

UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO

UNITED STATES OF AMERICA,

Plaintiff,

v.

THE MUNICIPALITY OF SAN JUAN,
THE PUERTO RICO DEPARTMENT OF
NATURAL AND ENVIRONMENTAL
RESOURCES, THE PUERTO RICO
DEPARTMENT OF TRANSPORTATION
AND PUBLIC WORKS, THE PUERTO
RICO HIGHWAY AND
TRANSPORTATION AUTHORITY,
AND THE COMMONWEALTH
OF PUERTO RICO,

Defendants.

CIVIL ACTION NO.
3:14-cv-1476-CCC

CONSENT DECREE

Department of Natural and Environmental Resources

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BACKGROUND

WHEREAS, Plaintiff, the United States of America, at the request of the Administrator of the United States Environmental Protection Agency ("EPA"), filed a First Amended Complaint (the "Complaint") alleging that Defendants the Municipality of San Juan ("San Juan"), the Department of Natural and Environmental Resources of the Commonwealth of Puerto Rico ("DNER"), the Department of Transportation and Public Works of the Commonwealth of Puerto Rico ("DTPW") and the Puerto Rico Highway and Transportation Authority ("HTA") (collectively, "DTPW/HTA") (hereinafter, collectively, "Defendants") violated Section 301 of the Clean Water Act (the "Act"), 33 U.S.C. §§ 1311, and regulations promulgated thereunder;

WHEREAS, in its Complaint, the United States also alleges that Defendants San Juan, DTPW, and HTA violated the terms and conditions of the National Pollutant Discharge Elimination System ("NPDES") General Permit for Discharges from Small Municipal Separate Storm Sewer Systems, Permit Number PRR040000/PRR04000F ("MS4 Permit"), dated November 6, 2006;

WHEREAS, EPA published Notice of Availability of the Draft NPDES General Permit for Small Municipal Separate Storm Sewer Systems in the Commonwealth of Puerto Rico and Federal Facilities within the Commonwealth of Puerto Rico on June 11, 2014 (79 Fed. Reg. 33548);

WHEREAS, in its Complaint, the United States also alleges that all Defendants are liable to the United States for injunctive relief addressing an imminent and substantial endangerment, pursuant to Section 504, of the Act, 42 U.S.C. § 1364;

WHEREAS, San Juan is a municipality organized under the laws of the Commonwealth of Puerto Rico (the "Commonwealth");

WHEREAS, DNER is an executive department of the Commonwealth, created, pursuant to 3 L.P.R.A. §§ 151 et seq., and lacks the legal authority to sue and be sued;

WHEREAS, DTPW is an executive department of the Commonwealth, created pursuant to Section 6 of Article IV of the Constitution of the Commonwealth, and lacks the legal authority to sue and be sued;

WHEREAS, HTA is a public corporation of the Commonwealth, pursuant to 9 L.P.R.A. § 2002;

WHEREAS, the Commonwealth is a "State" within the meaning of Section 502(3) of the Act, 33 U.S.C. § 1362(3);

WHEREAS, the Secretary of the DNER is empowered to enter into agreements with bodies of the government of the United States of America for the purpose of achieving the objectives of the DNER, pursuant to 3 L.P.R.A. § 155(e);

WHEREAS, the Secretary of the DNER is empowered to exercise the powers, faculties, functions and activities with respect to flood prevention, pursuant to 3 L.P.R.A. § 156(c), as well as those with respect to the Federal Watershed Protection and Flood Control Act (16 U.S.C. §§ 1001 et seq. and 33 U.S.C. § 701b), pursuant to 3 L.P.R.A. § 156a;

WHEREAS, pursuant to the inherent powers and faculties granted by the enabling act of the DNER, with the consent of the Attorney General of the Commonwealth pursuant to 3 L.P.R.A. § 292b, the Secretary of the DNER is empowered to sign any settlement documents on behalf of the Commonwealth;

WHEREAS, as an executive department of the State, DNER meets the definition of “person” within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5);

WHEREAS, pursuant to 3 L.P.R.A. § 292a(1), the Attorney General of the Commonwealth is the legal counsel of the Commonwealth, its agencies, and the People of Puerto Rico in civil, criminal, administrative and special suits and proceedings to which it is a party or which are brought before the courts or other forums in or outside of Puerto Rico. Furthermore, the Attorney General shall exercise this representation personally or through designated attorneys,

WHEREAS, DNER was represented by attorney Carlos E. Colón Franceschi during the settlement negotiations for the present action, which commenced prior to the filing of the Complaint and First Amended Complaint;

WHEREAS, the law firm of Torres & García, P.S.C. has been designated by the Attorney General to represent the Commonwealth for the purpose of this litigation and taking such other actions required in furtherance of settlement negotiations, including memorializing the settlement and entering into this Consent Decree;

WHEREAS, DNER owns and operates three flood control storm water pump stations in and around San Juan, Puerto Rico, including the Baldorioty de Castro, De Diego, and Barriada Figueroa (“Stop 18”) Pump Stations (collectively the “DNER Pump Stations”); DNER asserts that it does not control or own the system of conveyances and connections discharging to the DNER Pump Stations, and DNER has no NPDES permit authorization to discharge from any of the DNER Pump Stations;

WHEREAS, the flow to and transferred by the three DNER Pump Stations addressed in the Complaint and in this Consent Decree originates from areas within San Juan and in some instances adjacent municipalities;

WHEREAS, the DNER Pump Stations are part of the storm water conveyance management system for the San Juan municipal area and were constructed and, as DNER asserts, are operated for the purpose of conveying storm water only to prevent flooding and protect life and property in the affected areas;

WHEREAS, San Juan owns and operates a municipal separate storm sewer system (“MS4”) in San Juan, Puerto Rico, a portion of which flows into the DNER Pump Stations, addressed in the Complaint and in this Consent Decree;

WHEREAS, DTPW and HTA own and operate an MS4 in Puerto Rico, a portion of which flows into San Juan’s MS4 and/or the DNER Pump Stations, addressed in the Complaint and in this Consent Decree;

WHEREAS, the United States alleges that San Juan has, during the relevant time period, discharged pollutants not authorized to be discharged under the MS4 Permit in violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a);

WHEREAS, the United States alleges that DNER discharged untreated sewage, including but not limited to fecal coliform, oil and grease, metals and other “pollutants” from DNER’s Pump Stations in violation of Sections 301(a) of the Act, 33 U.S.C. §§ 1311(a);

WHEREAS, the United States alleges that DTPW and HTA have, during the relevant time period, discharged pollutants not authorized to be discharged under the MS4 Permit in violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a);

WHEREAS, EPA further alleges that the Complaint states claims upon which relief may be granted against DNER under Sections 301 and 504 of the Act, 33 U.S.C. §§ 1311 and 1364;

WHEREAS, DNER asserts that it has no control over the inflows and does not contribute pollutants to such inflow or the discharges;

WHEREAS, DNER maintains that it has recently taken actions toward achieving compliance with the Act;

WHEREAS, the express purpose of the Parties entering into this Consent Decree is to, without making any admissions, resolve the claims alleged in the Complaint against DNER and to facilitate San Juan and DTPW and HTA’s compliance with the Act, to implement capital improvement plans at DNER Pump Stations, and to implement other relief, as necessary, to achieve compliance with the Act;

WHEREAS, DNER has provided financial documentation to the United States to verify DNER’s assertions of financial hardship. Taking into consideration the economic impact of a civil penalty and DNER’s documented inability to pay a penalty, the United States is waiving the civil penalty associated with the violations alleged in the Complaint;

WHEREAS, Plaintiff, the United States of America and DNER, without making any admission of fact or law, or evidence of same, or of any violation of any permit, law or regulation, agree that: (i) settlement of these unresolved matters in accordance with this Consent Decree is in the best interests of the United States, DNER, and of the public; and (ii) entry of this Consent Decree without further litigation is the most expeditious, economic and appropriate means of resolving this action to the extent set forth herein;

WHEREAS, the Parties have examined and are in agreement with the terms and conditions set forth in this Consent Decree;

NOW, THEREFORE, without admission by DNER of the non-jurisdictional allegations in the Complaint and upon consent of the Parties, it is hereby ORDERED, ADJUDGED, AND DECREED as follows:

OBJECTIVES

It is the express purpose of the Parties in entering into this Consent Decree to further the objectives of the Act, as enunciated at Section 101, 33 U.S.C. § 1251, to eliminate unauthorized discharges to waters of the United States, for DNER to obtain NPDES permit coverage and to achieve compliance with that permit and the Act at the DNER Pump Stations, for DNER, together with all Defendants, to take such actions to mitigate the imminent and substantial endangerment, and for DNER, as part of a comprehensive initiative with San Juan, DTPW/HTA, and others, to eliminate and/or reduce raw sewage in the flow from the San Juan and DTPW/HTA municipal separate storm water systems that reach its flood control pump stations and are then discharged. All plans, reports, construction, remedial maintenance, and other obligations in this Consent Decree or resulting from the activities required by this Consent Decree shall have the objective of causing DNER to come into and remain in full compliance with the Act.

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter and over the parties to this action pursuant to Section 309(b) of the Act, 33 U.S.C. § 1319(b) and pursuant to 28 U.S.C. §§ 1331, 1345, and 1355. DNER shall not challenge entry of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree. Venue is proper in this judicial district under 28 U.S.C. § 1391(b) and (c) and § 1395(a).

2. DNER agrees that the Complaint states claims upon which relief may be granted pursuant to Sections 301 and 504 of the Act, 33 U.S.C. §§ 1311 and 1364.

II. PARTIES

3. The Parties to this Consent Decree are as follows:

a. The United States, being the Plaintiff United States of America, on behalf of the United States Environmental Protection Agency, and

b. The Commonwealth, acting through DNER, an executive department of the State.

III. APPLICATION AND BINDING EFFECT

4. The provisions of this Consent Decree shall apply to, inure to the benefit of, and be binding upon the United States, on behalf of EPA, and DNER, its officers, directors, employees, successors in interest and assigns, and upon all persons, agents, firms, subsidiaries, divisions, and corporations acting under or for them, including any entity which may enter into a contract with DNER to operate and maintain any Facility governed by this Consent Decree, and such contractor's officers, agents, directors, employees, parent and related companies, subsidiaries, successors in interest and assigns. The Appendices to this Consent Decree are incorporated herein and shall have the same force and effect as all provisions hereto. The undersigned representatives of the United States and DNER certify that they are fully authorized to enter into this Consent Decree and to execute and to bind legally each signatory to this Consent Decree.

5. Effective from the date of lodging of this Consent Decree until its termination, DNER shall give written notice of this Consent Decree to any person or entity to whom DNER may transfer ownership or operation of the Facilities affected by the terms and requirements of this Consent Decree, and shall provide a copy of this Consent Decree to any such person or entity. DNER shall notify EPA and the United States Department of Justice in writing of any successor in interest at least twenty-one (21) days prior to any such transfer.

6. DNER shall make a copy of this Consent Decree available to each engineering, consulting and contracting firm to be retained to perform the work or any portion thereof required by this Consent Decree upon execution of any contract relating to such work and shall inform each such engineering firm, consultant or contractor of the terms of this Consent Decree, and shall also so inform each engineering, consulting and contracting firm already retained no later than thirty (30) days after the date of lodging of this Consent Decree. Any action taken by any engineering firm, contractor or consultant to implement DNER's duties under this Consent Decree shall be considered an action of DNER for purposes of determining compliance with this Consent Decree.

7. In any action to enforce this Consent Decree, DNER shall not raise as a defense the failure by any of their agents, contractors, subcontractors, employees, successors or assigns to take actions necessary to comply with this Consent Decree, except as provided under Section X (Force Majeure) of this Consent Decree. This Section shall not limit DNER's right to take all appropriate action against any person or entity that causes or contributes to DNER's failure to perform.

IV. DEFINITIONS

8. Unless otherwise defined herein, the terms used in this Consent Decree will have the meaning given to those terms in the Act, 33 U.S.C. §§ 1251 *et seq.*, and the regulations promulgated thereunder. The following terms, as used in this Consent Decree and for purposes of this Consent Decree only, will be defined as follows:

a. “Baldorioty de Castro Pump Station,” “De Diego Pump Station,” and “Stop 18 Pump Station” (collectively, the “DNER Pump Stations”) shall mean those pump stations, currently owned and operated by DNER and located at Baldorioty de Castro Avenue, De Diego Avenue, and Roosevelt Street, respectively, in San Juan, Puerto Rico, and include the integrated entity composed of the last manhole in the gravity pipeline segment that feeds the pump stations’ wet wells and the pipeline in those sections, the entrance channel(s), the bar screens, the wet wells, the pumps and motors, level indicators, float switches and controllers, electrodes, plug valves, check valves, the electrical motor control center(s) (“MCC”) and/or electrical control panels, transfer switches, alternate power units (“APU”) and their fuel tanks, disinfection equipment (if any), meters and metering equipment (if any), and any other related equipment (such as continuous monitoring equipment), and the discharge pipelines that extend toward the Facility property limits, including discharge points.

b. The term “Complaint” shall mean the First Amended Complaint filed by the United States in this action captioned United States v. Municipality of San Juan, et al., Civ. No. 3:14-cv-1476 (CCC).

c. The term “Consent Decree” shall mean this Consent Decree, including all Appendices hereto, and any modifications made hereto.

d. The term “date of lodging” shall mean the date on which this Consent Decree is filed for lodging with the Clerk of the Court for the United States District Court for the District of Puerto Rico.

e. Unless otherwise indicated, the term “day” or “days” as used herein shall mean a calendar day or days. References to “working days” or “business days” shall mean days of the week other than Saturdays, Sundays, holidays, and days containing half-holidays. In computing any period of time under this Consent Decree, if the last day would fall on a Saturday, Sunday or federal or Commonwealth holiday, the period shall continue until the next day other than a Saturday, Sunday, or holiday.

f. The term “DTPW” shall mean the Department of Transportation and Public Works of the Commonwealth of Puerto Rico, its officers, directors, employees, successors in interest and assigns.

g. The term “DTPW and/or HTA’s MS4” or “DTPW and/or HTA’s Municipal Separate Storm Sewer System” shall mean DTPW and/or HTA’s small municipal separate storm sewer system, as that term is defined in 40 C.F.R. § 122.26(b)(16).

h. The term “Effective Date” shall mean that date as described in Section XXI (Effective Date).

i. Unless otherwise indicated, “Facility or “Facilities” shall refer to the DNER Pump Stations and all other equipment owned and/or operated by DNER defined herein and covered by this Consent Decree.

j. The term “HTA” shall mean the Puerto Rico Highway and Transportation Authority, its officers, directors, employees, successors in interest and assigns.

k. The term “NPDES” shall mean National Pollutant Discharge Elimination System, as established by 33 U.S.C. § 1342.

l. The term “Parties” shall mean the parties to this Consent Decree: the United States and the Commonwealth, acting through DNER.

m. The term “PRASA” shall mean the Puerto Rico Aqueduct and Sewer Authority, its officers, directors, employees, successors in interest and assigns.

n. The term “Quarterly Report” shall mean the quarterly progress reports to be submitted by DNER pursuant to Section VIII (Quarterly Progress Reports) of this Consent Decree.

o. The term “San Juan’s MS4” or “San Juan’s Municipal Separate Storm Sewer System” shall mean San Juan’s small municipal separate storm sewer system, as that term is defined in 40 C.F.R. § 122.26(b)(16).

p. The terms “San Juan Stage I Work Plan” and “DTPW/HTA Stage I Work Plan” shall mean those Reconnaissance, Investigation, Planning & Design, and Construction Work Plans developed pursuant to agreements between the United States and San Juan, and between the United States and DTPW/HTA.

q. The term “submit,” with respect to documents required to be submitted pursuant to this Consent Decree, shall mean the date the document is placed in the express mail, certified mail, and/or express courier service, unless otherwise specifically stated.

V. COMPLIANCE MEASURES

9. NPDES Permit Application and Storm Water Management Program (“SWMP”):

- a. Within three (3) months of the date of lodging of this Consent Decree, or after the renewal of the Small MS4 General Permit (“MS4 General Permit”) and within the time period set forth therein, whichever occurs first, DNER shall submit to EPA a Notice of Intent (“NOI”) to be covered under the renewed MS4 General Permit, as specifically addressed in the renewed MS4 General Permit, or submit an individual permit application seeking NPDES coverage for the DNER Pump Stations.

- b. Regardless of the status of DNER's permit application contemplated above, within six (6) months of the date of lodging of this Consent Decree, DNER shall develop, submit to EPA for review, and implement a Storm Water Management Program ("SWMP") for the DNER Pump Stations. The SWMP shall be fully implemented within three (3) years of the date of lodging of this Consent Decree. The SWMP for the DNER Pump Stations shall be consistent with Appendix A (SWMP Requirements for DNER Pump Stations). EPA reserves the right to request modifications to the SWMP, and DNER shall develop and submit an amended SWMP within thirty (30) days of receipt of a written request to modify, which modifications shall be implemented pursuant to the implementation schedule set forth in the modified SWMP.
- c. If EPA determines that DNER owns any of the storm water collection systems upstream of the DNER Pump Stations, within sixty (60) days of receipt of EPA's written determination, DNER shall be responsible for implementing and complying with all applicable requirements of the applicable MS4 General Permit or individual permit for this type of system.
- d. If DNER is authorized to discharge under an NPDES permit, DNER is required to comply with the provisions of this Consent Decree and the provisions of the permit. If the permit requires additional requirements to be included in a SWMP, DNER must amend its SWMP to include those requirements. DNER shall submit and implement an amended SWMP within the time set forth therein. The SWMP shall be subject to EPA review, DNER shall modify the SWMP, consistent with EPA's comments, and DNER shall develop and submit the modified SWMP within thirty (30) days of receipt of a written request to modify, which modifications shall be implemented pursuant to the implementation schedule set forth in the modified SWMP. The SWMP shall be enforceable under this Consent Decree, as if fully incorporated herein. Any failure to comply with the SWMP shall subject DNER to stipulated penalties as provided in Section VII (Stipulated Penalties) of this Consent Decree. In the event that any of the requirements (including deadlines) set forth in Section V of this Consent Decree are inconsistent with a new MS4 General Permit, the terms of this Consent Decree shall control unless otherwise modified by the Parties pursuant to Section XIX (Modification), following (if necessary) dispute resolution pursuant to Section XIV (Dispute Resolution).

10. Capital Improvements at the DNER Pump Stations

- a. *Installation, Inspection, Maintenance, and/or Replacement of Warning Signs for all DNER Pump Stations*
- i. Commencing not later than fifteen (15) days after the date of lodging of this Consent Decree, and continuing thereafter at a rate not less than once

- per month, DNER shall inspect each warning sign at the DNER Pump Stations' discharge points.
- ii. If, at the time of inspection, the warning signs are damaged or altered such that the contents of the warning are no longer visible, or if the sign is no longer in its place or is missing, or if it no longer effectively communicates its contents, then within three (3) business days DNER shall fix or reinstall the sign.
 - iii. DNER may request a reduction in the frequency of the warning sign inspections. Such request shall be submitted, in writing, to EPA for review and approval, pursuant to Section VI (Review and Approval Procedures), and explain why such reduced frequency is appropriate.
 - iv. If the sanitary discharge flowing to a DNER Pump Station outfall is eliminated and the discharge meets the Commonwealth Water Quality Standards ("PRWQS") for bacteria for two (2) consecutive quarters, then DNER may remove the warning sign relating to that outfall, subject to EPA's right to require warning signs to be reposted. Results of sampling of discharges at the DNER Pump Stations' outfall points shall be submitted to EPA, pursuant to Section VIII (Quarterly Progress Reports).
 - v. DNER shall create a table, spreadsheet, database or other system for collecting information on sign inspections, including but not limited to such information as the sign locations (including latitude and longitude), the date(s) inspected, condition of the sign, and the date that any remedies were completed. This information shall be submitted to EPA, pursuant to Section VIII (Quarterly Progress Reports).
 - vi. The language, dimensions, design, and placement locations of the warning signs approved by EPA are described in Appendix B (Advisory Sign Design and Warning Language) hereto. EPA reserves the right to modify the language, dimensions, design, and/or placement of warning signs.
 - vii. DNER shall install additional warning signs on property owned or controlled by DNER no later than fifteen (15) days after receipt of a written request to do so by EPA.
- b. *Boom Replacement at all DNER Pump Stations*
- i. Within thirty (30) days of the date of lodging of this Consent Decree, DNER shall develop, submit to EPA for review, and implement a Standard Operating Procedure ("SOP") for maintaining and changing the booms at each pump station. At a minimum, the SOP shall describe the proper method for replacing booms, including methods to capture, contain, and remove floatables, sheens, oil, and other materials accumulated at the boom. The SOP shall include descriptive text and instructive diagrams and/or photographs.
 - ii. The SOP shall require, at a minimum, that the booms in the DNER Pump Stations wet wells be replaced every two (2) weeks (commencing within thirty (30) days of lodging and continuing through the permanent

- installation contemplated by subparagraph iv, below), in accordance with and in the manner prescribed in the SOP or modified SOP, as applicable.
- iii. DNER shall include in its Quarterly Reports the dates, during the prior quarter, when the booms at the DNER Pump Stations were changed, pursuant to Section VIII (Quarterly Progress Reports).
 - iv. Within six (6) months of the date of lodging of this Consent Decree, DNER shall complete permanent installation of booms in or at the influent pipelines to the Pump Station wet wells. There shall be two (2) boom installations in the Baldorioty de Castro Pump Station, one for each of the two influent pipelines to the Pump Station. DNER shall include a description of this work in the next Quarterly Report, pursuant to Section VIII (Quarterly Progress Reports).
- c. *Baldorioty de Castro Pump Station Upgrades*
- i. Discharge Channel Aerosol Control. Within forty-five (45) days of the date of lodging of the Consent Decree, DNER shall submit a schematic drawing and schedule to EPA for review and approval of an effluent discharge channel aerosol control to be installed over the channel that will minimize aerosols from the pump station discharge (“Discharge Channel Aerosol Control” or “aerosol control measures”). DNER shall implement Discharge Channel Aerosol Control construction in accordance with the schedule approved by EPA. Within six (6) months of the date of lodging, DNER shall build and install the aerosol control measures and submit written certification that such measures have been installed in accordance with the design in the next Quarterly Report, pursuant to Section VIII (Quarterly Progress Reports). Within thirty (30) days after installation of the Discharge Channel Aerosol Control, DNER shall conduct periodic inspections of the aerosol control measures and DNER shall establish and submit to EPA for review and approval a specific schedule (i.e., monthly, every six months, etc.) for periodic inspections based on the types of material used to build the aerosol control measures. EPA reserves the right to require increased frequency of periodic inspections and DNER must, within thirty (30) days of receipt of EPA’s written comments, submit a modified periodic inspection frequency. If the inspections indicate that the aerosol control measures are damaged, DNER shall repair the damages within thirty (30) days of the date of the inspection or when the deficiency was first observed. Records of the inspections, inspection dates, inspection findings, and repair dates shall be submitted to EPA, pursuant to Section VIII (Quarterly Progress Reports).
 - ii. Installation of Discharge Channel Perimeter Fencing or Signs. Within forty-five (45) days of date of lodging of the Consent Decree, DNER shall submit to EPA a design plan and schematic drawings for a fence to be installed along the west side of the Baldorioty de Castro Pump Station Discharge Channel, and a sketch or map of the proposed fence location, or

other feasible prevention and/or warning measures. The purpose of these measures shall be to both warn people of the discharge and/or prevent people from having contact with the pump station discharge. Within six (6) months of the date of lodging of the Consent Decree, DNER shall complete such measures in accordance with the proposed design plan and schematic drawings and at the locations in accordance with the sketch or map. If a fence is built, warning signs shall be placed at intervals of at least every fifty (50) linear feet along the fence to limit access to the discharge area. Within seven (7) months of the date of lodging of the Consent Decree, DNER shall submit written certification that the fence or prevention and/or warning measures have been installed, photos of the installed fence or measures, and a map or sketch showing the fence location and height or the location of the alternative selected measures. DNER shall conduct quarterly inspections to ensure that the measures remain intact. If the inspections indicate that the measures are damaged or in need of repair, DNER shall repair them within thirty (30) days of the date of the inspection or when the deficiency was first observed, except damaged signs shall be fixed or reinstalled with three (3) business days. Records of the quarterly inspections, inspection dates, inspection findings, and repair dates shall be submitted to EPA in each Quarterly Report, pursuant to Section VIII (Quarterly Progress Reports).

- iii. Wet Well Baffle Wall for Sedimentation. Within forty-five (45) days of the date of lodging of the Consent Decree, DNER shall submit to EPA a design plan and schematic drawings and construction schedule for a baffle wall to be installed in the Baldorioty de Castro Pump Station wet well. The purpose of this baffle wall shall be to promote sedimentation and/or settling of solids in the wet well to be recovered during wet well cleaning under Paragraphs 11(a) through (c), below. Within nine (9) months of the date of lodging, DNER shall install the baffle wall in accordance with the design plan, schematic drawings, and schedule, and submit written certification that the baffle wall has been installed in accordance with the design plan in the next Quarterly Report, pursuant to Section VIII (Quarterly Progress Reports).
- d. *Continuous Electronic Monitoring Equipment and Lighting Fixtures at Pump Station Wet Wells*
 - i. Within sixty (60) days of the date of lodging of the Consent Decree, to aid in the inspection of the influent entering the DNER Pump Stations, DNER shall conduct a feasibility study and submit to EPA a report containing the conclusions and recommendations for the installation of continuous monitoring equipment to monitor ammonia, pH, temperature, and total residual chlorine at the Pump Station wet wells. DNER shall ensure that there are adequate ventilation systems and sulfide and methane meters necessary for worker safety. Within six (6) months of the conclusion of the feasibility study, DNER shall implement the recommendations and

- conclusions of the feasibility study, including continuous monitoring, if feasible.
 - ii. Within three (3) months of the date of lodging of the Consent Decree, DNER shall place lighting fixtures and shall properly operate and maintain such lighting at the Pump Station wet wells.
- 11. Standard Operating Procedures and Schedules for DNER Pump Stations
 - a. *Standard Operating Procedures for Pump Station Cleaning*

Within thirty (30) days of the date of lodging of the Consent Decree, DNER shall develop, submit to EPA for review, and implement the final SOPs for all Pump Station Wet Well Cleaning for both tri-annual (every four (4) months) and annual wet well cleaning activities, and be consistent with EPA comments on the De Diego Pump Station Cleaning SOP. The SOPs shall be subject to EPA review. Within six (6) months of submission of the final SOPs, DNER shall construct, complete and place into operation any additional equipment and infrastructure at the DNER Pump Stations in accordance with the final SOPs.
 - b. *Minimum Standards for Tri-Annual Pump Station Routine Cleaning SOP*
 - i. DNER shall implement routine pump station cleanings of the DNER Pump Stations every four (4) months in accordance with the SOP for Tri-Annual Pump Station Cleaning. The routine cleaning shall include surface cleaning with portable water pressure washers, general cleaning, removal of floatables from influent channels to wet wells, cleaning of wet wells to remove all accumulated materials, and removal of settled materials (e.g. solids, sludge, etc.) from the bottom of the influent wet well.
 - ii. The cleaning dates, summary of cleaning, and current photos of the cleaned Pump Station shall be submitted to EPA, pursuant to Section VIII (Quarterly Progress Reports).
 - c. *Minimum Standards for Annual Pump Station Cleaning SOP*
 - i. Once each calendar year, DNER shall conduct the Triannual Pump Station Routine Cleaning described in Paragraph 11(b), above, and in addition, shall remove all solids accumulated within the Pump Station influent wet wells and suction wet wells (the area of the wet well after the bar screens where the pumps are located), in accordance with the SOP for Annual Pump Station Cleaning.
 - ii. The cleaning dates, summary of cleaning, and current photos of the cleaned Pump Station shall be submitted to EPA, pursuant to Section VIII (Quarterly Progress Reports).

d. *Minimum Standards for Manual and Mechanical Bar Screen System Cleaning SOP*

Within thirty (30) days of the date of lodging of the Consent Decree, DNER shall develop, submit to EPA for review, and implement an SOP for cleaning and maintaining manual and mechanical bar screens. The SOP shall provide for cleaning of the bar screens with the existing mechanical bar screen system at the DNER Pump Stations on a weekly basis, or more frequently, if necessary (e.g. more frequently during wet weather events, or based upon inspections of the bar screens or wet well) as well as cleaning the manual bar screens on an as-needed basis based on bar screen and wet well inspections. The SOP must also ensure that the manual and mechanical screen system shall be properly operated and maintained and debris removed from the bar screens shall be disposed of properly, in accordance with all applicable federal law and regulations. The SOP shall also provide for safe procedures for the operators to inspect and clean bar screens as necessary. Provided that at least one bar screen in service at the Baldorioty de Castro Pump Station adequately captures floatables, DNER shall not be required to return the second bar screen to service.

e. *Pump Station Sludge Sampling and Disposal*

DNER shall dispose of all material removed from the DNER Pump Stations (including, but not limited to, sludge, sediment, sand, oil, liquids, floatables, and other materials, debris, screenings, or sheens) in accordance with all applicable federal and Commonwealth laws and regulations. As part of the first cleaning and once per year thereafter, DNER shall conduct Toxicity Characteristic Leaching Procedure ("TCLP") sampling of the sludge removed from each of the three DNER Pump Stations. TCLP results and manifests (if required by applicable federal and Commonwealth laws and regulations) for the prior quarter shall be submitted in the next Quarterly Report, pursuant to Section VIII (Quarterly Progress Reports).

f. *Measuring of Water and Sediment Levels at the DNER Pump Stations*

- i. Baldorioty de Castro and Stop 18 Pump Stations. Within three (3) months of the date of lodging of the Consent Decree, DNER shall install a ruler or other device to measure water and sludge levels in these Pump Stations' wet wells and operate the existing automated water level monitoring devices (e.g., sensors). Within three (3) months of date of lodging of the Consent Decree, DNER shall begin weekly monitoring of sediment/sludge depth in the Pump Station wet wells. DNER shall visually determine sediment levels and determine whether the amount of sediments

accumulated justifies more frequent sediment removal in the Pump Station wet wells in accordance with the SOP.

- ii. De Diego Pump Station. DNER shall continue to monitor its automatic water level monitoring device at this Pump Station.
 - iii. Requirements for All DNER Pump Stations. DNER shall operate and maintain water level monitoring devices at each of the DNER Pump Stations. DNER shall certify in its first Quarterly Report that it has completed the requirements of Paragraph 11(f)(i) – (ii), above, and that it has properly operated and maintained these devices or, if delayed, provide an explanation for the delay and when it is anticipated to be operated, pursuant to Section VIII (Quarterly Progress Reports). The monitoring devices must be calibrated no less than annually and the most recent calibration records must be submitted quarterly, pursuant to Section VIII (Quarterly Progress Reports).
- g. *Pump Station Inspections Checklists*
- i. Within fifteen (15) days of the date of lodging of the Consent Decree, DNER shall begin using the Appendix C (Pump Station Checklist) and Appendix D (Influent Reconnaissance Inventory/Sample Collection Field Sheet) checklist and field sheet at the frequencies described therein.
 - ii. Inspection checklists for each quarter shall be submitted to EPA on a quarterly basis, pursuant to Section VIII (Quarterly Progress Reports). Such submittals shall be included in the first four (4) Quarterly Reports. Submittals thereafter are subject to EPA's decision to require recommencement of such submittals.
- h. *Operation and Preventive Maintenance Plan of the DNER Pump Stations*
- i. Within six (6) months of the date of lodging of the Consent Decree, DNER shall submit to EPA for review and approval a draft Operation and Preventive Maintenance Plan or its substantial equivalent ("O&PM Plan"), for each of the three DNER Pump Stations, consistent with plans for storm water flood control pump stations as set forth in Appendix E (Operation & Maintenance Plan). At a minimum, the O&PM Plan shall include, but not be limited to, requirements for the following major pump station equipment: pumps, electric motors, electrical controllers, emergency generator units, bar screens (mechanical and/or manual), debris and/or garbage collection systems (e.g., conveyors), mechanical hoists, monitoring equipment, level sensors, and wet well or pump station suction chamber structures. The O&PM Plans shall also include an essential inventory of materials necessary for proper operation and maintenance of the facilities, including but not limited to, spare parts and system

- consumables (e.g., lubricants, fuses, etc.) and chemicals, if applicable. This inventory should be updated and maintained as necessary.
- ii. On EPA approval of each O&PM Plan, DNER shall implement the approved O&PM Plan for each Pump Station.
 - iii. In addition to the O&PM Plan, DNER shall retain a qualified contractor(s) to provide maintenance services and/or repairs as necessary or provide a list of qualified contractors or suppliers to provide such services.
 - iv. DNER may propose to EPA for review and approval that some of the maintenance services referenced above should be performed by DNER's employees in lieu of a contractor. DNER shall submit such proposal in writing, including a detailed description of which services would be performed by DNER's employee(s) and demonstrate in the submission to EPA that DNER's employee(s) is qualified to perform that service.
 - v. EPA may require DNER to undertake additional operation and preventative maintenance procedures to address the issues identified by EPA. DNER shall take steps to address the issue(s) promptly upon demand by EPA. Such additional procedures shall not be deemed a Major Modification under Section XIX (Modification) of this Decree.
 - vi. Interim Pump Station Operating Procedures: Prior to implementation of EPA approved O&PM Plans, DNER shall perform the following actions at the DNER Pump Stations and submit documentation illustrating compliance with each task described below in the Quarterly Report, pursuant to Section VIII (Quarterly Progress Reports), covering the relevant time period:
 - 1. In addition to those operational pumps necessary to pump the volume of storm water associated with large and/or historical storm events, one additional spare pump shall be maintained in good working order and be available for operation in the event that a normally operational pump becomes unavailable. The O&PM Plan must specify the number of operational pumps necessary to pump the volume associated with large and/or historical storm events and demonstrate that the additional spare pump is available and operable.
 - 2. A trained operator must be at each Pump Station on a daily basis to ensure its proper operation and maintenance; and
 - 3. The Operator must maintain a log of all activities at the Facility, including a Pump Station Checklist, as detailed in Appendix C.

12. Spill Prevention Control and Countermeasures Plans ("SPCC Plans")

- a. Within fifteen (15) days of the date of lodging of the Consent Decree, DNER shall develop, submit to EPA for review, and implement the final SPCC Plans for the DNER Pump Stations. These SPCC plans shall be in full compliance with the SPCC regulations under Section 311 of the Act and 40 CFR Part 112 and consistent with the comments EPA provided to DNER with regard to the De Diego Pump Station SPCC

Plan. The submittal shall contain written certification that the each of the SPCC Plans fully complies with 40 CFR Part 112 and Section 311 of the Act.

b. Within four (4) months of the date of lodging of this Consent Decree, DNER shall construct, complete, and place into operation the necessary equipment and infrastructure at the DNER Pump Stations in order to implement the SPCC Plan(s). DNER shall submit written certification that it has fully implemented each of the SPCC Plans and is in full compliance with 40 CFR Part 112 and Section 311 of the Act in the next Quarterly Report, pursuant to Section VIII (Quarterly Progress Reports).

13. Water Quality Monitoring and Improvement Activities, Including Plans to Achieve the Commonwealth Water Quality Standards ("PRWQS")

a. *Pump Station Monitoring.* Beginning not later than six (6) months after the date of lodging of the Consent Decree, DNER shall conduct monitoring at each of the DNER Pump Stations, in accordance with Appendix F (Monitoring Parameters) and at the frequencies memorialized therein. Monitoring results shall be submitted to EPA on a quarterly basis, pursuant to Section VIII (Quarterly Progress Reports). DNER shall sample the De Diego Pump Station discharge point at the Atlantic Ocean for Enterococcus and Fecal Coliform twice per month. Results of the sampling at the De Diego Pump Station shall be provided to EQB and EPA (electronically) within twenty-four (24) hours of receipt. DNER shall comply with sampling methods and protocols established by the Puerto Rico Environmental Quality Board, May 2013 Quality Assurance Project Plan 004, Special Sampling of Bathing Zones in Puerto Rico.

b. *Floatables Monitoring and Additional Control*

- i. Within four (4) months of the date of lodging of the Consent Decree, DNER shall submit to EPA for review and approval, pursuant to Section VI (Review and Approval Procedures), a feasibility study for the installation of automatic bar screens at the Stop 18 Pump Station that includes a detailed evaluation of costs, implementation requirements, and recommendations. Within one (1) year of receipt of EPA approval of a final feasibility study, DNER shall implement the recommendations of the final feasibility study, if feasible.
- ii. Within thirty (30) days of the date of lodging of this Consent Decree, DNER shall submit a protocol for monitoring and measuring floatables (e.g. bottles, litter, debris, etc.), discharges, and/or deposits in the receiving waters from the DNER Pump Stations.
- iii. Within six (6) months of the date of lodging of the Consent Decree, DNER shall submit a floatables report to EPA for review and comment, documenting floatables discharges from the pump station, along with proposals/recommendations to install additional floatables controls, as necessary (see EPA's CSO Floatables Control Technology Fact Sheet EPA 832-F99-008 (September 1999))

http://water.epa.gov/scitech/wastetech/upload/2002_06_28_mtb_floatctrl.pdf.

- iv. Within two (2) years of the date of lodging of the Consent Decree, DNER shall install the floatables controls identified in DNER's final floatables report and submit written certification that the floatables control has been implemented in the next Quarterly Report, pursuant to Section VIII (Quarterly Progress Reports).

c. *De Diego Pump Station.*

By July 31, 2016, DNER shall pay the first of ten (10) annual installments of \$100,000 into the Court Registry, pursuant to Paragraph 15, to support the completion of Phase I through IV activities under the San Juan Stage I Work Plan and/or the DTPW/HTA Stage I Work Plan for the De Diego Pump Station Priority Area. This money shall be used by DTPW/HTA and/or San Juan for the purpose of addressing the findings of the Stage I Work Plans performed in and around the De Diego Pump Station sewershed. Requests for reimbursement by San Juan or DTPW/HTA for completion of the Phase I through IV activities from the Court Registry shall be governed pursuant to Paragraph 15 and Appendix G (Reimbursement Claim Form and Procedures). On the first anniversary of the date that the first annual installment is due and on each anniversary thereafter DNER shall make additional payments of \$100,000 in further support of Phase I through IV activities under the Stage I Work Plans, including but not limited to, eliminating illicit discharges or constructing new sanitary sewer pipe lines. Such annual payments shall continue for ten (10) years. For the purpose of complying with this Consent Decree, DNER shall not have further financial obligations under this paragraph after the final payment is made.

d. *Stop 18 Pump Station.* Within sixty (60) days of the date of lodging of this Consent Decree or by July 1, 2015, whichever occurs last, DNER shall pay the first of ten (10) annual installments of \$150,000 into the Court Registry, pursuant to Paragraph 15, to support the completion of Phase I through IV activities under the San Juan Stage I Work Plan and/or the DTPW/HTA Stage I Work Plan for the Stop 18 Pump Station Priority Area. This money shall be used by DTPW/HTA and/or San Juan for the purpose of addressing the findings of the Stage I Work Plans performed in and around the Stop 18 Pump Station sewershed. Requests for reimbursement by San Juan or DTPW/HTA for completion of the Phase I through IV activities from the Court Registry shall be governed pursuant to Paragraph 15 and Appendix G (Reimbursement Claim Form and Procedures). On the first anniversary of the date that the first annual installment is due and on each anniversary thereafter DNER shall make additional payments of \$150,000 in further support of the Phase I through IV activities under the Stage I Work Plans, including but not limited to, eliminating illicit discharges or constructing new sanitary sewer pipe lines. Such annual payments shall continue for ten (10) years. For the purpose of complying with this Consent Decree, DNER shall not have further financial obligations under this paragraph after the final payment is made.

e. *Baldorioty de Castro Pump Station.* Within sixty (60) days of the date of lodging of this Consent Decree or by July 1, 2015, whichever occurs last, DNER shall pay the first of ten (10) annual installments of \$400,000 into the Court Registry, pursuant to Paragraph 15, to support the completion of Phase I through IV activities under the San Juan Stage I Work Plan and/or the DTPW/HTA Stage I Work Plan for the Baldorioty de Castro Pump Station Priority Area. This money shall be used by DTPW/HTA and/or San Juan for the purpose of addressing the findings of the Stage I Work Plans performed in and around the Baldorioty de Castro Pump Station sewershed. Requests for reimbursement by San Juan or DTPW/HTA for completion of the Phase I through IV activities from the Court Registry shall be governed pursuant to Paragraph 15 and Appendix G (Reimbursement Claim Form and Procedures). On the first anniversary of the date that the first annual installment is due and on each anniversary thereafter DNER shall make additional payments of \$400,000 in further support of the Phase I through IV activities under the Stage I Work Plans, including but not limited to, eliminating illicit discharges or constructing new sanitary sewer pipe lines. Such annual payments shall continue for ten (10) years. For the purpose of complying with this Consent Decree, DNER shall not have further financial obligations under this paragraph after the final payment is made.

f. *Funding and Financial Reporting.* Beginning with its first fiscal year after the date of lodging of this Consent Decree, DNER shall budget sufficient funds for each operating year in an amount reasonably expected to comply with all the requirements of Section V (Compliance Measures) of this Consent Decree, including but not limited to Personnel and Training, Operation and Preventive Maintenance, Pump Station Operations and Construction Requirements. Once per year (or with each Annual Report due pursuant to an applicable NPDES Permit), DNER shall submit copies of the (i) Single Audit Report for the prior fiscal year, (ii) its approved annual budget for the current fiscal year, (iii) documents indicating spending to date, future budget, and expected completion date for each project for which the annual expense exceeds \$500,000, and (iv) the annual budget for its MS4 program. DNER shall submit quarterly budgets and cash flow projections, within thirty (30) days of a written request by the United States to submit this information.

14. Project Coordinators, Personnel, and Training

a. Project Coordinators

- i. DNER's Project Coordinator must have sufficient technical expertise to coordinate the performance of all work required by Section V (Compliance Measures). DNER's Project Coordinator may not be an attorney representing any party in this matter and may not act as the Supervising Contractor. DNER's Project Coordinator may assign other representatives, including other contractors, to assist in coordinating the work.
- ii. EPA shall designate and notify DNER of its Project Coordinator and Alternate Project Coordinator. EPA may designate other representatives,

which may include its employees, contractors and/or consultants, to oversee the work.

- iii. DNERs' Project Coordinator shall meet with EPA's Project Coordinator at least quarterly.

b. Procedures for Disapproval/Notice to Proceed

- i. DNER shall designate, and notify EPA, within ten (10) days after the date of lodging, of the name[s], contact information, and qualifications of the DNER's proposed Project Coordinator.
- ii. EPA shall issue notices of disapproval and/or authorizations to proceed regarding the proposed Project Coordinator. If EPA issues a notice of disapproval, DNER shall, within thirty (30) days, submit to EPA a list of supplemental proposed Project Coordinators, as applicable, including a description of the qualifications of each. EPA shall issue a notice of disapproval or authorization to proceed regarding each supplemental proposed coordinator and/or contractor. DNER may select any coordinator covered by an authorization to proceed and shall, within twenty-one (21) days, notify EPA of DNER's selection.
- iii. DNER may change its Project Coordinator by following the procedures of Paragraphs 14(b)(i) and 14(b)(ii).
- iv. Notwithstanding the procedures of Paragraphs 14(b)(i) and 14(b)(ii), DNER has proposed, and EPA has authorized DNER to proceed, regarding the following Project Coordinator:

Roberto Velázquez
Auxiliary Administrator of Regional Operations
PO Box 366147
San Juan, Puerto Rico 00936-6147

c. Other Personnel and Training Requirements

- i. DNER shall maintain adequate personnel and/or retain sufficient contractors to comply with its Permit and with Section V (Compliance Measures) of this Consent Decree. If EPA determines that the number of personnel or training programs are insufficient, EPA may require DNER to take additional measures, as appropriate.
- ii. DNER shall ensure that all personnel with responsibilities for compliance with the Compliance Measures referenced in Section V (Compliance Measures) of this Consent Decree receive necessary and appropriate training to carry out their obligations.
- iii. DNER shall provide training to all the personnel with responsibilities for compliance with this Consent Decree on proper operation and maintenance of the DNER Pump Stations no later than thirty (30) days after the date of lodging of this Consent Decree. Training shall continue on an annual basis. All new employees assigned to work on matters

- related to this Consent Decree and any applicable NPDES permit shall receive training within sixty (60) days of their start day.
- iv. DNER shall produce a copy of all training materials used, including the agenda and the attendance checklist, in the Quarterly Report to EPA covering the applicable quarter, pursuant to Section VIII (Quarterly Progress Reports).

15. Payments to the Court Registry referenced in Paragraphs 13(c), (d), and/or (e), shall be paid into an interest-bearing Court Registry Account pursuant to Local Civil Rules and procedures of this Court ("Court Registry Account"). DNER assents to the filing by the United States of an Assented to Motion for Order Regarding Disbursement of Funds from the Court Registry Account and proposed order, which the United States may file after having determined that payments requested by DTPW and/or HTA, and/or San Juan are not inconsistent with the terms of this Consent Decree. A copy of any request for payment must be sent by email (to address set forth in Section XI) to DNER at the time it is submitted for EPA's consideration. Subject to EPA determination of the validity of the claim for reimbursement, DTPW and HTA (collectively) and San Juan shall be entitled to an initial disbursement of 20% of the amounts in the Court Registry Account and EPA shall allocate the remaining funds in proportion to the amount of subsequent valid claims for reimbursement. Subject to the proceeding sentence, available funds shall be allocated such that between the Effective Date and the sixth anniversary of the first installment payment, not less than 40% of the funds disbursed shall be for physical construction work contemplated by Phase IV activities, thereafter, not less than 80% of the funds disbursed shall be used for such purpose. Claims for reimbursement must be submitted within forty-five (45) days after each anniversary of the Effective Date of this Consent Decree. Except for claims seeking excess funds following completion of Phase IV activities (as contemplated below), only claims for costs incurred in the prior year (from the Effective Date to the first anniversary and each subsequent anniversary, as the case may be) will be considered for reimbursement. Claims must be submitted using Appendix G (Reimbursement Claim Form) and include supporting documentation, itemization, and certification as required by Appendix G. On completion of all Phase IV activities relating to the DNER Pump Station sewersheds and reimbursement of valid claims, excess funds may be disbursed, as determined by EPA, on a pro-rata basis to reimburse as yet unreimbursed, valid claims for work under Phases I through III for the Stage I Work Plans pertaining to the DNER Pump Station sewersheds. Any determinations made by EPA pursuant to this paragraph shall be in its sole discretion. If the Court refuses to enter this Consent Decree, and the time for any appeal of that decision has run or if the Court's denial of entry is upheld on appeal, the monies placed in the Court Registry Account, together with accrued interest thereon (less miscellaneous schedule fees), shall be returned to DNER, unless otherwise ordered by the Court. Nothing in this Consent Decree shall be construed to limit the Parties from agreeing to a reallocation of funds to be paid into the Court Registry Account pursuant to Paragraphs 13(c), (d), and/or (e) and to be available for reimbursement pursuant to Paragraph 15, to effect the timely and efficient completion of the objectives of this Consent Decree.

VI. REVIEW AND APPROVAL PROCEDURES

16. In recognition of the unique circumstances of this matter, and to advance the Objectives of this Consent Decree, all plans of action to be taken by DNER shall be implemented without the need for EPA approval of those plans, unless such approval is expressly required by this Consent Decree, as evidenced by reference to this Section VI (Review and Approval Procedures). Unless indicated otherwise in this Consent Decree, the following review and approval procedures set forth in this Section shall apply with respect to any plan, program or other document which is required to be submitted for EPA review and approval pursuant to this Section:

- a. After receipt and review of any plan, program or other document which is required to be submitted for approval pursuant to this Consent Decree, EPA may (1) approve the submission; (2) approve the submission or portions of the submission upon specified conditions; (3) approve part of the submission and disapprove the remainder; or (4) disapprove the submission and direct DNER to modify the submission.
- b. In the event of approval of the complete submission, DNER shall proceed to take any actions required by the plan, program or other approved document, in accordance with the schedule contained therein, as approved in writing by EPA.
- c. In the event of written approval of portions of the submission or approval upon specified conditions, DNER shall proceed to take the actions identified in the non-disapproved portion of the plan, program, other document, or portion thereof, if severable, in accordance with any applicable conditions specified by EPA, subject only to the right of DNER to invoke the Dispute Resolution procedures set forth in Section XIV (Dispute Resolution) of this Consent Decree with respect to the conditions imposed or the disapproved portions. Implementation of any approved portion of the submission shall not eliminate the potential for DNER to incur stipulated penalties pursuant to Section VII (Stipulated Penalties) based on the failure of DNER to meet other approved requirements of the submission so long as such other approved requirements are technically severable from the disapproved portion(s) of the submission.
- d. Upon receipt of a notice of disapproval of all or part of a submission from EPA, DNER shall, within forty-five (45) days, correct the deficiencies as directed by EPA's written comments and resubmit the plan, program or other document for approval. Any stipulated penalties applicable to the original submission, as provided in Section VII of this Consent Decree (Stipulated Penalties), shall accrue during the 45-day period, but shall not be payable unless the resubmission is untimely or is disapproved in whole or is materially deficient.

17. In the event that a resubmitted plan, program or other document, or portion thereof, is disapproved by EPA, EPA may again require DNER to correct the deficiencies in accordance with preceding Paragraphs, subject to the right of DNER to invoke the Dispute Resolution procedures set forth in Section XIV (Dispute Resolution) of this Consent Decree and the right of EPA to seek stipulated penalties as provided in Section VII (Stipulated Penalties).

18. If DNER timely submits or resubmits an item for review and approval or comments under this Consent Decree, and if EPA fails to approve, provide comments or otherwise act on a submittal within sixty (60) days of receipt of the submittal, DNER shall be entitled to an extension of any interim or final deadlines which DNER can demonstrate that it will be unable to meet as a result of the length of the review process. Any such request must be in writing and must identify the deadlines for which an extension is requested, the length of the extension requested, and set forth the basis for each such request. In the event that EPA should disapprove, in whole or in part, the extended deadline requested by DNER, DNER may invoke the Dispute Resolution procedures set forth in Section XIV (Dispute Resolution) of this Consent Decree.

19. If DNER submits or resubmits a plan, or program, or other document that fails to contain all of the required elements as set forth in the appropriate Section or Appendix of this Consent Decree, EPA may deem DNER to have failed to make the submission, unless DNER invokes the Dispute Resolution procedures set forth in Section XIV (Dispute Resolution) of this Consent Decree. In the case of a submission or resubmission that fails to contain all required elements, stipulated penalties begin to accrue on the date the submission or resubmission was due.

20. DNER may request in writing that EPA grant an extension of any deadline established by this Consent Decree, and EPA shall grant such, in writing, if it determines that good faith efforts to comply with the timetables established in this Consent Decree have been made and good cause for the requested extension has been shown. The granting of such an extension pursuant to this Paragraph is not necessarily a "material modification" within the meaning of Section XIX (Modification) of this Consent Decree.

VII. STIPULATED PENALTIES

21. DNER shall be liable to pay to the United States stipulated penalties in the amounts set forth below. For each day that DNER fails to complete the work specified in accordance with the applicable schedules, including all benchmarks and interim deadlines, developed pursuant to Section V (Compliance Measures) and the Appendices of this Consent Decree, including schedules, benchmarks and interim deadlines developed after the Effective Date of this Consent Decree, and for each day that DNER fails to submit a report or plan or satisfy any other requirement of this Consent Decree and the Appendices, DNER shall be liable for stipulated penalties as follows:

<u>Type of Requirement</u>	<u>Period of noncompliance</u>	<u>Per day per violation</u>
<u>Tier I Requirements</u>	1 - 60 days	\$250.00
	61 - 120 days	\$500.00
	Over 120 days	\$750.00
<u>Tier II Requirements</u>	1 - 60 days	\$1,000.00
	61 - 120 days	\$1,250.00
	Over 120 days	\$1,500.00

Tier II Requirements are listed in Appendix H to this Consent Decree. Any requirement under this Consent Decree not listed in Appendix H as a Tier II Requirement shall be classified as a Tier I Requirement for purposes of this Section.

22. Payment of stipulated penalties pursuant to this Section shall be made within thirty (30) days following written demand by EPA for payment of the penalties.

23. All stipulated penalties begin to accrue on the day that complete performance is due or a violation occurs, and continue to accrue through, and including, the day on which such violation or other noncompliance is remedied. Nothing herein shall preclude the simultaneous accrual of separate stipulated penalties for separate violations of this Consent Decree.

24. The United States may in the unreviewable exercise of its discretion, reduce or waive stipulated penalties otherwise due it under this Consent Decree. In exercising its discretion of whether to reduce or not assess a stipulated penalty, EPA may consider evidence submitted by DNER explaining why it should not be subject to a stipulated penalty, including, but not limited to, any actions taken to prevent the noncompliance.

25. Stipulated penalties shall continue to accrue as provided in Paragraph 23, during any Dispute Resolution, but need not be paid until the following:

- a. If the dispute is resolved by agreement or by a decision of EPA, DNER shall pay accrued penalties determined to be owing, together with interest, to the United States within sixty (60) days of the effective date of the agreement or the receipt of EPA's decision or order.
- b. If the dispute is appealed to the Court and the United States prevails in whole or in part, DNER shall pay all accrued penalties determined by the Court to be owing, together with interest, within sixty (60) days of receiving the Court's decision or order, except as provided in subparagraph (c) below.
- c. If any party appeals the District Court's decision, DNER shall pay all accrued penalties determined to be owing, together with interest, within sixty (60) days of receiving the final appellate court decision.

26. Stipulated penalties paid to the United States under this Section shall be paid by certified check payable to the "Treasurer of the United States," and tendered to the United States Attorney for the District of Puerto Rico. A copy of the check, the letter tendering such check,

together with a report setting forth the computations made in determining such penalties, and a transmittal document identifying this action, the requirement(s) of this Consent Decree which was not complied with, the date(s) of non-compliance, and the amount of payment shall be mailed to EPA and the United States Department of Justice at the addresses set forth in Section XI (Notices).

27. If DNER fails to pay stipulated penalties according to the terms of this Consent Decree, DNER shall be liable for interest on such penalties, as provided for in 28 U.S.C. § 1961 accruing as of the date payment became due, plus the amount of the United States' reasonable costs, attorneys' fees or other expenses incurred in seeking payment of the civil or stipulated penalty. Nothing in this Section shall be construed as prohibiting, altering, or in any way limiting the rights of the United States to seek additional remedies or sanctions, pursuant to other provisions of this Consent Decree or of any applicable statutes and regulations, including seeking injunctive or other relief for the failure by DNER to implement Section V (Compliance Measures) of this Consent Decree. Where a violation of this Consent Decree is also a violation of the Act, DNER shall be allowed a credit, for any stipulated penalties paid, against any statutory penalties imposed for such violation.

VIII. QUARTERLY PROGRESS REPORTS

28. Within thirty (30) days after the end of the first complete calendar year quarter (i.e., by April 30, July 30, October 30, and January 30) after the date of lodging of the Consent Decree and on each subsequent quarter, until termination of the Consent Decree pursuant to the Section XXII (Termination), DNER shall submit a Quarterly Report for the preceding quarter ("Quarterly Report") that shall include narrative descriptions and appendices, as necessary, concerning the: status of any construction or compliance measures; completion of milestones; problems encountered or anticipated, together with implemented or proposed solutions; status of permit applications; operation and maintenance; reports required by the Consent Decree or any applicable Permit; inspections and outfall monitoring; and all results of sampling.

29. The Quarterly Reports shall also include a description of any non-compliance (including delays) with the requirements of this Consent Decree and an explanation of the violation's likely cause and of the remedial steps taken, or to be taken, to prevent or minimize such violation. If DNER violates, or has reason to believe that DNER may violate, any requirement of this Consent Decree, DNER shall notify the United States of such violation and its likely duration, in writing, within thirty (30) business days of the day DNER becomes aware of the violation, with an explanation of the violation's likely cause and of the remedial steps taken, or to be taken, to prevent or minimize such violation. If the cause of a violation cannot be fully explained at the time the report is due, DNER shall so state in the report. DNER shall investigate the cause of the violation and shall then submit an amendment to the report within sixty (60) days of the date of the violation, including a full explanation of the causes of the violation. Nothing in this Paragraph or the following Paragraph relieves DNER of its obligation to provide the notice required by Section X (Force Majeure) of this Consent Decree.

30. All reports shall be submitted to the persons designated in Section XI (Notices) of this Consent Decree. Reports may be submitted in electronic form to EPA, at the addresses designated in Section XI (Notices).

31. All Quarterly Reports and other submissions required pursuant to this Consent Decree shall be in English and signed by an official of the submitting party and include the following certification:

“I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.”

IX. QUARTERLY PROGRESS MEETINGS

32. Representatives of EPA and DNER shall convene informally (including, as appropriate, representatives of PRASA, DTPW/HTA, San Juan, and/or others), at least on a quarterly basis, pursuant to a mutually agreed-upon schedule, to discuss DNER's ongoing progress under the Consent Decree. The meetings should cover at least the following subjects:

- a. Progress on the implementation of the actions required by this Consent Decree, including but not limited to the San Juan and DTPW/HTA Work Plans and Urgent Action Registries required under their respective Consent Decrees;
- b. Potential problems that may adversely affect progress on implementing the actions required by this Consent Decree;
- c. Measures that DNER intends to take to correct problems and deficiencies encountered by DNER or found by EPA in its inspections of any facility covered by this Consent Decree; and status of compliance with effluent limits.

33. If, as a result of discussions at the Quarterly Progress Meetings, EPA and DNER agree on actions to be taken and a schedule for such actions that are not otherwise provided for in this Consent Decree, the Parties shall, after consultation with counsel, follow the procedure set forth in Section XIX (Modification).

X. FORCE MAJEURE

34. DNER's obligation to comply with one or more of the provisions of this Consent Decree shall be deferred or, in the sole discretion of EPA, excused, to the extent that the delay in compliance or the non-compliance is caused by a "*force majeure*" event. "*Force majeure*," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of DNER that delays or prevents the performance of any obligation or causes a non-compliance under this Consent Decree despite best efforts to fulfill the obligation. The requirement that DNER exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential *force majeure* and best efforts to address the effects of any potential *force majeure* (i) as it is occurring; and (ii) following the potential *force majeure*, such that the delay is minimized to the greatest extent possible. "*Force majeure*" shall not include any delay due to unanticipated or increased costs of achieving and maintaining compliance with any provision of this Consent Decree or the financial inability of DNER to implement any provision of this Consent Decree. The failure of DNER to obtain any necessary permit or approval shall not be deemed a *force majeure* unless DNER demonstrates that it exercised due diligence in promptly pursuing such permit application or approval. The Parties agree that, depending upon the circumstances related to an event and the response of DNER to such circumstances, the kinds of events listed below are among those that could qualify as "*force majeure* events" within the meaning of this Section: fire, hurricane, flood, riot, terrorism, or other circumstances beyond the control of, and without the fault of DNER, or any entity controlled by DNER, including either DNER's consultants and contractors.

35. If any alleged *force majeure* event occurs or has occurred that may delay the performance or cause a non-compliance of any obligation under this Consent Decree, DNER shall notify EPA no later than five (5) working days after DNER first knew or should have known that the event might cause a delay. Within ten (10) days thereafter, DNER shall provide in writing to EPA an explanation and description of the reasons for the delay or non-compliance; the anticipated duration of the delay or non-compliance; all actions taken or to be taken to prevent or minimize the delay or non-compliance; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or non-compliance or the effect of the delay or non-compliance; and reason(s) for attributing such delay to a *force majeure*, if DNER intends to assert such a claim. Any written claim of a *force majeure* event shall be detailed and Facility-specific. DNER shall include with any notice, all available documentation supporting the claim that the delay was attributable to a *force majeure*.

36. Failure to comply with the above procedures regarding notification and reporting shall preclude DNER from asserting any claim of *force majeure* for that event for the period of time of such failure to comply, unless such failure to comply with the foregoing procedures regarding notification is itself attributable to a *force majeure* event. DNER further agrees that, notwithstanding giving notice to EPA within five (5) working days, any unreasonable delay in notifying EPA of an alleged *force majeure* event may hinder or preclude EPA from substantiating an assertion by DNER that the delay in compliance or the non-compliance in question is attributable to a *force majeure* event.

37. If EPA agrees that the delay or non-compliance or anticipated delay or noncompliance is attributable to a *force majeure*, the time for implementation of the applicable portions of this Consent Decree that are affected by the *force majeure* will be extended by EPA for a period to compensate for the delay resulting from such event, and stipulated penalties shall not accrue for such period. An extension of time for performance of the obligations affected by the *force majeure* shall not, of itself, extend the time for performance of any other obligation or toll the accrual of stipulated penalties for failure to perform such obligation. If EPA does not agree that the delay or non-compliance or anticipated delay or non-compliance has been or will be caused by a *force majeure*, EPA will notify DNER in writing of its decision. If EPA agrees that the delay is attributable to a *force majeure*, EPA will notify DNER in writing of the length of the extension, if any, for performance of the obligations affected by the *force majeure*.

38. If DNER elects to invoke the dispute resolution procedures set forth in Section XIV, with regard to a *force majeure* determination, it shall do so no later than thirty (30) days after receipt of EPA's written notice. In any such proceeding, DNER shall have the burden of demonstrating by a preponderance of the evidence that the delay or non-compliance or anticipated delay or non-compliance has been or will be caused by a *force majeure*, that the duration of the delay or non-compliance or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid or mitigate the effects of the delay, and that DNER complied with the requirements of this Section of the Consent Decree. If DNER carries the burden, the delay at issue shall be deemed not to be a violation by DNER of the affected obligation of this Consent Decree identified to EPA and to the Court.

XI. NOTICES

39. Whenever under the terms of this Consent Decree notice is to be given, or a report or other document is to be forwarded by one party to another, it shall be directed to the following addresses unless otherwise provided in this Consent Decree or unless the sending party has been advised by the receiving party that such notice and reports should be forwarded to a different individual or address. Any such materials shall be in English and shall include a reference to the name, caption and number of this action.

As to the United States:

Chief, Environmental Enforcement Section
Environment & Natural Resources Division
U.S. Department of Justice
P.O. Box 7611, Ben Franklin Station
Washington, D.C. 20044-7611

As to EPA:

Director, Caribbean Environmental Protection Division
United States Environmental Protection Agency
City View Plaza -- Suite 7000
#48 RD 165 KM 1.2

Guaynabo, PR 00968-8069
font.jose@epa.gov (if by electronic means)

Chief, Water Compliance Branch
United States Environmental Protection Agency
Region 2
290 Broadway, 20th Floor
New York, NY 10007
mckenna.douglas@epa.gov (if by electronic means)

and

Chief, Water and General Law Branch
Office of Regional Counsel
United States Environmental Protection Agency
Region 2
290 Broadway, 16th Fl.
New York, NY 10007
feinmark.phyllis@epa.gov (if by electronic means)

As to DNER:

Secretary
Department of Natural and Environmental Resources
PO Box 366147
San Juan, Puerto Rico 00936-6147

with copy to

Attorney General
Puerto Rico Department of Justice
PO Box 9020192
San Juan, Puerto Rico 00902-0192

40. Delivery shall be considered complete upon deposit of the material at issue in the express mail, express courier service, or certified mail, or as otherwise specifically provided herein.

41. Documents required to be submitted under the terms of this Consent Decree may be submitted electronically, provided a paper copy is timely submitted to the Director of the Caribbean Environmental Protection Division in Puerto Rico and the Chief of the Water Compliance Branch in New York. A copy of any document required to be submitted under the terms of this Consent Decree must also be sent electronically to the other parties to this Consent Decree.

XII. ACCESS TO THE FACILITIES

42. Nothing in this Consent Decree in any way limits any right of entry or access to DNER's Facilities available to EPA pursuant to applicable federal or Commonwealth laws, regulations or permits.

XIII. RECORD RETENTION

43. Unless otherwise specified in this Consent Decree, DNER shall preserve an original or a copy of all records, logs, and documents required to be kept under the Clean Water Act, any applicable regulations promulgated thereunder, and pursuant to the provisions of this Consent Decree, for at least five (5) years after the termination of this Consent Decree, or as long as is required under the Act, regulation, or Permit, if longer. Drafts of documents for which a final version has been submitted to EPA pursuant to this Consent Decree need not be retained. Upon request by EPA, DNER shall provide copies to EPA of any such records, logs and documents during the periods DNER is required to preserve the original or copy of such records, logs, and documents. Provided, however, that DNER may eliminate documents after five (5) years upon written notice to EPA listing the documents DNER plans to destroy and EPA's written approval. If EPA does not respond in writing within ninety (90) days of receiving such notice, DNER may destroy such documents.

44. For purposes of this Section and of Section VII (Stipulated Penalties), DNER shall be required to preserve at least the following records, logs and documents: Facility log books; Illicit Interconnection notices (both 24 hour and/or five day notices); computerized or other written maintenance management system files in which routine Facility maintenance information is loaded or otherwise recorded including job orders for corrective or preventive maintenance for the Facility; Inspection check list or report performed at the Facility, compiled daily, weekly, monthly, semi-annually, or annually, as applicable; and Police reports documenting employee security and/or vandalism-related incidents affecting the operation of the Facility.

XV. DISPUTE RESOLUTION

45. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. Failure by DNER to seek resolution of a dispute under this Section shall preclude DNER from raising any such issue as a defense to an action by the United States to enforce any obligation of DNER arising under this Decree.

46. Informal Dispute Resolution. Any dispute subject to Dispute Resolution under this Consent Decree shall first be the subject of informal negotiations. The dispute shall be considered to have arisen when DNER sends the United States a written Notice of Dispute. Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations shall not exceed thirty (30) days from the date the dispute arises, unless that period is modified by written agreement. If the Parties cannot resolve a dispute by informal negotiations, then the

position advanced by the United States shall be considered binding unless, within thirty (30) days after the conclusion of the informal negotiation period, DNER invokes formal dispute resolution procedures as set forth below.

47. Formal Dispute Resolution. DNER shall invoke formal dispute resolution procedures, within the time period provided in the preceding Paragraph, by serving on the United States a written Statement of Position regarding the matter in dispute. The Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting the position of DNER and any supporting documentation relied upon by DNER.

48. The United States shall serve its Statement of Position within forty-five (45) days of receipt of the Statement of Position of DNER. The United States' Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by the United States. The United States' Statement of Position shall be binding on DNER, unless DNER files a motion for judicial review of the dispute in accordance with the following Paragraph.

49. DNER may seek judicial review of the dispute by filing with the Court and serving on the United States, in accordance with Section XI (Notices) of this Consent Decree, a motion requesting judicial resolution of the dispute. The motion must be filed within thirty (30) days of receipt of the United States' Statement of Position pursuant to the preceding Paragraph. The motion shall contain a written statement of position on the matter in dispute, including any supporting factual data, analysis, opinion, or documentation, and shall set forth the relief requested and any schedule within which the dispute must be resolved for orderly implementation of the Consent Decree.

50. The United States shall respond to the motion of DNER within the time period allowed by the Local Rules of this Court. DNER may file a reply memorandum to the extent permitted by the Local Rules.

51. Standard of Review

a. Disputes Concerning Matters Accorded Record Review. Except as otherwise provided in this Consent Decree, in any dispute brought under Paragraph 47 pertaining to the adequacy or appropriateness of plans, procedures to implement plans, schedules or any other items requiring approval by EPA under this Consent Decree; the adequacy of the performance of work undertaken pursuant to this Consent Decree; and all other disputes that are accorded review on the administrative record under applicable principles of administrative law, DNER shall have the burden of demonstrating, based on the administrative record, that the position of the United States is arbitrary and capricious or otherwise not in accordance with the law.

b. Other Disputes. Except as otherwise provided in this Consent Decree, in any other dispute brought under Paragraph 47, DNER shall bear the burden of demonstrating that its position complies with this Consent Decree and furthers the objectives of the Consent Decree.

c. The invocation of dispute resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of DNER under this Consent Decree, unless and until final resolution of the dispute so provides. Stipulated penalties with respect to the disputed matter shall continue to accrue from the day of noncompliance, but payment shall be stayed pending resolution of the dispute as provided in Paragraph 25. If DNER does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section VII (Stipulated Penalties).

XVI. COMPLIANCE WITH APPLICABLE LAWS

52. This Consent Decree in no way relieves DNER of its responsibility to comply with all applicable federal, Commonwealth and local laws, regulations, and permits, and compliance with this Consent Decree shall not constitute a defense to any action pursuant to said laws, regulations, or permits, except as otherwise provided in this Consent Decree or in the Clean Water Act. DNER shall be responsible for obtaining all Commonwealth or local permits which are necessary for the performance of any obligations imposed in this Consent Decree. This Consent Decree shall not be construed as a determination of any issue related to any federal, Commonwealth, or local permit, nor shall it be construed to be an NPDES Permit or a modification of any NPDES Permit or other permit.

53. Nothing in this Consent Decree relieves DNER from any requirements imposed on them relating to the Clean Water Act, laws of the Commonwealth of Puerto Rico, or any orders or Permits issued pursuant to the foregoing, except as otherwise provided in this Consent Decree or in the Clean Water Act.

54. In the Quarterly Meetings, the Parties agree to discuss significant changes in law and/or regulations and whether such changes may require modification of this Consent Decree pursuant to Section XIX (Modification).

XVII. EFFECT OF SETTLEMENT

55. This Consent Decree resolves the civil claims of the United States for the violations alleged in the Complaint filed in this action through the date of lodging.

56. The United States reserves all legal and equitable remedies available to enforce the provisions of this Consent Decree, except as expressly stated in Paragraph 55. This Consent Decree shall not be construed to limit the rights of the United States to obtain penalties or injunctive relief under the Act or implementing regulations, or under other federal laws, regulations, or permit conditions, except as expressly specified in Paragraph 55. The United States further reserves all legal and equitable remedies to address any imminent and substantial endangerment to the public health or welfare or the environment arising at, or posed by, Facilities subject to this Consent Decree, whether related to the violations addressed in this Consent Decree or otherwise.

57. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, civil penalties, other appropriate relief relating to violations, DNER shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, claim preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case, except with respect to claims that have been specifically resolved pursuant to Paragraph 55 of this Section.

58. This Consent Decree is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. DNER is responsible for achieving and maintaining complete compliance with all applicable federal, State, and local laws, regulations, and permits; and compliance with this Consent Decree shall not be a defense to any action commenced pursuant to any such laws, regulations, or permits, except as set forth herein. The United States does not, by its consent to the entry of this Consent Decree, warrant or aver in any manner that compliance of DNER with any aspect of this Consent Decree will result in compliance with provisions of the Act, 33 U.S.C. §§ 1251 *et seq.*, or with any other provisions of federal, State, or local laws, regulations, or permits.

59. This consent Decree does not limit or affect the rights of DNER or the United States against any third parties not party to this Consent Decree, nor does it limit the rights of third parties not party to this Consent Decree against DNER, except as otherwise provided by law.

60. This Consent Decree shall not be construed to create rights in, or grant any cause of action to, any third party not party to this Consent Decree.

XVIII. COSTS OF SUIT

61. The Parties shall bear their own costs of this action, including attorneys' fees, except that the United States may be entitled to collect the costs (including attorneys' fees) incurred in any action necessary to collect any stipulated penalties due but not paid by DNER.

XIX. PUBLIC COMMENT

62. This Consent Decree shall be lodged with the Court for a period of not less than thirty (30) days for public notice and comment in accordance with 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations indicating that the Consent Decree is inappropriate, improper, or inadequate. DNER consents to entry of this Consent Decree without further notice and agrees not to withdraw from or oppose entry of this Consent Decree by the Court or to challenge any provision of the Decree, unless the United States has notified DNER in writing that it no longer supports entry of the Decree.

XX. MODIFICATION

63. The terms of this Consent Decree, including any attached appendices, may be modified only by a subsequent written agreement signed by all the Parties. Where the

modification constitutes a material change to this decree, it shall be effective only upon approval by the Court.

64. Any disputes concerning modification of this Decree shall be resolved pursuant to Section XIV (Dispute Resolution) of this Consent Decree, provided, however, that, instead of the burden of proof provided by Paragraph 51, the Party seeking the modification bears the burden of demonstrating that it is entitled to the requested modification in accordance with Federal Rule of Civil Procedure 60(b).

XXI. RETENTION OF JURISDICTION

65. The Court shall retain jurisdiction over this case until termination of this Consent Decree, for the purpose of resolving disputes arising under this Consent Decree or entering orders modifying this Decree, pursuant to Sections XIV (Dispute Resolution) and XIX (Modification) of this Consent Decree, or effectuating or enforcing compliance with the terms of this Decree.

66. The United States retains the right to enforce the terms of this Consent Decree and to take any other action authorized by federal, Commonwealth or local law to achieve or maintain compliance with this Consent Decree.

XXII. EFFECTIVE DATE

67. The Effective Date of this Consent Decree shall be the date upon which the Consent Decree is entered by the Court or a motion to enter the Consent Decree is granted, whichever occurs first, as recorded on the Court's docket; provided, however, that DNER hereby agrees that it shall be bound to perform duties scheduled to occur prior to the Effective Date. In the event that the United States withdraws or withholds consent to this Consent Decree before entry, or the Court declines to enter the Consent Decree, then the preceding requirement to perform duties scheduled to occur before the Effective Date shall terminate.

XXIII. TERMINATION

68. After DNER has satisfied the requirements of Section V (Compliance Measures) and all other requirements of this Consent Decree, but not sooner than ten (10) years from the date of lodging of this Consent Decree, and has paid any accrued stipulated penalties as required by this Consent Decree, DNER may serve upon the United States a Request for Termination, stating that DNER has satisfied those requirements, together with all necessary supporting documentation.

69. Following receipt by the United States of DNER's Request for Termination, the Parties shall confer informally concerning the Request and any disagreement that the Parties may have as to whether DNER has satisfactorily complied with the requirements for termination of this Consent Decree. If the United States agrees that the Decree may be terminated, the Parties shall submit, for the Court's approval, a joint stipulation terminating the Decree.

70. If the United States does not agree that the Decree may be terminated, DNER may invoke Dispute Resolution under Section XIV (Dispute Resolution) of this Consent Decree. However, DNER shall not seek Dispute Resolution of any dispute regarding termination, under Paragraph 46 of Section XIV (Dispute Resolution) of this Consent Decree, until three (3) months after service of the Request for Termination.

XXIV. SIGNATORIES/SERVICE

71. Each undersigned representative of DNER and the Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind the Party he or she represents to this document.

72. This Consent Decree may be signed in counterparts, and its validity may not be challenged on that basis. DNER agrees to accept service of process by mail with respect to all matters arising under or relating to this Consent Decree and to waive the formal service requirements set forth in Rules 4 and 5 of the Federal Rules of Civil Procedure and any applicable Local Rules of this Court including, but not limited to, service of a summons.

XXV. INTEGRATION

73. This Consent Decree constitutes the final, complete, and exclusive agreement and understanding between the Parties with respect to the settlement embodied in the Decree and supersedes all prior agreements and understandings, whether oral or written, concerning the settlement embodied herein. Other than reports, plans, designs, or other submittals that are subsequently submitted and approved pursuant to this Decree, no other document, nor any representation, inducement, agreement, understanding, or promise, constitutes any part of this Decree or the settlement it represents, nor shall it be used in construing the terms of this Decree.

XXVI. FINAL JUDGMENT

74. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment of the Court as to the United States and DNER. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Federal Rules of Civil Procedure 54 and 58.

SO ORDERED this __ day of _____, 2015.


HON. CARMEN CONSUELO VARGAS DE CEREZO
UNITED STATES DISTRICT JUDGE

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Municipality of San Juan, Civil No. 14-CV-1476 (CCC)

FOR THE PLAINTIFF UNITED STATES OF AMERICA:

JOHN C. CRUDEN
Assistant Attorney General
Environment and Natural Resources Division

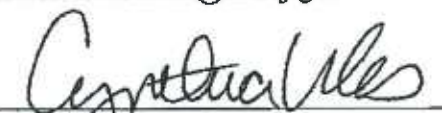
Date: 12/23/2015


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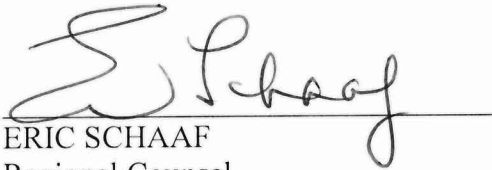
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HECTOR E. RAMIREZ
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Date: 12/16/15


CYNTHIA GILES
Assistant Administrator
Office of Enforcement and Compliance Assurance
United States Environmental Protection Agency
1200 Pennsylvania Ave., N.W.
Washington, D.C. 20460

Date: 12/14/15

A handwritten signature in black ink, appearing to read "Eric SchAAF", written over a horizontal line.

ERIC SCHAAF
Regional Counsel
EPA Region II
290 Broadway, 17th Floor
New York, N.Y. 10007

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Municipality of San Juan., Civil No. 14-CV-1476 (CCC)

FOR THE DEPARTMENT OF NATURAL & ENVIRONMENTAL RESOURCES OF THE COMMONWEALTH OF PUERTO RICO

Date: DECEMBER 21 / 2015

CARMEN R. GUERRERO-PÉREZ
Secretary of the Department of Natural &
Environmental Resources of the Commonwealth of
Puerto Rico
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San Juan, Puerto Rico 00936-6147

Date: 12/15/2015

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Date: 12/15/2015

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