

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY**

BEFORE THE ADMINISTRATOR

IN THE MATTER OF:)
)
Puerto Rico Land Authority,) **Docket No. CWA-02-2005-3605**
)
Respondent.)

**ORDER REJECTING STATUS REPORT AND MOTION FOR EXTENSION OF TIME
AND CLOSING CASE**

This case (CWA-02-2005-3605) was initiated on August 9, 2005 by the filing of an Administrative Complaint alleging that, on or before *November 6, 2003*, Respondent had discharged fill material into approximately *25 acres* of wetlands on a tract of land known as *Finca Palmarejo* which constitute waters of the United States in violation of 33 U.S.C. § 1311(a). Complainant proposed an Administrative Penalty of \$137,500. Simultaneously, another almost identical action (CWA-02-2005-3606) was filed by Complainant against Respondent based upon subsequent aerial photography indicating that as of *September 22, 2004*, Respondent had discharged fill material into *28.5 acres* of wetlands on the site. In the subsequent action, Complainant sought a penalty of \$157,700.

On or about September 20, 2005, the parties were offered an opportunity to participate in Alternative Dispute Resolution (ADR) in regard to the cases. The parties accepted the Offer and the cases were assigned to a Neutral for ADR. On November 28, 2005, the parties requested an extension of ADR on the basis that they needed time to “finalize” the settlement agreement they had reached which involved a Supplemental Environmental Project. That request was granted and the ADR process continued until terminated, *four months after it began*, on February 6, 2006 at which time the parties were still representing they had reached a settlement in principle but had not yet filed their Consent Agreement (CAFO).

The cases were subsequently assigned to the undersigned who, in light of the parties’ representations of settlement, on February 7, 2006, issued in each case (since the cases had *not* been consolidated) an Order granting the parties further time, until March 7, 2006, to file their Consent Agreement(s). On March 1, 2006, the Complainant, with Respondent’s Consent, moved for an extension of time until April 18, 2006 to file the CAFO(s). The Extension Motion was granted by separate Orders dated March 3, 2006 and the parties were Ordered to file their Agreement by the date they had requested April 18, 2006.¹ On April 6, 2006, Complainant,

¹ Although the parties had received separate Orders in the cases from the undersigned, the Complainant filed a single extension Motion with both case numbers and as a courtesy to the

with Respondent's consent, filed another motion for extension requesting until May 18, 2006 to file the CAFO and this request too was granted. This time the Orders granting the motion(s) noted in a footnote that -

The caption of the Motion as filed includes the Docket number of two separate actions which have **NOT** been consolidated. Therefore, it is inappropriate for a single Motion to be filed in regard to such matters and such Motion could be denied on this basis. However, in the interests of efficiency, the Motion will be ruled upon as if filed separately in each case. Nevertheless, the parties are advised that further inappropriately "consolidated" pleadings will NOT be accepted for filing.

See, Order Granting Motion For Extension of Time to File Consent Agreement and Final Order, dated, April 10, 2006, fn. 1 (Emphasis in original).

On May 3, 2006, the undersigned received from Complainant another single pleading entitled "Status Report and Motion for Extension of Time" with a caption containing both case docket numbers requesting yet another extension of time, until June 22, 2006, to file the Consent Agreement based in part on the recent Puerto Rican government's shut down of government offices due to a "fiscal crisis." The captioning of this pleading violates the directives contained in the prior Order of this Tribunal and is hereby rejected.

Moreover, it is obvious that there is no further need for the undersigned to preside in this matter. Cases are referred to the Office of Administrative Law Judges solely for the purpose of providing the respondent with the right to a hearing before an Administrative Law Judge, consistent with the applicable statutes and the Administrative Procedure Act. The parties are deemed to have waived the right to hearing, as the parties have been reporting consistently since November 2005, a period of six months, that they have reached agreement on all outstanding issues in this matter

Accordingly, this proceeding before the undersigned is hereby deemed **CLOSED** as of this date.

Susan L. Biro
Chief Administrative Law Judge

Date: May 4, 2006
Washington, D.C.

parties that procedural error was initially ignored and the Motion treated if it had been filed separately in each of the actions in light of the fact that the CAFO was to be filed imminently.