be accessed from the information below: [WWW.PAY.GOV](http://WWW.PAY.GOV). Enter sfo 1.1 in the search field. Open form and complete required fields.

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

JDS  
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. – 4<sup>th</sup> 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, 16<sup>th</sup> 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. General Provisions


16. 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.
17. 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.

18. 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.
19. 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.
20. 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.
21. Each party shall bear its own costs and attorney fees in connection with the action resolved by this CA/FO.

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(Remainder of this page is left intentionally blank)

**RESPONDENT MOLINOS DE PUERTO RICO, INC.:**

BY:   
\_\_\_\_\_  
John D. Stuewe  
President

DATE: December 14, 2012

**COMPLAINANT:**

BY: \_\_\_\_\_

DATE: \_\_\_\_\_

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

**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:

**Molinos de Puerto Rico, Inc.**

RESPONDENT

**CONSENT AGREEMENT**  
**AND**  
**FINAL ORDER**

**DOCKET NUMBER CWA-02-2012-3458**

**CERTIFICATE OF SERVICE**

I certify that I have this day caused to be sent the foregoing **Consent Agreement and Final Order**, dated \_\_\_\_\_, 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, 16<sup>th</sup> Floor  
New York, NY 10007-1866  
Fax (212) 637-3202.

Copy by facsimile, **Certified Mail/Return Receipt** to:

Attorney for Respondent, Molinos de Puerto Rico, Inc.  
**José A. Cepeda Rodríguez, Esq.**  
**LAW OFFICES JOSÉ A. CEPEDA RODRÍGUEZ**  
Suite 906, The Hato Rey Center  
268 Ponce de León Avenue  
Hato Rey, P.R. 00918  
Tel: (787) 758-8574  
Fax: (787) 281-8554  
[cepedapr@cepedalaw.com](mailto:cepedapr@cepedalaw.com)

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

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

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name