

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 2

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REG.II

2007 MAY -4 PM 4:06

REGIONAL HEARING  
CLERK

IN THE MATTER OF:

**Cervecería India, Inc.**  
Post Street N, State Road 2  
Algarrobo Ward  
Mayagüez, Puerto Rico 00681

NPDES Permit PR0001341

**Respondent**

Proceeding to Assess a Class I  
Administrative Penalty Pursuant  
to Section 309(g) of The Clean  
Water Act, 33 U.S.C. § 1319(g)

DOCKET NO. CWA-02-2007-3325

CONSENT AGREEMENT AND FINAL ORDER

I. Preliminary Statement

1. This Consent Agreement and Final Order (CA/FO) is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency (EPA) by Section 309(g)(2)(A) of the Clean Water Act (Act), as amended, 33 U.S.C. § 1319(g)(2)(A).
2. The following Findings are made and Order issued pursuant to the authority vested in the Administrator of the 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). The Administrator has delegated this authority to the Regional Administrator of EPA, Region 2, who in turn has delegated it to the Director, Caribbean Environmental Protection Division (CEPD) of EPA, Region 2 (Complainant).
3. This Consent Agreement and Final Order is issued in accordance with 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 for settlement of administrative civil penalty assessment proceedings through issuance of a consent agreement and final order pursuant to 40 C.F.R. §§ 22.18(b)(2) and (3).

## II. Findings of Fact and Conclusions of Law

4. Cervecería India, Inc. (Respondent) is a corporation, and as such, is a "person" within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5).
5. Respondent owns and operates a facility located at Post Street N, State Road 2, Algarrobo Ward, Municipality of Mayagüez, Puerto Rico (the "Facility").
6. The Facility is engaged in the production of alcoholic and non-alcoholic beverages.
7. The operations at the Facility are best described by the Standard Industrial Classification ("SIC") code 2082 (malt beverages).
8. Respondent was and is, at all relevant times, a "point source" within the meaning of Section 502(14) of the Act, 33 U.S.C. § 1362(14).
9. Respondent discharges pollutants through point sources into "Río Yagüez."
10. Río Yagüez is a water of the United States within the meaning of Section 502(7) of the Act, 33 U.S.C. § 1362(7).
11. Respondent's Facility is subject to the NPDES permit requirements pursuant to Sections 301(a) and 402 of the Act, 33 U.S.C. §§ 1311(a) and 1342, respectively.
12. Section 402 of the Act, 33 U.S.C. § 1342, authorizes the Administrator of EPA to issue a National Pollutant Discharge Elimination System (NPDES) permit for the discharge of any pollutant, or combination of pollutants subject to certain requirements of the Act and conditions which the Administrator determines are necessary.
13. On September 3, 1999, EPA re-issued Respondent's NPDES permit PR0001341 (the "Permit") pursuant to Section 402 of the Act, 33 U.S.C. § 1342. The Permit became effective on October 1, 1999 and expired on September 30, 2004. The Permit authorized the discharge of waters composed entirely of storm water through outfall serial numbers 002 and 003 into Río Yagüez. The permit also established effluent limitations, monitoring and reporting requirements, and special and general conditions which had to be met by

Respondent.

14. Part II.B.2 of the Permit required Respondent to file a complete permit application at least 180 days prior to the expiration date in order to receive authorization to discharge after the expiration date.
15. The NPDES permit application regulations at 40 CFR § 122.21 (d)(2) require permittees with currently effective permits to submit a complete application 180 days before the existing permit expires, except when EPA grants permission to submit an application later than the deadline for submission otherwise applicable, but no later than the permit expiration date.
16. Based on Part II.B.2 of the Permit and 40 CFR § 122.21(d)(2), Respondent was required to file a complete permit application no later than April 3, 2004.
17. On February 2, 2004, EPA issued the Administrative Compliance Order, Docket number CWA-02-2004-3054 (ACO), against Respondent. The ACO required Respondent to among others, file a renewal permit application no later than September 30, 2004.
18. In accordance with the ACO and 40 CFR § 122.21(d)(2)(i), the new renewal permit application deadline was September 30, 2004.
19. By letter dated March 31, 2004, Respondent submitted to EPA an NPDES permit renewal application (March 2004 Permit Renewal). EPA reviewed it and determined that it was incomplete.
20. In a letter dated April 13, 2004, EPA notified Respondent that the March 2004 Permit Renewal was incomplete. The letter stated that Respondent failed to provide certain information related to the pollutants that were present in the discharges from the Facility's outfalls.
21. In a letter dated May 21, 2004, Respondent provided EPA with information supplementing the March 2004 Permit Renewal. EPA reviewed it and determined that the March 2004 Permit Renewal continued to be incomplete. EPA informed this to Respondent in a letter dated July 5, 2004. In such letter, EPA specifically indicated the sections of the March 2004 Permit Renewal that were incomplete and the specific information that was missing.

22. In a letter dated November 17, 2004, Respondent submitted to EPA a compliance status report on the ACO stating that it had established the sampling points for compliance with the monitoring requirements of the NPDES permit by August 1, 2004, but that it was not until October 21, 2004, that the Environmental Quality Board (EQB) conditionally approved the NPDES sampling points subject to construction and inspection.
23. On March 31, 2005, Respondent filed another NPDES permit renewal application (March 2005 Permit Renewal).
24. EPA reviewed the March 2005 Permit Renewal and in a letter dated May 30, 2005, it informed Respondent that the application for the NPDES permit renewal was complete.
25. EPA has determined that Respondent discharged storm water associated with industrial activity from its Facility into waters of the United States, without an NPDES permit, from September 30, 2004 to March 31, 2005, in contravention of Section 301 of the Act, 33 U.S.C. § 1311.
26. The parties feel it is in the public interest to resolve the issues raised in this agreement without further litigation and the expense and effort that litigation entails. Toward this end, the parties have agreed to the following settlement.

### **III. Consent Agreement**

Based upon the foregoing, and pursuant to Section 309(g) of the Act, 33 U.S.C. § 1319(g), 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

27. For the purpose of this proceeding, Respondent: a) admits the jurisdictional allegations of the Complaint and of this Consent Agreement/Final Order; and b) neither admits nor denies the specific factual allegations.

#### Terms of Agreement

28. Pursuant to the authority of Section 309(g) of the Act and having taken into account the nature, circumstances, extent and gravity of the violations, Respondent's prior compliance

history, degree of culpability and the economic benefit or savings accruing to Respondent by virtue of the violation, and Respondent's ability to pay the proposed penalty, and, EPA has determined an appropriate civil penalty of TWENTY THOUSAND DOLLARS (\$20,000.00).

Payment of Civil Penalty

29. Respondent shall submit payment of a civil penalty in the total amount of TWENTY THOUSAND DOLLARS (\$20,000.00), plus interest, payable to the "Treasurer, United States of America," by cashier's or certified check, in four payments as follows:
- a. an initial payment of FIVE THOUSAND DOLLARS (\$5,000.00) shall be made within forty-five (45) calendar days from the effective date of the Consent Agreement;
  - b. a Second payment shall be made within one hundred thirty-five (135) calendar days from the effective date of the Consent Agreement in the amount of FIVE THOUSAND TWO HUNDRED TWENTY-ONE DOLLARS NINETY-ONE CENTS (\$5,221.91);
  - c. a Third payment shall be made within two hundred and twenty-five (225) calendar days from the effective date of the Consent Agreement in the amount of FIVE THOUSAND TWO HUNDRED FORTY-SIX DOLLARS FIFTY-SEVEN CENTS (\$5,246.57); and
  - d. a Fourth and Final payment shall be made within three hundred and fifteen (315) calendar days from the effective date of the Consent Agreement in the amount of FIVE THOUSAND ONE HUNDRED SEVENTY-TWO DOLLARS SIXTY CENTS (\$5,172.60).

These four payments satisfy the totality of the civil penalty of TWENTY THOUSAND DOLLARS (\$20,000.00), plus interest that accrues on the unpaid principal over the period of less than eleven months that Respondent has requested to satisfy payment.

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 - 16<sup>th</sup> Floor  
New York, New York 10007,

and to:

Héctor L. Vélez Cruz  
Assistant Regional Counsel  
U.S. Environmental Protection Agency, Region 2  
Office of Regional Counsel, Caribbean Team  
Centra Europa Building, Suite 417  
1492 Ponce de Leon Avenue  
San Juan, Puerto Rico 00907-4127.

30. The initial payment must be received at the above address on or before forty-five (45) calendar days after the date of the 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").
- a. 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.
  - b. 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.
  - c. In addition, pursuant to Section 309(g)(9) of the 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. Respondent also may be required to pay attorneys fees and costs for collection proceedings in connection with nonpayment.

31. The penalty specified in Paragraph 26, above, shall represent a civil penalty assessed by EPA and shall not be deductible from Respondent's federal or state taxes.

#### **IV. General Provisions**

32. 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 ACO. 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.
33. 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.
34. Respondent knowingly and explicitly waives its right under CWA Section 309(g)(2) and (8), 33 U.S.C. § 1319(g)(2) and (8), to request or to seek any Hearing on or Judicial Review of this Consent Agreement or the Findings of Fact and Conclusions of Law herein, or on the accompanying Final Order.
35. 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 Regional Administrator or the Deputy 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.

36. Issuance of the 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 309(a), (b) and (c) of the Act, 33 U.S.C. §§ 1319(a), (b) and (c). Pursuant to Section 309(g)(7) of the Act, 33 U.S.C. § 1319(g)(7), issuance or compliance with this Consent Agreement Final Order does not waive, extinguish or otherwise affect Respondent's obligation to comply with all applicable requirements of the Clean Water Act, of regulations promulgated thereunder and of any legal order or permit issued thereunder.
37. Nothing in this Consent Agreement shall be construed to create any rights in, or grant any caused of action to, any person not a Party to this Agreement.
38. 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.
39. 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.
40. Each party hereto agrees to bear its own costs and fees in this matter.
41. Respondent consents to service upon Respondent by a copy of this Consent Agreement and Final Order by an EPA employee other than the Regional Hearing Clerk.

For the Respondent,  
Cervecería India, Inc.:

Carmen A. Valdés

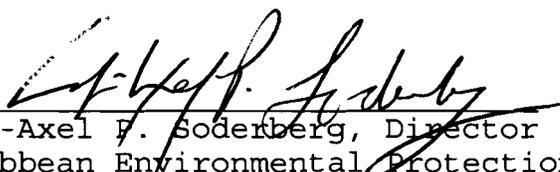
Date: 27 de febrero 2007

Authorizing Signature

CARMEN A. Valdés  
Name (PLEASE PRINT)

President  
Title

**For the Complainant:**

  
\_\_\_\_\_  
Carl-Axel F. Soderberg, Director  
Caribbean Environmental Protection Division  
U.S. Environmental Protection Agency - Region 2  
Centra Europa Building, Suite 417  
1492 Ponce de Leon Avenue  
San Juan, Puerto Rico 0090

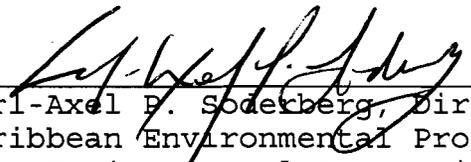
Date: 05-03-07

**V. Final Order**

The Regional Administrator of the U.S. Environmental Protection Agency, Region 2, through Director, Caribbean Environmental Protection Division of EPA, 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. Environmental Protection Agency, Region 2, New York, New York.

**IN THE MATTER OF:      Cervecería India, Inc.**  
Post Street N, State Road 2  
Algarrobo Ward  
Mayagüez, Puerto Rico 00681  
CONSENT AGREEMENT AND FINAL ORDER  
Docket No. CWA-02-2007-3325

ISSUED AND ORDER THIS *3rd* DAY OF *May*, 2007.

  
\_\_\_\_\_  
Carl-Axel P. Soderberg, Director  
Caribbean Environmental Protection Division  
U.S. Environmental Protection Agency - Region 2

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 2

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NPDES Permit PR0001341

**Respondent**

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DOCKET NO. CWA-02-2007-3325

CERTIFICATE OF SERVICE

I certify that on *May 3*, 2007, 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 copy by certified mail/return receipt 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; and

copy by certified mail/return receipt to:

Attorney for Respondent:  
Eduardo M. Negrón Navas, Esq.  
Fiddler, González & Rodríguez, PSC  
Attorneys and Counselors at Law  
P. O. Box 363507  
San Juan, PR 00936-3507  
Fax (787) 754-7532.

*May 3, 2007*  
Date