

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 2  
290 Broadway  
New York, New York 10007

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REGION 2  
2007 FEB 28 AM 10:38  
REGIONAL HEARING  
CLERK

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IN THE MATTER OF :  
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 **Authority for the Port of the Americas** : **Consent Agreement**  
 Ponce, Puerto Rico : **and Final Order**  
 :  
 :  
 Respondent. :  
 :  
 Proceeding Pursuant to §105(a) of the : **Docket No.**  
 Marine Protection, Research and : **MPRSA-02-2007-6002**  
 Sanctuaries Act, 33 U.S.C. §1415(a) :  
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**I. Preliminary Statement**

1. This administrative proceeding for the assessment of a civil penalty is instituted pursuant to Section 105(a) of the Marine Protection, Research and Sanctuaries Act ("MPRSA" or "Act"), 33 U.S.C. §1415(a).
2. The following Findings of Fact are made and Final Order issued pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency ("EPA") by the Act, 33 U.S.C. §1401 et seq., and in particular by Section 105(a) of the Act, 33 U.S.C. §1415(a). This authority has been duly delegated by the Administrator to the Regional Administrator of Region 2 of EPA, which authority has been duly re-delegated to the undersigned Director of the Division of Environmental Planning and Protection of Region 2 of EPA.
3. This Consent Agreement and Final Order is issued in accordance with 40 C.F.R. §22.18(b) and (c) of the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits" ("CROP"), which sets forth procedures where the Parties agree to the settlement of an action and allows for conclusion of administrative civil penalty assessment proceedings through issuance of a consent agreement and final order.

4. The Parties feel that it is in the public interest to resolve disputed issues that are the basis for this action and avoid the costs and risks associated with litigation. Toward this end, the Parties have agreed to the following settlement.

## **II. Procedural Background**

5. EPA, Region 2 ("Complainant") issued a Complaint on September 28, 2007, entitled "Complaint, Findings of Violation, Notice of Proposed Assessment of a Civil Penalty, and Notice of Opportunity to Request a Hearing" ("Complaint") against Authority for the Port of the Americas ("Respondent") (Docket Number MPRSA-02-2007-6002). This Complaint is incorporated herein.

6. The Complaint charged Respondent with violating Section 101(a) of MPRSA, 33 U.S.C. §1411(a) by discharging material into ocean waters without authorization by the Secretary of the Army as provided by Section 103(a) of the Act, 33 U.S.C. §1413(a).

## **III. Findings of Fact and Conclusions of Law**

7. Respondent is a "person" as defined under Section 3 of the Act, 33 U.S.C. § 1402.

8. Section 103 of the Act, 33 U.S.C. §1413, authorizes the Secretary of the Army to issue permits for the transportation of dredged material for the purpose of dumping it into ocean waters.

9. Section 101 of the Act, 33 U.S.C. §1411, prohibits the discharge of material into ocean waters without authorization by the Secretary of the Army as provided by Section 103(e) of the Act, 33 U.S.C. §1413(e).

10. On March 26, 2004, the Respondent received a Department of the Army Permit (SAJ-2002-6525 (IP-JER)) to perform improvement dredging in and around the Port of Ponce and in specific areas of the Bahia de Ponce. Specifically, the activity authorized is as follows:

"To construct a deep draft port at the Municipality of Ponce, to harbor simultaneously Post-Panamax vessels to handle cargo transshipment. The project includes the construction of an inland navigation channel of approximately 3,000 feet in length and 600 feet wide in average, with its entrance between piers 7 and 8. Approximately 59 acres of mangroves and wetlands adjacent to the inland channel and docking site are to be filled. The dredge of approximately 5.5 million cubic meters of material from about a bottom area of approximately 248 acres are authorized to be dredged from the harbor bottom and turning basin area. Approximately 97 acres of seagrasses are to be impacted by the dredge work. The dredged material is to be disposed at the EPA's Designated Ocean Dredged Material Disposal Site (ODMDS)

located at 4.5 nautical miles south of the entrance of the Ponce Harbor south of Ponce. To minimize impacts to the shelf edge resources, disposal activity would be restricted to the bottom half of the ODMDS (i.e., south of 17° 53' 30"N.)”

11. As required by the United States Army Corps of Engineers (“USACE”) authorization, Respondent submitted barge tracking reports for all disposal events. These reports showed that project dredged material was disposed outside the boundaries of the Ponce Harbor, PR Ocean Dredged Material Disposal Site on two occasions as noted in paragraph 12 below.
12. At 0745 on April 19, 2006, Weeks discharged approximately 3500 cubic yards of dredged material from Scow 259 outside the designated disposal site boundaries during Trip 1449 of the project.
13. EPA has reviewed the explanations provided by the Respondent and its contractor and finds that the violation resulted from an attention lapse on the part of the tug operator following some difficulty in getting the scow doors to open.
14. Based on the above findings, EPA finds Respondent to be in violation of Section 101(a) of the Act, 33 U.S.C. §1411(a) for the discharge of material into ocean waters without authorization by the Secretary of the Army as provided by Section 103(e) of the Act, 33 U.S.C. §1413(e).
15. Under Section 105(a) of the Act, 33 U.S.C. §1415(a), Respondent is liable for the administrative assessment of civil penalties in an amount not to exceed \$65,000 for each violation or a maximum penalty (cap) of \$157,500.00 for a single administrative enforcement action.

#### **IV. Consent Agreement**

Based upon the foregoing Findings of Fact and Conclusions of Law, and pursuant to Section 105(a) of the Act, 33 U.S.C. §1415(a), and the CROP (40 C.F.R. §22.18), it is hereby agreed by and between the parties, and Respondent voluntarily and knowingly agrees as follows:

#### **Jurisdiction**

16. For the purpose of this proceeding, Respondent (a) admits the jurisdictional allegations of the Findings of Fact and Conclusions of Law as applied to the activities; and (b) neither admits nor denies the specific factual allegations contained in the Findings of Fact. In addition, nothing in this Consent Agreement and Final Order shall be construed or interpreted by any governmental entity (Federal, State, or local) or private party as a determination as to a violation of any Federal, State, or local laws for the purpose of disqualifying the Respondent or its agents or contractors for any Federal, State, or local governmental permit or contract.

### Payment of Civil Penalty

17. Pursuant to Section 105(a) of the Act and having taken into account the gravity of the violations, prior violations, and the demonstrated good faith of Respondent in attempting to achieve rapid compliance after notification of the violations, and any other factors that may be required by the Act, EPA has determined that a civil penalty in the amount of **\$65,000.00 (sixty-five thousand dollars and zero cents)**, is appropriate in settlement of this case.

18. Respondent shall pay, by cashier's or certified check, a civil penalty in the amount of **\$65,000.00 (sixty-five thousand dollars and zero cents)**, payable to the "Treasurer, United States of America." The check 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. Such check shall be mailed to:

EPA, Region 2 (Regional Hearing Clerk)  
P.O. Box 360188M  
Pittsburgh, Pennsylvania 15251

Respondent shall also send copies of such payment to:

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

and to:

Phyllis Feinmark, Esq.  
Chief, Water and General Law Branch  
Office of Regional Counsel  
U.S. Environmental Protection Agency  
290 Broadway, 16<sup>th</sup> Floor  
New York, New York 10007.

19. Payment must be received at the above address on or before **sixty (60)** calendar days after the date of signature of the Final Order at the end of this document (the date by which payment must be received shall hereafter be referred to as the "due date"). Failure to pay the penalty in full according to the above provisions will result in referral of this matter to the United States Department of Justice or the United States Department of the Treasury for collection of the assessed penalty as well as, but not limited to, interest and attorney's fees. 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. The penalty specified in Paragraph 18 above shall represent a civil penalty assessed by EPA and shall not be deductible from Respondent's federal or state taxes.

## **V. General Provisions**

20. This Consent Agreement is being voluntarily and knowingly entered into by the parties in full and final settlement of the civil liabilities that might have attached as a result of the allegations contained in the Findings of Fact, above. Respondent has read the Consent Agreement, understands its terms, finds it to be reasonable and consents to its issuance and its terms. Respondent consents to the issuance of the accompanying Final Order. Respondent agrees that all terms of settlement are set forth herein.

21. Respondent explicitly and knowingly consents to the assessment of the civil penalty as set forth in this Consent Agreement and agrees to pay the penalty in accordance with the terms of this Consent Agreement.

22. This Consent Agreement and Order shall not relieve Respondent of 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.

23. Respondent knowingly and explicitly waives its right under Section 105(a) of the Act, 33 U.S.C. §1415(a) to request or to seek any Hearing on or Judicial Review of the Complaints consolidated herein or on any of the allegations therein asserted, on this Consent Agreement or the Findings of Fact and Conclusions of Law set forth herein, or on the accompanying Final Order.

24. 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 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.

25. Issuance of this Consent Agreement and Final Order does not constitute a waiver by EPA of its right to enforce the substantive legal requirements underlying this penalty assessment, either administratively or judicially, pursuant to Sections 105(a), (b), and (d) of the Act, 33 U.S.C. §1415(a), (b) and (d) or constitute a waiver by Respondent of its rights to contest any of the aforesaid proceedings.

26. Each undersigned signatory to this Consent Agreement certifies that he or she is duly and fully authorized to enter into and ratify this Consent Agreement and all the terms and conditions set forth in this Consent Agreement.

27. The provisions of this Consent Agreement and Final Order shall be binding upon the Respondent, its officers, directors, agents, servants, authorized representatives and successors or assigns.

28. Each party shall bear its own costs and attorneys fees in connection with the action resolved by this Consent Agreement and Final Order.

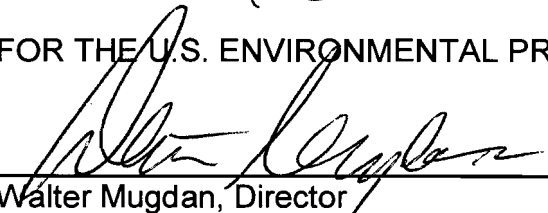
29. Respondent consents to service upon Respondents by a copy of this Consent Agreement and Final Order by an EPA employee other than the Regional Hearing Clerk.

FOR RESPONDENT:

  
\_\_\_\_\_  
Authority for the Port of the Americas

12/31/07  
Date

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY:

  
\_\_\_\_\_  
Walter Mugdan, Director  
Division of Environmental Planning and Protection  
U.S. Environmental Protection Agency, Region 2

2/8/08  
Date

## VI. 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, New York.

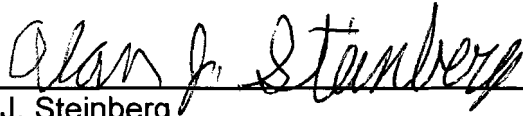
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Ponce, Puerto Rico :

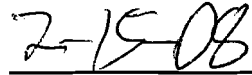
Proceedings Pursuant to §105(a) of the :

Docket No. MPRSA-02-2007-6002

Marine Protection, Research and  
Sanctuaries Act, 33 U.S.C. §1415(a)



Alan J. Steinberg  
Regional Administrator  
U.S. Environmental Protection Agency, Region 2



Date