



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2  
290 BROADWAY  
NEW YORK, NY 10007-1866

SEP 26 2008

PROTECTION AGENCY-REG:11  
2008 SEP 30 PM 4:13  
REGIONAL HEARING  
CLERK

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Article Number: 7005 3110 0000 5930 0534

Mr. Donald K. Bloodworth  
Lagan Puerto Rico, Ltd., LLC  
Caribbean Airport Building 1, Office 213, Suite 1  
Carr. Sector Central 150  
Carolina, Puerto Rico 00979

Re: Notice of Complaint and Proposed Assessment of a Civil Penalty  
Luis Muñoz Marin International Airport RW10/28 Reconstruction  
NPDES Tracking No. PRR10BA51  
Docket No. CWA-02-2008-3405

Dear Mr. Bloodworth:

Enclosed is a Complaint which the U.S. Environmental Protection Agency (EPA) is issuing to you as a result of our determination that Lagan Puerto Rico, Ltd., LLC, located at Luis Muñoz Marin International Airport, Carolina, Puerto Rico 00979, is in violation of Sections 301 and 402 of the Clean Water Act (CWA or Act), 33 U.S.C. §§1311 and 1342 of the CWA. This Complaint is filed pursuant to the authority Section 309(g) of the CWA, 33 U.S.C. §1319(g). The Complaint proposes that a penalty of \$98,000 be assessed against Lagan Puerto Rico, Ltd., LLC for these violations.

You have the right to a hearing to contest the factual allegations in the Complaint. If you admit the allegations, or they are found to be true after you have had an opportunity for a hearing on them, you have the right to contest the penalty proposed in the Complaint. I have enclosed a copy of the Consolidated Rules of Practice (CROP), found at 40 Code of Federal Regulations Part 22, which the EPA follows in cases of this kind. Please note the requirements for an Answer at Section 22.15 of the CROP. **If you wish to contest the allegations or the penalty proposed in the Complaint, you must file an Answer within thirty (30) days of your receipt of the enclosed Complaint to the EPA Regional Hearing Clerk at the following address:**

Regional Hearing Clerk  
U.S. Environmental Protection Agency  
290 Broadway, 16th Floor  
New York, New York 10007-1866

If you do not file an Answer within thirty (30) days of receipt of this Complaint, you may be judged to have defaulted (See, §22.17 of the CROP). If a default order is entered, the entire proposed penalty may be assessed without further proceedings.

cc: Karen Maples, Regional Hearing Clerk (w/ Complaint and enclosures)  
Wanda E. García Hernández, Director, Water Quality Area, PREQB (w/Complaint only)

**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 2**

**IN THE MATTER OF:**

Lagan Puerto Rico, Ltd., LLC  
Caribbean Airport Building 1, Office 213, Suite 1  
Carolina, Puerto Rico 00979

Luis Muñoz Marin International Airport RW10/28  
Reconstruction  
**NPDES Permit Tracking Number: PRR10BA51**

Respondent

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

**PROCEEDING TO ASSESS A  
CLASS II CIVIL PENALTY**

**DOCKET NO. CWA-02-2008-3405**

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REGION 2  
2008 SEP 30 PM 4:13  
REGIONAL HEARING  
CLERK

**ADMINISTRATIVE COMPLAINT  
FINDINGS OF VIOLATION, NOTICE OF PROPOSED  
ASSESSMENT OF AN ADMINISTRATIVE PENALTY, AND  
NOTICE OF OPPORTUNITY TO REQUEST A HEARING**

**I. STATUTORY AND REGULATORY AUTHORITIES**

1. This Administrative Complaint, Findings of Violation, Notice of Proposed Assessment of an Administrative Penalty, and Notice of Opportunity to Request a Hearing (Complaint) is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency (EPA) by Section 309(g)(2)(B) of the Clean Water Act (Act or CWA), 33 U.S.C. §1319(g)(2)(B). The Administrator has delegated this authority to the Regional Administrator of EPA, Region 2, who in turn has delegated it to the Director, Division of Enforcement and Compliance Assistance (DECA) of EPA, Region 2 (Complainant).
2. Pursuant to Section 309(g)(2)(B) of the Act, and 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), 40 CFR Part 22 (2001), a copy of which is attached, Complainant hereby requests that the Regional Administrator assess a civil penalty against Lagan Puerto Rico, Ltd., LLC (Respondent), as a result of Complainant's determination that the Respondent is in violation of Sections 301 and 402 of the Act, 33 U.S.C. §§1311 and 1342, respectively, for the unlawful discharge of pollutants into navigable waters without authorization by a National Pollutant Discharge Elimination System (NPDES) permit.

3. Section 301(a) of the Act, 33 U.S.C. §1311(a), provides in part that "except as in compliance with this Section and Sections . . . 1342, and 1344 of [the Act], the discharge of any pollutant by any person shall be unlawful."
4. Section 308 of the Act, 33 U.S.C. §1318, provides, in relevant part, that the Administrator of EPA may require the owner or operator of any point source to, among other things: maintain such records; make such reports; install, use and monitor such equipment; sample such effluents; and provide such other information as may reasonably be required in order to carry out Section 402 of the Act, 33 U.S.C. §1342.
5. Section 402 of the Act, 33 U.S.C. §1342, authorizes the Administrator 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 such conditions as the Administrator determines are necessary.
6. Section 402(p) of the Act, 33 U.S.C. §1342(p), requires a permit with respect to a discharge associated with industrial activity.
7. The Administrator of EPA has promulgated regulations at 40 CFR §§122.26(a)(1)(ii) and 122.26(b)(14), which require operators to obtain a NPDES permit for storm water discharges associated with industrial activity, including construction activity.
8. The regulations at 40 CFR §§122.26(b)(14)(x) and 122.26(b)(15)(i) regulate storm water discharges associated with construction sites which include clearing, grading and excavation activities that result in the disturbance of one (1) or more acres of total land area.
9. Construction sites that are less than one acre, but are part of a common plan that is greater or equal to one acre are required to apply for coverage under the Construction General Permit. See 40 CFR §122.26(a)(1)(ii) and §122.26(b)(14)(x) and §122.26(b)(15)(i).
10. The Act and its implementing regulations and applicable NPDES permit contain the following definitions:
  - a) "Navigable waters" means the waters of the United States and territorial seas, pursuant to Section 502(7) of the Act, 33 U.S.C. §1362(7). "Waters of the United States" means, but are not limited to, waters which are currently used or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide and including wetlands, rivers and streams (including intermittent streams) (40 CFR §122.2).
  - b) "Pollutant" means, but is not limited to, solid waste, dredged spoil, rock, sand, cellar dirt, sewage, sewage sludge, and industrial, municipal and agricultural waste discharged into water, pursuant to Section 502(6) of the Act, 33 U.S.C. §1362(6).
  - c) "Point source" means "any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well,

discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged, ..." pursuant to Section 502(14) of the Act, 33 U.S.C. §1362(14).

- d) "Discharge of a pollutant" means any addition of any pollutant to navigable waters from any point source, pursuant to Section 502(12) of the Act, 33 U.S.C. §1362(12).
- e) "Person" means, but is not limited to, an individual, corporation, partnership or association, pursuant to Section 502(5) of the Act, 33 U.S.C. §1362(5).
- f) "Operator," for the purpose of the NPDES storm water general permit for construction activities and in the context of storm water associated with construction activity, is defined at Appendix A of the CGP to mean any party associated with a construction project that meets either of the following two (2) criteria:
  - i. The party has operational control over construction plans and specifications including the ability to make modifications to those plans and specifications; or
  - ii. The party has day-to-day operational control of those activities at a project which are necessary to ensure compliance with a storm water pollution prevention plan for the site or other permit conditions. See Appendix A of the CGP.

11. EPA issued the "NPDES General Permit for Discharges from Large and Small Construction Activities", Permit No. PRR100000 on July 1, 2003 (CGP or 2003 CGP). This permit was published in the Federal Register (68 FR 39087). It became effective on July 1, 2003 and it expired on July 1, 2008. EPA has reissued the CGP and the 2008 CGP became effective on June 30, 2008 and will expire on June 30, 2010.

- a) Part 2.3 of the CGP requires the submittal of a complete and accurate Notice of Intent (NOI) (a/k/a application for inclusion in the CGP) and that storm water discharges be authorized consistent with Part 2.1 of the CGP prior to commencement of construction activities.
- b) Part 3.1 of the CGP requires that a Storm Water Pollution Prevention Plan (SWPPP) must be prepared prior to the submission of the NOI. Part 3.1 also requires that the SWPPP be implemented as written from commencement of construction activity until final stabilization is complete.
- c) Parts 3.3 and 3.4 of the CGP specify the components that are to be included in a SWPPP.
- d) Part 3.6 of the CGP requires that erosion and sediment control measures and other protective measures identified in the SWPPP must be maintained in effective operating condition.

- e) Part 3.10 of the CGP requires that inspections be conducted at least once every seven (7) calendar days, or at least once every fourteen (14) calendar days and within twenty-four (24) hours of the end of a storm event of 0.5 inches or greater.
- f) Part 3.12 of the CGP requires that the SWPPP be retained at the construction site.

## **II. JURISDICTIONAL FINDINGS**

- 12. Lagan Puerto Rico, Ltd., LLC (Respondent) is a person within the meaning of Section 502(5) of the CWA, 33 U.S.C. §1362(5).
- 13. The Luis Muñoz Marin International Airport (LMMIA) runway RW10/28 Reconstruction construction site (Site) is located at Luis Muñoz Marin International Airport in Carolina, Puerto Rico.
- 14. At all relevant times, Respondent was the operator of the Site.
- 15. The Site disturbed approximately 94 acres of land.
- 16. Storm water from the Site discharged to Laguna San Jose and Laguna Torrecilla via conveyances such as pipes, storm water channels, conduits, etc.
- 17. Laguna San Jose and Laguna Torrecilla are water bodies of the United States.
- 18. Respondent's Site was and is, at all relevant times, a point source as defined Section 502 (14) of the Act, 33 U.S.C. §1362(14).

## **III. FINDINGS OF VIOLATION**

- 19. Complainant re-alleges Paragraphs 12 – 18 above.
- 20. EPA's NOI database (<http://cfpub.epa.gov/npdes/stormwater/noi/noisearch.cfm>) indicates that Lagan Puerto Rico, Ltd., received CGP coverage under NPDES Permit Tracking No. PRR10BA51 on April 17, 2006. Based upon this NOI, construction began on May 15, 2005, and was scheduled to be completed on March 31, 2008. Failure to obtain coverage under the Permit prior to commencement of construction activities violates Part 2.3.A. of the Permit and Sections 301 and 402 of the CWA.
- 21. On January 22, 2007, an EPA Region 2 inspector conducted a Compliance Evaluation Inspection (CEI) at the Site. At the time of the CEI, the EPA inspector identified the following violations of the CGP:
  - a. Part 3.10.A. of the Permit requires that the site be inspected at least once every seven (7) calendar days, or at least once every fourteen (14) calendar days and within twenty-four (24) hours of the end of a storm event of 0.5 inches or greater. Part 3.10.G. of the Permit requires that a site inspection report be completed for each site inspection conducted and that these records be retained on-site with the

SWPPP for a period of three (3) years from construction termination. The CEI and Attachment C of Lagan's September 10, 2007 letter indicated that Lagan failed to conduct at least one inspection, as required, during the period between its site inspections on October 27, 2006 and November 27, 2006. Lagan's failure to conduct site inspections and/or to maintain the required documentation violates Part 3.10 of the CGP;

b. As part of the CEI, EPA reviewed Lagan site inspection reports for the dates: June 9, 2005, June 11, 2005, June 25, 2005, June 27, 2005, June 28, 2005, July 5, 2005, July 11, 2005, July 13, 2005, October 16, 2006, October 18, 2006, October 20, 2006, October 27, 2006, November 27, 2006, November 29, 2006, December 4, 2006, December 15, 2006, December 20, 2006, January 13, 2007. Part 3.10.G of the Permit requires specific items to be listed in the Site inspection reports. The reports failed to include some or all of the following information in violation of Part 3.10.G of the CGP:

- i. Qualifications of person making the inspection were not listed;
- ii. Description of discharges from the site;
- iii. Locations of discharges of sediment or other pollutants from the site;
- iv. Location of Best Management Practices (BMPs) that failed to operate as designed or proved inadequate for a particular location;
- v. Locations where additional BMPs are needed that did not exist at the time of inspection;
- vi. Corrective action required including any changes to the SWPPP necessary and implementation dates;
- vii. Weather information for the period since the last inspection;
- viii. Weather information and description of discharges occurring during the inspection;

c. Part 3.10.E of the Permit states that:

*"[S]ite inspections must include all areas of the site disturbed by construction activity and areas used for storage of materials that are exposed to precipitation. Inspectors must look for evidence of, or the potential for, pollutants entering the storm water conveyance system. Sedimentation and erosion control measures identified in the SWPPP must be observed to ensure proper operation. Discharge locations must be inspected to ascertain whether erosion control measures are effective in preventing significant impacts to waters of the United States, where accessible. Where discharge locations are inaccessible, nearby downstream locations must be inspected to the extent that such inspections are practicable. Locations where vehicles enter or exit the site must be inspected for evidence of off-site sediment tracking".*

EPA's review of Lagan's inspection reports during the CEI indicated that Lagan's inspections did not comply with the provisions of 3.10.E of the CGP. For example, as part of the CEI, EPA reviewed two different inspection reports from the same date,

November 29, 2006. One report was developed to meet the conditions of the Puerto Rico Environmental Quality Board, Plan for Control of Erosion and Sedimentation (Plan CES). The Plan CES Report identified that a silt fence had been disturbed. The second report, produced per Part 3.10 CGP, did not indicate any deficiencies and contained no other information except for the Project Inspector, Date, and the statement that, "No Stabilization was required".

- d. Part 10.0 of the SWPPP (3.6 of the CGP) requires that all erosion and sediment controls and other protective measures identified in the SWPPP be maintained in effective operating condition. The CEI identified that silt fences and inlet protection had not been maintained in accordance with Part 10.0 of the SWPPP (3.1.D of the CGP) and Part 3.6 of the CGP;
- e. Part 3.13 of the CGP requires that stabilization take place fourteen (14) days after construction activity in that portion of the Site has temporarily or permanently ceased. The CEI identified areas of the Site that were in need of temporary or permanent stabilization.
- f. Part 4.1.1 of the SWPPP specifies that stockpiled soils will be covered with plastic. Stockpiles seen during the CEI were not covered as required by the SWPPP. Part 3.1.D requires that the SWPPP be implemented as written.
- g. Part 3.1.D of the CGP requires that the SWPPP be implemented as written. Part 4.2 of the SWPPP indicates that all storm water inlets will be surrounded by hay bales and silt fences. During the CEI, several catch basins that were in use did not have hay bales and silt fences around them as required by Part 4.2 of the SWPPP. Lagan's failure to install inlet protection at several catch basins fails to meet the requirements of Part 3.1.D of the CGP.
- h. The CEI identified that the East Blast Pad area, which has potential pollutant sources associated with the construction activity, was not included in the SWPPP or Site Maps. Part 3.1 of the CGP requires that all potential storm water pollutant sources must be identified in the SWPPP and that appropriate Storm Water BMPs be installed and maintained.
- i. During the CEI, a SWPPP dated April 1, 2006 was available on-site; however, the NOI states that construction began at the Site on May 15, 2005. Lagan representatives said that prior to the April 1, 2006, SWPPP, there was another SWPPP, but that it was no longer available. Part 6 of the CGP, Retention of Records, requires that copies of the SWPPP and all documentation required by the Permit must be retained for at least three years from the date that permit coverage expires or is terminated. The facility failed to retain its SWPPP as required by Part 6 of the CGP.
- j. Records of dates when major grading activities occurred, dates when construction activities temporarily or permanently cease on a portion of the Site; and, dates when stabilization measures were initiated were not included in the April 1, 2006 SWPPP or available on-site during the CEI as required by Part 3.4.C. of the CGP.



- k. The Site Map within the April 1, 2006 SWPPP, reviewed during the CEI did not depict areas for waste, borrow or equipment storage areas, or areas of final stabilization as required by 3.3.C of the CGP.
  - l. Part 3.12.B of the CGP requires posting of a sign containing the NOI information. During the CEI there was no sign containing the NOI information at the entrance of the construction site. Failure to post the required sign is a violation of Part 3.12.B of the CGP;
22. On July 30, 2007, an Administrative Order and Request for Information (CWA-02-2007-3060) (AO/RFI) was issued against Respondent Lagan Puerto Rico, Ltd., LLC under Sections 308 and 309 of the CWA.
  23. An AO, CWA-02-2007-3060 required Respondent to remedy certain violations based on findings made during the January 22, 2007 EPA inspection.
  24. Respondent replied to the AO on September 10, 2007 and October 23, 2007.
  25. Based on the Findings in Paragraphs 19 – 24 above, Respondent violated Sections 301 and 402 of the Act, 33 U.S.C. §§1311 and 1342, by failing to obtain or comply with the terms of the Construction General Permit.

#### **IV. NOTICE OF PROPOSED ORDER ASSESSING A CIVIL PENALTY**

Based on the foregoing Findings of Violation, and pursuant to the authority of Section 309(g) of the Act, 33 U.S.C. §1319(g), and the Debt Collection Improvement Act of 1996, EPA, Region 2 hereby proposes to issue a Final Order Assessing Administrative Penalties (Final Order) to Respondent assessing a penalty of **\$98,000**. EPA determined the proposed penalty after taking into account the applicable factors identified at Section 309(g)(3) of the Act, 33 U.S.C. §1319(g)(3). EPA has taken account of the nature, circumstances, extent and gravity of the violation (or violations), and Respondent's prior compliance history, degree of culpability, economic benefit or savings accruing to Respondent by virtue of the violations, and Respondent's ability to pay the proposed penalty. Based on the Findings set forth above, the Respondent has been found to have violated the Act in **twelve (12) instances constituting five hundred ninety one (591) days of violation**. EPA may issue the Final Order Assessing Administrative Penalties thirty (30) days after Respondent's receipt of this Notice, unless Respondent files an Answer to the Complaint within that time and requests a Hearing on this Notice pursuant to the following section.

#### **V. PROCEDURES GOVERNING THIS ADMINISTRATIVE ACTION**

The rules of procedure governing this civil administrative litigation have been set forth in the CROP, 40 CFR Part 22. A copy of these rules accompanies this Complaint.

##### **A. Answering The Complaint**

Where Respondent intends to contest any material fact upon which the Complaint is based, to contend that the proposed penalty is inappropriate or to contend that Respondent is entitled to

judgment as a matter of law, Respondent must file with the Regional Hearing Clerk of EPA, Region 2, both an original and one copy of a written Answer to the Complaint, and such Answer must be filed within thirty (30) days after service of the Complaint. 40 CFR § 22.15(a). The address of the Regional Hearing Clerk of EPA, Region 2, is:

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

Respondent shall also then serve one copy of the Answer to the Complaint upon Complainant and any other party to the action. 40 CFR §22.15(a). Respondent's Answer to the Complaint must clearly and directly admit, deny, or explain each of the factual allegations that are contained in the Complaint and with regard to which the Respondent has any knowledge. 40 CFR §22.15(b). Where Respondent lacks knowledge of a particular factual allegation and so states in the Answer, the allegation is deemed denied. 40 CFR §22.15(b). The Answer shall also set forth: (1) the circumstances or arguments that are alleged to constitute the grounds of defense, (2) the facts that Respondent disputes (and thus intend to place at issue in the proceeding), (3) the basis for opposing the proposed relief and (4) whether Respondent requests a Hearing. 40 CFR §22.15(b).

Respondent's failure to affirmatively raise in the Answer facts that constitute or that might constitute the grounds of a defense may preclude Respondent, at a subsequent stage in this proceeding, from raising such facts and/or from having such facts admitted into evidence at a Hearing.

#### **B. Opportunity To Request A Hearing**

If requested by Respondent in its Answer, a Hearing upon the issues raised by the Complaint and Answer may be held. 40 CFR §22.15(c). If, however, Respondent does not request a Hearing, the Presiding Officer (as defined in 40 CFR §22.3) may hold a Hearing if the Answer raises issues appropriate for adjudication. 40 CFR §22.15(c).

Any Hearing in this proceeding will be held at a location determined in accordance with 40 CFR §22.21(d). A Hearing of this matter will be conducted in accordance with the applicable provisions of the Administrative Procedure Act, 5 U.S.C. §§551-59, and the procedures set forth in Subpart D of 40 CFR Part 22.

Should Respondent request a Hearing on this proposed penalty assessment, members of the public, to whom EPA is obligated to give notice of this proposed action, will have a right under Section 309(g)(4)(B) of the Act, 33 U.S.C. §1319(g)(4)(B), to be heard and to present evidence on the appropriateness of the penalty assessment. Should Respondent not request a Hearing, EPA will issue a Final Order, and only members of the public who submit timely comment on this proposal will have an additional thirty (30) days to petition EPA to set aside the Final Order and to hold a Hearing thereon. EPA will grant the petition and will hold a Hearing only if the petitioner's evidence is material and was not considered by EPA in the issuance of the Final Order.

### **C. Failure To Answer**

If Respondent fails in any Answer to admit, deny, or explain any material factual allegation contained in the Complaint, such failure constitutes an admission of the allegation. 40 CFR §22.15(d). If Respondent fails to file a timely [i.e. in accordance with the thirty (30)-day period set forth in 40 CFR §22.15(a)] an Answer to the Complaint, Respondent may be found in default upon motion. 40 CFR §22.17(a). Default by Respondent constitutes, for purposes of the pending proceeding only, an admission of all facts alleged in the Complaint and a waiver of Respondent's right to contest such factual allegations. 40 CFR §22.17(a). Following a default by Respondent for a failure to timely file an Answer to the Complaint, any order issued therefore shall be issued pursuant to 40 CFR §22.17(c).

Any penalty assessed in the default order shall become due and payable by Respondent without further proceedings thirty (30) days after the Default Order becomes final pursuant to 40 CFR §22.27(c). 40 CFR §22.17(d). If necessary, EPA may then seek to enforce such Final Order of Default against Respondent, and to collect the assessed penalty amount, in Federal court.

### **VI. INFORMAL SETTLEMENT CONFERENCE**

Whether or not Respondent requests a formal Hearing, EPA encourages settlement of this proceeding consistent with the provisions of the Act and its applicable regulations. 40 CFR §22.18(b). At an informal conference with a representative(s) of Complainant, Respondent may comment on the charges made in this Complaint and Respondent may also provide whatever additional information is believed to be relevant to the disposition of this matter, including: (1) actions Respondent has taken to correct any or all of the violations herein alleged, (2) any information relevant to Complainant's calculation of the proposed penalty, (3) the effect the proposed penalty would have on Respondent's ability to continue in business and/or (4) any other special facts or circumstances Respondent wishes to raise.

Complainant has the authority to modify the amount of the proposed penalty, where appropriate, to reflect any settlement agreement reached with Respondent, to reflect any relevant information previously not known to Complainant or to dismiss any or all of the charges, if Respondent can demonstrate that the relevant allegations are without merit and that no cause of action as herein alleged exists. Respondent is referred to 40 CFR §22.18.

Any request for an informal conference or any questions that Respondent may have regarding this Complaint should be directed to:

Nadine Orrell, Esq.  
Assistant Regional Counsel  
Water and General Law Branch  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 2  
290 Broadway, 16th Floor  
New York, NY 10007-1866  
Telephone (212) 637-3244

The parties may engage in settlement discussions regardless of whether Respondent has requested a Hearing. 40 CFR §22.18(b)(1). Respondent's requesting a formal Hearing does not prevent Respondent from also requesting an informal settlement conference; the informal conference procedure may be pursued simultaneously with the formal adjudicatory hearing procedure. A request for an informal settlement conference constitutes neither an admission nor a denial of any of the matters alleged in the Complaint. Complainant does not deem a request for an informal settlement conference as a request for a Hearing as specified in 40 CFR §22.15(c).

A request for an informal settlement conference does not affect Respondent's obligation to file a timely Answer to the Complaint pursuant to 40 CFR §22.15. No penalty reduction, however, will be made simply because an informal settlement conference is held.

Any settlement that may be reached as a result of an informal settlement conference shall be embodied in a written Consent Agreement. 40 CFR §22.18(b)(2). In accepting the Consent Agreement, Respondent waives any right to contest the allegations in the Complaint and waives any right to appeal the Final Order that is to accompany the Consent Agreement. 40 CFR §22.18(b)(2). In order to conclude the proceeding, a Final Order ratifying the parties' agreement to settle will be executed. 40 CFR §22.18(b)(3).

Entering into a settlement through the signing of such Consent Agreement and complying with the terms and conditions set forth in such Consent Agreement and Final Order terminates this administrative litigation and these civil proceedings against Respondent (note that a new enforcement action may be initiated based on continued non-compliance). Entering into a settlement agreement does not extinguish, waive, satisfy or otherwise affect Respondent's obligation and responsibility to comply with all applicable statutory and regulatory requirements, and to maintain such compliance.

## **VII. RESOLUTION OF THIS PROCEEDING WITHOUT HEARING OR CONFERENCE**

Instead of filing an Answer, Respondent may choose to pay the total amount of the proposed penalty (\$98,000) within thirty (30) days after receipt of the Complaint, provided that Respondent files with the Regional Hearing Clerk, Region 2 (at the address noted below), a copy of the check or other instrument of payment. 40 CFR §22.18(a). A copy of the check or other instrument of payment should be provided to the EPA Attorney identified in Section VI above. Payment of the penalty assessed should be made by sending a cashier's or certified check payable to the "Treasurer, United States of America", in the full amount of the penalty assessed in this complaint to the following addressee:

US Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
PO Box 979077  
St. Louis, MO 63197-9000  
Docket No. CWA-02-2008-3405

Wire transfers should be directed to the Federal Reserve Bank of New York

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"

Pursuant to 40 CFR §22.18(a)(3), if Respondent elects to pay the full amount of the penalty proposed in the Complaint within thirty (30) days of receiving the Complaint, then, upon EPA's receipt of such payment, the Regional Administrator of EPA, Region 2 (or, if designated, the Regional Judicial Officer), shall issue a Final Order in accordance with 40 CFR §22.18(a)(3). In accordance with 40 CFR §22.45(c)(3), no Final Order shall issue until at least ten (10) days after the close of the comment period on this Complaint. Issuance of a Final Order terminates this administrative litigation and the civil proceedings arising out of the allegations made in the Complaint (note that a new enforcement action may be initiated based on continued non-compliance). Further, pursuant to 40 CFR §22.18(a)(3), the making of such payment by Respondent shall constitute a waiver of Respondent's right both to contest the allegations made in the Complaint and to appeal said Final Order to Federal court. Such payment does not extinguish, waive, satisfy or otherwise affect Respondent's obligation and responsibility to comply with all applicable statutory and regulatory requirements, and to maintain such compliance.

## **VII. FILING OF DOCUMENTS**

The Answer and any Hearing Request and all subsequent documents filed in this action should be sent to:

Regional Hearing Clerk  
U.S. Environmental Protection Agency  
290 Broadway, 16th Floor  
New York, New York 10007-1866

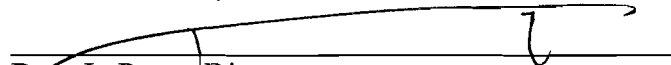
A copy of the Answer, any Hearing Request and all subsequent documents filed in this action shall be sent to:

Nadine Orrell, Esq.  
Assistant Regional Counsel  
U.S. Environmental Protection Agency, Region 2  
290 Broadway, 16th Floor  
New York, NY 10007-1866  
Telephone (212) 637-3244  
Fax: (212) 637-3202

### VIII. GENERAL PROVISIONS

1. Respondent has a right to be represented by an attorney at any stage of these proceedings.
2. This Complaint does not constitute a waiver, suspension or modification of the requirements of the Act, regulations promulgated there under, or any applicable permit.
3. Neither assessment nor payment of an administrative civil penalty pursuant to Section 309(g) of the Act will affect Respondent's continuing obligation to comply with the Act, and with any separate Compliance Order issued under Section 309(a) of the Act, 33 U.S.C. §1319(a), for the violations alleged herein.

ISSUED THIS 26<sup>th</sup> DAY OF SEPTEMBER, 2008.

  
Dore LaPosta, Director  
Division of Enforcement and  
Compliance Assistance  
U. S. Environmental Protection Agency - Region 2  
290 Broadway  
New York, New York 10007

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 2

**IN THE MATTER OF:**

Lagan Puerto Rico, Ltd., LLC  
Caribbean Airport Building 1, Office 213, Suite 1  
Carolina, Puerto Rico 00979

**NPDES Permit Number PRR10BA51**

Respondent

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

**PROCEEDING TO ASSESS A  
CLASS II CIVIL PENALTY**

**DOCKET NO.  
CWA-02-2008-3405**

**SEP 30 2008**

I certify that on \_\_\_\_\_, I served the foregoing fully executed Administrative Complaint, Findings of Violation, Notice of Proposed Assessment of an Administrative Penalty, and Notice of Opportunity to Request a Hearing, 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:

Lagan Puerto Rico, Ltd., LLC  
Caribbean Airport Building 1, Office 213, Suite 1  
Carolina, Puerto Rico 00979

Copy by Certified Mail

Return Receipt Requested:

Wanda E. García Hernández, Director  
Water Quality Area  
Environmental Quality Board  
P.O. Box 11488  
Santurce, Puerto Rico 00910

Dated: 9/30/08

Marie St. George  
Secretary  
New York, New York