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4 Region IX
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7 **UNITED STATES**
ENVIRONMENTAL PROTECTION AGENCY
8 **REGION IX**

9 **IN THE MATTER OF:**

10 **JG Sablan Rock Quarry, Inc.**
11 **and John T. Sablan,**
12 **Respondent.**
13

Docket No.
RCRA-9-2006-0009

CONSENT AGREEMENT
AND
FINAL ORDER

14 **CONSENT AGREEMENT**

15 **A INTRODUCTION**

- 16 1. This administrative proceeding was initiated pursuant to Section 3008(a)(1) of the
17 Resource Conservation and Recovery Act ("RCRA"), as amended, 42 U.S.C.
18 §6928(a)(1), and the Consolidated Rules of Practice Governing the Administrative
19 Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits,
20 40 C.F.R. Part 22. Complainant is the United States Environmental Protection Agency,
21 Region IX ("Complainant" or "EPA"). Respondents are JG Sablan Rock Quarry, Inc.,
22 corporation organized under the laws of the Commonwealth of the Northern Mariana
23 Islands ("CNMI"), and Mr. John T. Sablan, an individual, (hereinafter, "Respondents").
24 2. This action commenced with the issuance of a Determination of Violation, Compliance
25 Order and Notice of Right to Request a Hearing ("Complaint") on March 22, 2006 under
26 the above-referenced docket number RCRA-09-2006-0009. The Complaint alleged that
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1 Respondents violated Sections 3002, 3004, 3005 and 3014 of RCRA, 42 U.S.C. §§6922,
2 6924, 6925 and 6935, and 40 C.F.R. §§ 112.3, 265.11, 265.51(a), 273.13(a), 273.14(a),
3 273.15(c), 273.17(a), 279.12(a), 279.22, 279.22(b), 279.22(c)(1), and 279.22(d).

4 **B. ADMISSIONS AND WAIVERS**

5 3. Complainant, the United States Environmental Protection Agency, Region IX, and
6 Respondents JG Sablan Rock Quarry, Inc., and Mr. John T. Sablan, the parties herein,
7 having agreed that settlement of this matter is in the public interest and that entry of this
8 Consent Agreement and Final Order, ("CA/FO"), pursuant to 40 C.F.R. Sections 22.13
9 and 22.18, without further litigation, is the most appropriate means of resolving this
10 matter.

11 4. For purposes of this proceeding, Respondents admit and agree that the EPA
12 Administrator and Region IX Administrator have jurisdiction and authority over the
13 subject matter of the action commenced in this CA/FO and over Respondents pursuant to
14 Section 3008(b) of RCRA, 42 U.S.C. § 6928(b), and 40 C.F.R. §§ 22.4 and 22.37.
15 Further, for the purposes of this proceeding, Respondents admit to the jurisdictional
16 allegations of facts and law set forth in the Complaint. Respondents consent to and agree
17 not to contest EPA's jurisdiction and authority to enter into and issue this CA/FO and to
18 enforce its terms. Further, Respondents will not contest EPA's jurisdiction and authority
19 to compel compliance with this CA/FO in any enforcement proceedings, either
20 administrative or judicial, or to impose sanctions for violations of this CA/FO.

21 5. Respondents neither admit nor deny any allegations of fact or law set forth in the
22 Complaint. Respondents hereby waive any rights Respondents may have to contest the
23 allegations set forth in the Complaint, waive any rights Respondents may have to a
24 hearing on any issue relating to the factual allegations or legal conclusions set forth in the
25 Complaint, including without limitation a hearing pursuant to Section 3008(b) of RCRA,
26 42 U.S.C. § 6928(b), and hereby consent to the issuance of this CA/FO without
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1 adjudication. In addition, Respondents hereby waive any rights Respondents may have to
2 appeal the Final Order attached to this Consent Agreement and made part of this CA/FO.

3 **C. CIVIL PENALTY**

4 6. Complainant and Respondents hereby consent to the assessment of a civil penalty in the
5 amount of FOUR HUNDRED THOUSAND DOLLARS (\$400,000) in settlement of the
6 civil penalty claims set forth in the Complaint. Satisfaction of the terms of this Consent
7 Agreement and Final Order constitutes a settlement of all civil penalty claims for the
8 violations of Sections 3002, 3004, 3005 and 3014 of RCRA, 42 U.S.C. §§6922, 6924,
9 6925 and 6935, and 40 C.F.R. §§ 112.3, 265.11, 265.51(a), 273.13(a), 273.14(a),
10 273.15(c), 273.17(a), 279.12(a), 279.22, 279.22(b), 279.22(c)(1), and 279.22(d) set forth
11 in the Complaint.

12 7. Respondents shall pay the civil penalty in installment payments as set forth in this
13 CA/FO, with accrued interest payable with the final installment. Interest shall accrue at a
14 rate of four percent (4%) per annum. The first payment of SIX THOUSAND DOLLARS
15 (\$6,000) shall be paid within thirty (30) days after Respondents' receipt of a fully
16 executed copy of this CA/FO. Except as set forth in paragraph 9 of this CA/FO, a
17 payment of SIX THOUSAND DOLLARS (\$6,000) shall be paid annually on the
18 anniversary of the effective date of this CA/FO through the year 2016, and the full penalty
19 outstanding, plus accrued interest, shall be paid in the year 2017, on the anniversary of the
20 effective date of this CA/FO. The Effective Date of this CA/FO is the date that the Final
21 Order is signed, by the Regional Judicial Officer or the Regional Administrator, and filed.

22 8. Respondents may, prior to the due date for the final payment payable under this CA/FO,
23 request, based on Respondents' financial inability to meet the payment obligations for the
24 final payment, that EPA modify the payment terms for the final payment due.
25 Respondents must provide substantiating documentation to support any such request for a
26 modification. Any such request must be made at least ninety (90) days prior to the due
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1 date for the final payment.

2 9. If Respondent JG Sablan Rock Quarry, Inc.'s Permit for operation of pozzolan extraction
3 and other related activities on the island of Pagan is reinstated, allowing work in
4 accordance with the Permit to commence, then the full outstanding balance of penalty due
5 under this CA/FO is payable within one (1) year after the Permit is reinstated.

6 Respondents shall notify EPA, in writing, within thirty (30) days of such reinstatement
7 about any reinstatement of JG Sablan Rock Quarry, Inc.'s Permit for operation of
8 pozzolan extraction and other related activities on the island of Pagan.

9 10. Each payment due under this CA/FO shall be made by Funds Transfer Deposit (EPA
10 Form 2570-6) through the Federal Reserve Communication System (FRCS) to the
11 account of the U.S. Treasury at the Federal Reserve Bank of New York. The Funds
12 Transfer Deposit form shall reference the Respondents' names and the appropriate docket
13 number (RCRA-9-2006-0009).

14 11. Respondents shall concurrently send a copy the Funds Transfer Deposit form by certified
15 mail, return receipt requested, to:

16 Danielle Carr
17 Regional Hearing Clerk (ORC-1)
18 U.S. Environmental Protection Agency - Region IX
75 Hawthorne Street
San Francisco, CA 94105

19 and to:

20 Matthew Reed (WST-3)
21 Waste Management Division
22 U.S. Environmental Protection Agency - Region IX
75 Hawthorne Street
San Francisco, CA 94105

23 12. Failure to make the civil administrative penalty payments by the deadlines specified in
24 this Section may lead to any or all of the following actions:

25 a. The debt being referred to a credit reporting agency, a collection agency, or to the
26 Department of Justice for filing of a collection action in the appropriate United
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1 States District Court. 40 C.F.R. §§ 13.13, 13.14, and 13.33. In any such
2 collection action, the validity, amount, and appropriateness of the assessed penalty
3 and of this CA/FO shall not be subject to review.

- 4 b. The debt being collected by administrative offset (i.e., the withholding of money
5 payable by the United States to, or held by the United States for, a person to
6 satisfy the debt the person owes the Government), which includes, but is not
7 limited to, referral to the Internal Revenue Service for offset against income tax
8 refunds. 40 C.F.R. Part 13, Subparts C and H.
- 9 c. EPA may (i) suspend or revoke Respondent's licenses or other privileges; or
10 (ii) suspend or disqualify Respondent from doing business with EPA or engaging
11 in programs EPA sponsors or funds. 40 C.F.R. § 13.17.
- 12 d. In accordance with the Debt Collection Act of 1982 and 40 C.F.R. Part 13,
13 interest, penalties charges, and administrative costs will be assessed against the
14 outstanding amount that Respondent owes to EPA for Respondent's failure to pay
15 the civil administrative penalty by the deadline specified in this Section. Interest
16 will be assessed at an annual rate that is equal to the rate of current value of funds
17 to the United States Treasury (i.e., the Treasury tax and loan account rate) as
18 prescribed and published by the Secretary of the Treasury in the Federal Register
19 and the Treasury Fiscal Requirements Manual Bulletins. 40 C.F.R. § 13.11(a)(1).
20 Penalty charges will be assessed monthly at a rate of 6% per annum. 40 C.F.R.
21 § 13.11(c). Administrative costs for handling and collecting Respondent's
22 overdue debt will be based on either actual or average cost incurred, and will
23 include both direct and indirect costs. 40 C.F.R. § 13.11(b). In addition, if this
24 matter is referred to another department or agency (e.g., the Department of Justice,
25 the Internal Revenue Service), that department or agency may assess its own
26 administrative costs, in addition to EPA's administrative costs, for handling and
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1 collecting Respondent's overdue debt.

2 13. Payment of stipulated penalties shall be made in accordance with the procedure set forth
3 for payment of the penalty in Paragraphs 10 and 11 of this CA/FO.

4 14. The penalties specified in this CA/FO shall represent civil penalties assessed by EPA and
5 shall not be deducted by Respondents or any other person or entity for federal, state or
6 local taxation purposes.

7 **D. STIPULATED PENALTIES**

8 15. Respondents hereby agree to stipulated penalties in the amount of TEN THOUSAND
9 DOLLARS (\$10,000) per day, per violation, for any future violation of RCRA or its
10 implementing regulations that occur within five (5) years after the effective date of this
11 CA/FO.

12 16. Respondents hereby agree to stipulated penalties in the amount of FIVE HUNDRED
13 DOLLARS (\$ 500) for each day of delay for any payment not received by its due date or
14 any failure to comply with the requirements of this CA/FO.

15 17. The determination of whether Respondents has satisfactorily complied with the terms of
16 this CA/FO and the determination of whether Respondents have cured any future
17 violations for purposes of stipulated penalties under this CA/FO, are within the sole
18 discretion of the Director, Waste Management Division, EPA Region IX. The decision of
19 the Director, Waste Management Division, EPA Region IX is not reviewable in any
20 forum.

21 18. All penalties shall begin to accrue on the date that performance is due or a violation
22 occurs, and shall continue to accrue through the final day of correction of the
23 noncompliance. Nothing herein shall prevent the simultaneous accrual of separate
24 penalties for separate violations.

25 19. All penalties owed to EPA under this Section shall be due within thirty (30) days of
26 receipt of a notification of noncompliance. Such notification shall describe the
27 noncompliance and shall indicate the amount of penalties due. Interest at the current rate
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1 published by the United States Treasury, as described at 40 C.F.R. §13.11, shall begin to
2 accrue on the unpaid balance at the end of the thirty-day period.

3 20. Payment of stipulated penalties shall be made in accordance with the procedure set forth
4 for payment of the penalty in Paragraphs 10 and 11 of this CA/FO.

5 21. All payments shall indicate Respondents' names and the EPA docket number assigned to
6 this action.

7 22. The payment of stipulated penalties shall not alter in any way Respondents' obligation to
8 complete the performance required hereunder.

9 23. The stipulated penalties set forth in this Section do not preclude EPA from pursuing any
10 other remedies or sanctions which may be available to EPA by reason of Respondents'
11 failure to comply with any of the requirements of this CA/FO.

12 24. Notwithstanding any other provision of this Section, EPA may, in its unreviewable
13 discretion, waive any portion of stipulated penalties that have accrued pursuant to this
14 CA/FO.

15 25. The payment of stipulated penalties specified in this Section shall not be deducted by
16 Respondents or any other person or entity for federal, state or local taxation purposes.

17 **E. NOTIFICATION**

18 26. All notices and submissions to EPA shall include a certification under penalty of law that
19 the information submitted is true, accurate and complete, which the signatory can verify
20 personally or regarding which the signatory has inquired of the person or persons directly
21 responsible for gathering the information. All notices and submissions shall be sent by
22 email and fax, and shall be effective upon receipt, unless otherwise provided herein. All
23 notices and submissions sent to EPA shall be directed to:

24 Rich Vaile, Associate Waste Director
25 Waste Management Division, WST-1
26 U.S. Environmental Protection Agency, Region IX
27 75 Hawthorne St.
28 San Francisco, CA 94105
Phone: 415-972-3378
Fax: 415-947-3530

1 Email: vaille.rich@epa.gov

2 and

3 Matthew Reed, Project Coordinator
4 Waste Management Division, WST-3
5 U.S. Environmental Protection Agency, Region IX
6 75 Hawthorne St.
7 San Francisco, CA 94105
8 Phone: 415-972-3301
9 Fax: 415-947-3530
10 Email: reed.matthew@epa.gov

11 27. All notices and submissions to Respondents shall be directed to:

12 Joaquin DLG Torres, Esq.
13 Torres Brothers, LLC
14 P.O. Box 501856
15 Saipan, MP 96950
16 Bank of Guam Building, Third Floor
17 Phone: 670-233-5504/06
18 Fax: 670-233-5510
19 Email: torres_jack@yahoo.com

20 **F. PARTIES BOUND**

21 28. This CA/FO shall apply to and be binding upon Respondents and Respondents agents,
22 successors and assigns and upon all persons acting under or for Respondents, until such
23 time as the civil penalty required under Section C has been paid in accordance with the
24 terms of this CA/FO, and any delays in performance and/or stipulated penalties have been
25 resolved. At such time as those matters are concluded, this CA/FO shall terminate and
26 constitute full settlement of the civil penalty claims for the violations alleged in the
27 Complaint.

28 29. No change in ownership or corporate, partnership or legal status relating to the Facility
will in any way alter Respondents' obligations and responsibilities under this CA/FO.

30. Until termination of this CA/FO, Respondents shall give notice of this CA/FO to any
successor in interest prior to transfer of ownership or operation of the Facility and shall
notify EPA within seven (7) days prior to such transfer.

1 31. The undersigned representative of Respondents hereby certifies that he or she is fully
2 authorized by Respondents to enter into this CA/FO, to execute and to legally bind
3 Respondents to it.

4 **G. CERTIFICATION OF COMPLIANCE**

5 32. Upon signing this CA/FO, Respondents certify under penalty of law to EPA that the
6 Respondents have fully complied with the requirements of Sections 3002, 3004, 3005 and
7 3014 of RCRA, 42 U.S.C. §§6922, 6924, 6925 and 6935, that formed the basis for the
8 violations alleged in the Complaint. This certification of compliance is based upon true,
9 accurate and complete information, which the signatory can verify personally or regarding
10 which the signatory has inquired of the person or persons directly responsible for
11 gathering the information.

12 **H. RESERVATION OF RIGHTS**

13 33. EPA expressly reserves all rights and defenses that it may have.

14 34. EPA hereby reserves all of its statutory and regulatory powers, authorities, rights and
15 remedies, both legal and equitable, including without limitation, the right to require that
16 Respondents perform tasks in addition to those required by this CA/FO and the right to
17 assess penalties under Section 3008 of RCRA, 42 U.S.C. § 6928, or take other
18 appropriate action, in the event that Respondents fail to comply with any of the
19 requirements of this CA/FO.

20 35. This CA/FO shall not be construed as a covenant not to sue, a release, waiver or
21 limitation of any rights, remedies, powers or authorities, civil or criminal, that EPA has
22 under RCRA, or any other statutory, regulatory or common law enforcement authority of
23 the United States, except as otherwise set forth herein.

24 36. The entry of this CA/FO and Respondents' consent to comply shall not limit or otherwise
25 preclude EPA from taking additional enforcement actions should EPA determine that
26 such actions are warranted, except as they relate to Respondents' liability for federal civil
27 penalties for the specific alleged violations set forth in the Complaint. Full payment of
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1 the penalty proposed herein shall resolve Respondents' liability for federal civil penalties
2 for the violations alleged in the Complaint.

3 37. This CA/FO is not intended to be nor shall it be construed as a permit. This CA/FO does
4 not relieve Respondents of any obligation to obtain and comply with any local, state or
5 federal permits. Compliance by Respondents with the terms of this CA/FO shall not
6 relieve Respondents of obligation to comply with any applicable local, state or federal
7 laws and regulations.

8 38. Notwithstanding compliance with the terms of this CA/FO, Respondents are not released
9 from liability, if any, for the costs of any response actions taken by EPA. EPA reserves
10 its right to seek reimbursement from Respondents for any response costs incurred by the
11 United States that may result or arise from the alleged counts set forth in the Complaint.

12 **I. OTHER CLAIMS**

13 39. Nothing in this CA/FO shall constitute or be construed as a release from any other claim,
14 cause of action or demand in law or equity by or against any person, firm, partnership,
15 entity or corporation for any liability it may have arising out of or relating in any way to
16 the generation, storage, treatment, handling, transportation, release, or disposal of any
17 hazardous constituents, hazardous substances, hazardous wastes, pollutants, or
18 contaminants found at, taken to, or taken from Respondents' facility..

19 **J. MISCELLANEOUS**

20 40. This CA/FO may be amended or modified only by written agreement executed by both
21 EPA and Respondents.

22 41. The headings in this CA/FO are for convenience of reference only and shall not affect
23 interpretation of this CA/FO.

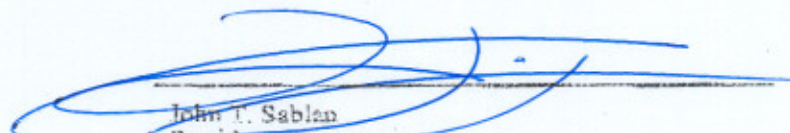
24 42. Each party shall bear its own attorneys' fees, costs, and disbursements incurred in this
25 proceeding.

1 43. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), this CA/FO shall be effective
2 on the date that the Final Order contained in this CA/FO, having been approved and
3 issued by either the Regional Judicial Officer or Regional Administrator, is filed.
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5 IT IS SO AGREED,
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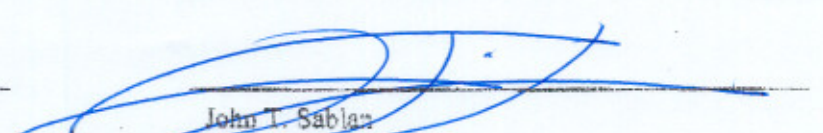
7 For Respondent JG SABLAN ROCK QUARRY, INC.

8
9 5/15/07
10 Date


11 John T. Sablan
12 President
13 JG Sablan Rock Quarry, Inc.

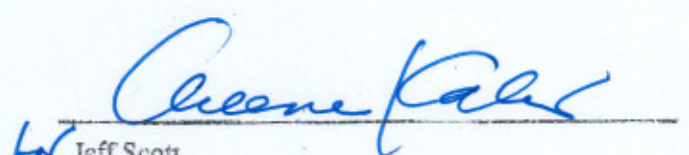
14 For Respondent JOHN T. SABLAN

15
16 5/15/07
17 Date


18 John T. Sablan

19
20 For Complainant

21
22 6-26-07
23 Date


24 for Jeff Scott
25 Director
26 Waste Management Division
27 United States Environmental Protection Agency,
28 Region IX

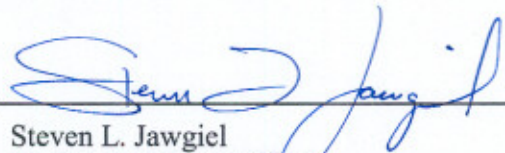
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FINAL ORDER

IT IS HEREBY ORDERED that this Consent Agreement and Final Order (EPA Docket No. RCRA-9-2006-0009) be entered and that Respondents JG Sablan Rock Quarry, Inc., and Mr. John T. Sablan pay a civil penalty in the amount of FOUR HUNDRED THOUSAND, DOLLARS (\$400,000), in accordance with the terms of this Consent Agreement and Final Order.

THIS FINAL ORDER SHALL BE EFFECTIVE IMMEDIATELY.

06/29/07
Date


Steven L. Jawgiel
Regional Judicial Officer
United States Environmental Protection Agency,
Region IX

CERTIFICATE OF SERVICE

I hereby certify that on the date below, the original copy of the foregoing Complaint, Consent Agreement and Final Order, was filed with the Regional Hearing Clerk, Region IX, and that copies were sent by certified mail, return receipt requested, to:

Mr. Joaquin D.L.G. Torres, Esq.
Mr. Vince Torres, Esq.
Torres Brothers, LLC
Bank of Guam Building, Third Floor
P.O. Box 501856
Saipan, MP 96950
Phone: 670-233-5504/06
Fax: 670-233-5510

7-2-07

Date



Danielle Carr
Regional Hearing Clerk
Office of Regional Counsel, Region IX