

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG.11

2011 OCT -5 P 2:37

REGIONAL HEARING
CLERK

October 5, 2011

Ms. Karen Maples
Regional Hearing Clerk
U.S. Environmental Protection Agency
290 Broadway, 16th floor
New York, New York 10007-1866

RE: *In the Matter of LPC&D, Inc.*
Docket Number CWA-02-2011-3455
Consent Agreement and Final Order

Dear Ms. Maples:

Enclosed is an original and a copy version of a Consent Agreement and Final Order (CA/FO), in the above-referenced matter, fully executed on September 28, 2011.

Sincerely,


Eduardo J. Gonzalez, Esq.

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

In the Matter of:

LPC & D, INC.
P.O. Box 2025
Las Piedras, Puerto Rico 00771

For violations at:

Río Blanco Offstream Reservoir Construction Project
State Road 191, Barrio Río Blanco
Naguabo, Puerto Rico 00744

Proceeding pursuant to § 309(g) of the Clean Water Act,
33 U.S.C. § 1319(g)

**CONSENT AGREEMENT
AND
FINAL ORDER**

**DOCKET NUMBER
CWA-02-2011-3455**

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II
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I. PRELIMINARY STATEMENT

- JB*
1. This is a civil administrative proceeding for the assessment of a civil penalty instituted pursuant to Section 309(g) of the Clean Water Act ("CWA" or "the Act"), 33 U.S.C. § 1319(g).
 2. The following Findings of Fact are made and Order issued pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency ("EPA") by the Act, as amended, 33 U.S.C. § 1251 *et. seq.*, and in particular Section 309(g) of the Act, 33 U.S.C. § 1319(g). This authority has been duly delegated by the Administrator to the Regional Administrator of Region 2 of EPA, which authority has been duly delegated to the undersigned Director of the Caribbean Environmental Protection ("CEPD") of Region 2 of EPA.
 3. EPA is initiating and concluding this proceeding for the assessment of a civil penalty, pursuant to Section 309(g) of the Clean Water Act, 33 U.S.C. § 1319(g); and 40 CFR § 22.13(b) 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 set forth procedures for simultaneous commencement and conclusion of administrative civil penalty assessment proceedings through issuance of a consent agreement and final order pursuant to 40 CFR § 22.18 (b)(2) and (3).

II. FINDINGS OF FACT

4. LPC & D, Inc. ("Respondent") is a corporation incorporated under the laws of the Commonwealth of Puerto Rico and is person pursuant to Section 502(5) of the CWA, 33 U.S.C. § 1362(5).
5. At all times relevant to this complaint, Respondent operated the Río Blanco Offstream Reservoir Construction Project ("Project"), located at State Road 191, Barrio Río Blanco, Naguabo, Puerto Rico 00744.
6. The Project was and is, at all relevant times, a "point source" which "discharges pollutants" into waters of the United States known as "Río Blanco" all within the definitions established in Section 502(14) of the Act, 33 U.S.C. §1362(14).
7. Respondent is therefore subject to the provisions of the Act, 33 U.S.C. § 1251 et seq.
8. On November 16, 1990, the Administrator of EPA promulgated storm water permit application regulations. The regulations require Respondent to apply for and obtain a National Pollutant Discharge Elimination System ("NPDES") permit for its storm water discharges associated with industrial activity from the Project into waters of the United States. The regulations applicable to Respondent and its construction site are codified in 40 C.F.R. §§ 122.21, 122.26 and 122.28.
9. On March 24, 2005, EPA granted Respondent coverage under the NPDES General Permit for Stormwater Discharges from Large and Small Construction sites issued by EPA on July 1, 2003 ("2003 Permit").
10. Based on the findings from the inspection of the Project that EPA officials conducted October 9, 2008, the EPA determined that the Respondent was in violation of its obligations under the 2003 Permit, as follows:
 - a. Inadequate and incomplete Storm Water Pollution Prevention Plan ("SWPPP") for the Project;
 - b. Inadequate selection and implementation of erosion and sediment control Best Management Practices ("BMPs") at the Project; and
 - c. Inadequate weekly inspections of BMPs, failure to conduct weekly inspections, and failure to document inspections.
11. By February 13, 2009, Respondent had submitted all the information, certifications and notifications required to bring it into compliance with the CWA and the 2008 Permit.

12. On February 19, 2009, EPA granted Respondent coverage under the 2008 Permit.

III. CONCLUSIONS OF LAW AND JURISDICTION

13. EPA alleges that Respondent operated the Project in violation of its 2003 Permit requirements and in violation of Sections 301 of the Act, 33 U.S.C. §§ 1311, respectively.
14. EPA has jurisdiction over the subject matter of this action, pursuant to Section 309 of the Act, 33 U.S.C. § 1319, and over the Respondent.

IV. CONSENT AGREEMENT

15. Paragraphs 1 through 14 are re-alleged and incorporated herein by reference.
16. EPA and Respondent agree that it is in the public interest to resolve the issues alleged in this Consent Agreement without further litigation and the expense and effort that litigation entails.
17. Based upon the foregoing and pursuant to Section 309(g) of the Act, 33 U.S.C. § 1319(g), and the CROP, it is hereby agreed by and between EPA and Respondent, and Respondent voluntarily and knowingly agrees as follows:

V. TERMS OF SETTLEMENT

18. For the purpose of this proceeding, Respondent:
 - a. Admits the jurisdictional allegations of this CA/FO;
 - b. Neither admits or denies the factual allegations contained herein;
 - c. Waives its right to contest the allegations, a judicial or administrative hearing, or to appeal this CA/FO; and,
 - d. Consents to the payment of the civil penalty in the amount of *one hundred thousand dollars (\$100,000.00)*, as stated in Paragraph 21 below.

VI. PAYMENT OF CIVIL PENALTY

19. Respondent shall pay a civil penalty in the amount of *one hundred thousand dollars (\$100,000.00)* to the "Treasurer of the United States of America."

20. Respondent agrees to pay the above stated amount in *three (3) payments*. The effective date of this CA/FO shall be the date the Regional Administrator signs the Final Order accompanying this CA/FO.
- a. An *initial payment* in the amount of fifty thousand dollars **(\$50,000.00)** shall be made within forty-five (45) calendar days from the effective date of this CA/FO.
 - b. A *second payment* in the amount of twenty five thousand dollars **(\$25,000.00)** shall be made within two hundred twenty five (225) calendar days from the effective date of this CA/FO.
 - c. A *third payment* in the amount twenty five thousand dollars **(\$25,000.00)** shall be made within four hundred five (405) calendar days from the effective date of this CA/FO.

 These three (3) payments satisfy the totality of the civil penalty of *one hundred thousand dollars (\$100,000.00)*.

21. The checks (cashier's or certified checks only) 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. Payment methods are described below:

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

ACH (also known as REX or remittance express)
Automated Clearinghouse (ACH) for receiving US currency
PNC Bank
808 17th 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
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:

Eduardo J. González, Esq.
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th Floor
New York, New York 10007-1866,

And,

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

The initial payment must be received at the above address on or before forty-five (45) 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").

22. 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.
23. 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.


24. 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. You also may be required to pay attorneys fees and costs for collection proceedings in connection with nonpayment.
25. The penalty to be paid is a civil penalty assessed by the EPA and shall not be deductible from Respondent's federal or Commonwealth of Puerto Rico taxes.

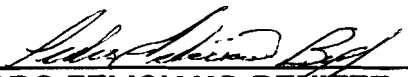
JLB

VII. GENERAL PROVISIONS

26. The provisions of this CA/FO shall be binding upon Respondent, and successors or assigns, including but not limited to, subsequent purchasers. No transfer of ownership or operation shall relieve Respondent of its obligation to comply with this CA/FO.
27. 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.
28. Except for the specific violations alleged herein, 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.
29. This CA/FO 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.
30. This CA/FO constitutes a settlement by EPA of all claims for civil penalties pursuant to the CWA for the violations by the Respondent alleged herein.

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. Nothing in this CA/FO shall be interpreted or used against Respondent in any other administrative or legal proceeding, including a court of law, by any third party, including but not limited to the Puerto Rico Aqueduct and Sewage Administration ("PRASA"), as an admission of Respondent of any violation of law or regulation or of any contract between Respondent and any such third party, including PRASA, nor as a release or waiver of any claim that Respondent may have against any third party, including PRASA, as a result of or in relation to any of the facts and findings made by EPA and referred to herein.

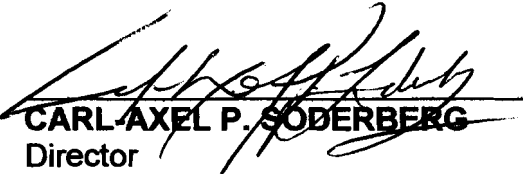
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31. Each undersigned representative of the parties to this Consent Agreement certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this Consent Agreement and to execute and legally bind that party to it.
 32. Each party shall bear its own costs and attorney's fees in connection with the action resolved by this CA/FO.

BY: 
PEDRO FELICIANO-BENITEZ
President
LPC & D, INC.
P.O. Box 2025
Las Piedras, Puerto Rico 00771

DATE: AUGUST 15, 2011

For the Complainant, the United States Environmental Protection Agency:

RB

BY: 
CARL AXEL P. SODERBERG
Director
Caribbean Environmental Protection Division
U.S. Environmental Protection Agency, Region 2
Centro Europa Building, Suite 417
1492 Ponce de León Avenue.
San Juan, Puerto Rico 00907

DATE: 09/26/11

VII. FINAL ORDER

The Regional Administrator of the United States 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, United States Environmental Protection Agency, Region 2, New York, New York.



JUDITH A. ENCK

Regional Administrator
U.S. Environmental Protection Agency, Region 2
290 Broadway
New York, New York 10007-1866

DATE: 9/28/11



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2**

In the Matter of:

LPC & D, INC.
P.O. Box 2025
Las Piedras, Puerto Rico 00771

For violations at:

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AND
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**DOCKET NUMBER
CWA-02-2011-3455**

Certificate of Service

I certify that on October 5, 2011, I served the foregoing fully executed Consent Agreement and Final Order, bearing the above referenced docket number, on the persons listed below in the following manner:

Original and One Copy
By Hand:

Office of Regional Hearing Clerk
U.S. Environmental Protection Agency - Region 2
290 Broadway, 16th floor
New York, New York 10007-1866

Copy by Certified Mail
Return Receipt Requested:

PEDRO FELICIANO-BENITEZ
President
LPC & D, INC.
P.O. Box 2025
Las Piedras, Puerto Rico 00771

Dated: /s/ Eduardo J. Gonzalez

October 5, 2011
New York, New York