

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
)
 MUNICIPALITY OF ARECIBO)
)
 Defendant.)
 _____)

CIVIL ACTION NO. 3:12-CV-01419
(ccc)

CONSENT DECREE

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BACKGROUND

WHEREAS, Plaintiff, the United States of America (“United States”), on behalf of the United States Environmental Protection Agency (“EPA”), is filing a Complaint (the “Complaint”) concurrently with lodging of this Consent Decree, alleging that Defendant Municipality of Arecibo (“Arecibo”), violated Sections 301, 308, 309 and 402 of the Clean Water Act (“CWA” or “Act”), 33 U.S.C. §§ 1311, 1318, 1319 and 1342, and regulations promulgated thereunder, and terms and conditions of the National Pollutant Discharge Elimination System General Permit for Discharges from Small Municipal Separate Storm Sewer Systems, Permit Number PRR040029 (“MS4 Permit”), issued pursuant thereto.

WHEREAS, Arecibo is a municipality organized under the laws of the Commonwealth of Puerto Rico.

WHEREAS, Arecibo owns and operates a municipal separate storm sewer system (“MS4”) and the La Puntilla Pump Station (“Pump Station”) in Arecibo, Puerto Rico, addressed in the Complaint and in this Consent Decree.

WHEREAS, the United States alleges that Arecibo has, during the relevant time period, failed to obtain coverage under the MS4 Permit, in violation of Section 308(a) of the Act, 33 U.S.C. § 1318(a); discharged storm water from the Pump Station into waters of the United States without a permit, in violation of the MS4 Permit and Sections 301(a) and 402 of the Act, 33 U.S.C. §§ 1311(a) and 1342; and discharged untreated sewage and sewage sludge including, but not limited to, fecal coliform, oil and grease, metals and other “pollutants” within the meaning of Section 502(6) of the Act, 33 U.S.C. § 1362(6) from Arecibo’s MS4 and the Pump Station into waters of the United States, in violation of the MS4 Permit and Section 301(a) of the Act, 33 U.S.C. § 1311(a).

WHEREAS, Arecibo maintains that it has taken actions toward achieving compliance with the CWA and with the MS4 Permit.

WHEREAS, it is the express purpose of the Parties entering into this Consent Decree to resolve the claims alleged in the Complaint; and with the goal of Defendant complying with the CWA, implementing and improving its MS4 storm water management program to ensure that it includes best management practices and controls to reduce the discharge of pollutants to the maximum extent practicable as required by the Permit.

WHEREAS, Plaintiff, the United States and Defendant Arecibo, without making any admissions 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 interest of the United States, Arecibo, and the public; (ii) entry of this Consent Decree without further litigation is the most expeditious, economic, and appropriate means of resolving this action; and (iii) that the Parties recognize, and the Court by entering this Consent Decree finds that this Consent Decree has been negotiated by the Parties in good faith and will avoid litigation between the Parties and that this Consent Decree is fair, reasonable, and in the public interest.

NOW, THEREFORE, without admission by Arecibo of non-jurisdictional allegations in the Complaint and upon consent of the United States and Arecibo, IT IS HEREBY ADJUDGED, ORDERED, AND DECREED as follows:

OBJECTIVES

It is the express purpose of the Parties in entering this Consent Decree to further the objectives of the Clean Water Act, as enunciated in Section 101 of the CWA, 33 U.S.C. § 1251, to eliminate unauthorized discharges, to properly implement its Storm Water

Management Plan (“SWMP”) as required by the MS4 Permit, and to properly operate and maintain its MS4 by properly evaluating and repairing its MS4.

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 CWA, 33 U.S.C. § 1319(b), and pursuant to 28 U.S.C. §§ 1331, 1345, and 1355. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(b) and (c), and 28 U.S.C. § 1395.

2. Arecibo consents to and shall not challenge entry of this Consent Decree or this Court’s jurisdiction to enter and enforce this Consent Decree.

3. Arecibo agrees that the Complaint states claims upon which relief may be granted pursuant to Sections 301, 308, 309 and 402 of the Clean Water Act (“CWA” or “Act”), 33 U.S.C. §§ 1311, 1318, 1319 and 1342.

II. PARTIES

4. 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. Arecibo, being the Defendant Municipality of Arecibo, a municipality organized under the laws of the Commonwealth of Puerto Rico.

III. APPLICATION AND BINDING EFFECT

5. The obligations of this Consent Decree shall apply to, inure to the benefit of, and be binding upon the United States, on behalf of EPA; Defendant Arecibo, 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 Arcibo to operate 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 Arcibo 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.

6. Effective from the date of lodging of this Consent Decree, until its termination, Arcibo shall provide written notice of this Consent Decree to any person or entity to whom Arcibo 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. Arcibo 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.

7. Arcibo 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 before the execution of any contract relating to such work, and shall inform each engineering firm, consultant, or contractor of the terms of this Consent Decree, and shall also inform each engineering firm, consultant, 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 Arcibo's duties under this Consent Decree shall be considered an action of Arcibo for purposes of determining compliance with this Consent Decree.

8. In any action to enforce this Consent Decree, Arcibo shall not raise as a

defense the failure by any of its officers, directors, employees, agents, contractors, subcontractors, successors, or assigns to take any actions necessary to comply with the provisions of this Consent Decree, except as provided under Section XI (Force Majeure) of this Consent Decree. This Section shall not limit Arecibo's right to take all appropriate actions against any person or entity that causes or contributes to Arecibo's failure to perform.

IV. DEFINITIONS

9. Unless otherwise defined herein, the terms used in this Consent Decree will have the meaning given to those terms in the Clean Water 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. The term "Complaint" shall mean the Complaint filed by the United States in this action captioned *United States v. Municipality of Arecibo and the Commonwealth of Puerto Rico*, Civ. No. ____;

b. The term "Consent Decree" shall mean this Consent Decree, including all Appendices hereto, and any modification made hereto;

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

d. The term "date of entry" shall have the meaning as Effective Date as described in Section XXII (Effective Date) of this Consent Decree;

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, where the last day would fall on a Saturday, Sunday, or federal or Commonwealth holiday, the period shall run until the next day other than a Saturday, Sunday, or holiday;

f. Unless otherwise indicated, the term “bi-monthly” as used herein, shall mean every two weeks;

g. The term “deliverable” shall mean any written plan, report, map, or other document required to be submitted by Arecibo, pursuant to Section V (Compliance Measures) of this Consent Decree, as further identified in Appendices A-D, and the Quarterly Progress Reports required to be submitted by Arecibo pursuant to Section IX (Quarterly Progress Reports) of this Consent Decree;

h. Unless otherwise indicated, “Facility” or “Facilities” shall refer collectively to the Pump Stations (including the La Puntilla Pump Station and the New Pump Station), the municipal separate storm sewer system (“MS4”), and all other equipment owned and/or operated by Defendant defined herein and covered by this Consent Decree;

i. The term “ La Puntilla Pump Station” shall mean the currently operated pump station located at Puro Girau Street, in Arecibo, Puerto Rico, and includes the integrated entity composed of the last manhole in the gravity MS4 pipeline segment that feeds the wet well, the MS4 pipeline in that section, the entrance channel(s), the bar screens, the wet well, the pump housings, level indicators, float switches and controllers, electrodes, plug valves, check valves, the electrical motor control center (“MCC”) and/or control panels, transfer switch, alternate power unit (“APU”) and its fuel tank, automatic chlorinator, and the discharge pipelines which extend towards the facility property limits;

j. The term “MS4” or “Municipal Separate Storm Sewer System” shall mean Arecibo’s small municipal separate storm sewer system, as that term is defined in

40 C.F.R. § 122.26 (b)(16);

k. The term “MS4 Permit” or “Permit” as used herein, shall mean the National Pollutant Discharge Elimination System General Permit for Discharges from Small Municipal Separate Storm Sewer Systems, Permit Number PRR040029 (“NPDES Permit”), issued on or about September 5, 2008, and shall include renewals, modifications, and revisions thereof;

l. The term “New Pump Station” shall mean the Pump Station that will be constructed at the intersection of Cristobal Colon Street and Puro Girau Street, Arecibo, Puerto Rico 00612 (Latitude North – 18°28'16" and Longitude West 66°42'48" and which will be constructed as part of the Compliance Measures under Section V (Compliance Measures) of this Consent Decree;

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

n. The term “Prior Administrative Enforcement Actions” means the two Administrative Orders issued by EPA to Arecibo on February 13, 2008 (Docket number CWA-02-2008-3133) and August 1, 2008 (Docket number CWA-02-2008-3154);

o. The term “Pump Stations” includes the La Puntilla Pump Station and the New Pump Station;

p. The term “Quarterly Progress Report” shall mean the quarterly progress reports to be submitted by Arecibo pursuant to Section IX (Quarterly Progress Reports) of this Consent Decree;

q. The term “Parties” shall mean the parties to this Consent Decree: the United States, and the Municipality of Arecibo;

r. 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; and

s. The term “Substantial Completion” shall mean, when used in reference to construction projects required under this Consent Decree, the date, as certified by the Engineer in charge of a construction project, when the construction project or specified part thereof is sufficiently completed, in accordance with the design specifications, such that the project or specified part thereof can be used to accomplish the purposes for which it was intended.

V. COMPLIANCE MEASURES

10. **SWMP**. Arecibo shall implement the Storm Water Management Plan (“SWMP”), which includes all of the appendices and attachments thereto, that was submitted to EPA on November 14, 2011, in accordance with the dates set forth in Appendix A, and as subsequently amended pursuant to the NPDES permitting process or otherwise. Appendix A contains the SWMP Implementation Itinerary and also identifies the tasks that will be undertaken by Defendant as part of its SWMP implementation. Notwithstanding any changes to the SWMP in the NPDES permitting process, for purposes of compliance with this Consent Decree, Arecibo shall, during the term of this Consent Decree continue to comply with the tasks listed in Appendix A to this Consent Decree. The tasks listed in Appendix A shall be enforceable under this Consent Decree. Any failure to comply with a task listed in Appendix A shall be subject to stipulated penalties as provided in Section VIII (Stipulated Penalties) of this Consent Decree. The tasks listed in Appendix A to this Consent Decree shall continue to be complied with by Arecibo during the term of this Consent Decree unless EPA and Arecibo both agree, in writing,

to the amendment or deletion of a particular task.

11. **Legal Authority.** No later than six (6) months from the Effective Date of this Consent Decree, Arecibo shall adopt and/or maintain in force an ordinance that:

a. Confers authority on Arecibo to assess penalties for violation of any Illicit Discharge Program, Industrial Storm Water Management Program, Construction Site Storm Water Management Program, and Post-Construction Storm Water Management Program requirement; and

b. Additionally, if Arecibo determines that construction activity at any Active Construction Site as defined in the SWMP is in violation of any Arecibo ordinance relating to storm water management, Arecibo shall contact the Puerto Rico Environmental Quality Board (“EQB”) who has the authority to issue cease and desist administrative orders or other actions pertaining to the construction activity. Any such notice sent by Arecibo to EQB shall be copied to EPA representatives as designated in Section XII (Notices) of this Consent Decree. If Arecibo determines that Industrial Facilities and High Risk Commercial Facilities as defined in the SWMP are required to develop and implement storm water pollution prevention plans (“SWPPPs”), Arecibo shall notify those Industrial Facilities and High Risk Commercial Facilities that they are required to implement SWPPPs, and copy the appropriate EQB officials, as well as the EPA representatives as designated in Section XII (Notices) of this Consent Decree.

12. **Funding.** Beginning with its first fiscal year after the Effective Date of this Consent Decree, Arecibo shall budget funds for each operating year in an amount reasonably expected to be sufficient to implement all measures in the SWMP, comply with the MS4 Permit, and 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.

13. **Personnel and Training.** Arecibo shall maintain adequate personnel and/or retain sufficient contractors to comply with the Permit and Section V (Compliance Measures) of this Consent Decree. Arecibo 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 for MS4 program implementation. Arecibo shall provide training to all the personnel with responsibilities for compliance with this Decree on proper operation and maintenance of the MS4 no later than thirty (30) days after the lodging of this Decree, and such training shall continue on an annual basis to educate all Arecibo personnel. In addition, Arecibo shall provide annual training in proper operation and maintenance of the Pump Stations to all pump station operators and supervisors. All new pump station operators hired by Arecibo shall be trained in the above referenced requirements within thirty (30) days of the commencement of employment as a pump station operator. Arecibo shall produce a copy of all training materials used, including the agenda and attendance checklist, in the quarterly report to EPA covering the last applicable quarter of the calendar year where training was conducted.

14. **Operation and Preventive Maintenance Plan.** Arecibo shall comply with the Operation and Preventive Maintenance Plan for the La Puntilla Pump Station that was approved by EPA on April 23, 2012. In addition to the Operation and Preventive Maintenance Plan, Arecibo shall retain a qualified contractor to provide maintenance services and/or repairs as necessary and maintain an essential inventory of spare parts and chemicals for proper operation and maintenance of the Facility. Arecibo may propose to EPA for review and approval that some of the maintenance services referenced above should at a later date during the pendency of this Consent Decree be performed by Defendant's employees instead of a qualified contractor. When seeking EPA approval Arecibo shall provide a detailed description of which services

would be performed by Defendant's employee (s) and demonstrate in the submission to EPA that the Municipality's employee(s) is (are) qualified to perform that service. If EPA determines that Defendant's operation and maintenance of its Facility has declined, EPA may require Defendant to undertake additional operating procedures to address the issues identified by EPA. Defendant shall take steps to address the issue(s) immediately upon demand by EPA. Such additional procedures shall not be deemed a Major Modification under Section XX (Modification) of this Decree.

15. **Interim Pump Station Operating Procedures.** Until the New Pump Station construction is completed and in operation, Defendant Arecibo shall perform the following actions at the La Puntilla Pump Station and submit documentation illustrating compliance with each task described below in the Quarterly Report covering the relevant time period:

- a. The wet pit must be completely cleaned with a vacuum truck on a monthly basis;
- b. The solid waste contained in the wet pit must be disposed of in accordance to all applicable laws and regulations;
- c. A manifest of the removed solid waste and liquid disposal must be prepared each time the wet pit is cleaned;
- d. The bar screen installed at the entrance of the wet pit must be cleaned on a daily basis and debris disposed of in accordance to all applicable laws and regulations;
- e. Two temporary pumps shall remain available for operation in the event that either permanent pump becomes unavailable;
- f. The water in the wet pit must be disinfected on a daily basis with

Calcium Hypochlorite (HTH) or Sodium Hypochlorite using an automatic chlorine dosifier, and de-chlorinated with a Sodium Bisulfite 40% solution before it is discharged. This measure must be in compliance with local, state, and federal law;

g. The oil and grease booms must be replaced at least on a bi-monthly basis;

h. Monthly sampling at the end of each effluent discharge point must take place to measure the concentration of the pollutants listed in Appendix B;

i. A dully-trained Operator must be at the Pump Station on a daily basis to ensure its proper operation and maintenance; and

j. The Operator must maintain a log of all activities, as well as an updated Pump Station Checklist at the Facility, as detailed in Appendix C.

16. **Sampling Plans and Analysis.** Full implementation of the SWMP and other Compliance Measures, as described in Section V (Compliance Measures) of this Consent Decree, is intended to 1) reduce discharge of pollutants to the maximum extent practicable; and 2) protect quality of the waters of the United States that receive storm water from the MS4 by complying with the appropriate Puerto Rico Water Quality Standards (“WQS”) as set forth by Puerto Rico Environmental Quality Board (“EQB”). Defendant has reduced the amount of pollutants being discharged into the waters of the United States by eliminating certain illicit interconnections, and improving operation and maintenance of its MS4 System; however, discharges of pollutants may continue until Arecibo fully implements the SWMP and other Compliance Measures as set forth in Section V (Compliance Measures) of this Consent Decree. Accordingly, Arecibo shall, from the date of lodging of this Consent Decree, and continuing until the date in which the Compliance Measures in Section V (Compliance Measures) of this Consent Decree have been fully implemented, analyze the required sampling results as described

in Paragraph 15 h and in accordance with Appendix B. Such analysis of the required sampling results shall be included in the Quarterly Reports. If the required sampling results show that a parameter listed in Appendix B that is required to be analyzed during the specified period has exceeded WQS for two consecutive months, Arecibo shall address in the Quarterly Report for the relevant period what actions it has taken or plans to take to reduce these exceedences to the maximum extent practicable as required by the Permit. If EPA determines that the actions proposed or already taken by Arecibo are not sufficient to address the exceedences, EPA may require Arecibo to take additional measures, as appropriate.

17. **Cleaning.** Defendant shall ensure that the MS4 is consistently cleaned in accordance with the SWMP. Arecibo shall provide a checklist to facilitate the cleaning of its MS4 to EPA for its review and approval no later than April 2, 2012.

18. **Storm Water Retention Pond Construction.** During regular and extreme rain events, the Downtown Arecibo and the Buenos Aires community Hydrographic Watersheds, experience severe flooding problems which may also cause wastewater and storm water to commingle. To resolve this issue, the Municipality of Arecibo has identified the need to design and build a new storm water pump station and three retention ponds with the capacity to receive and manage the expected maximum discharge of a 100 year rain event recurrence in Downtown Arecibo. The main storm water retention pond will have the capacity to manage approximately 1,450,000 gallons of storm water. Two smaller retention ponds will connect to the main retention pond.

a. Design of the main storm water retention pond shall be completed no later than May 1, 2012, and the design of the two smaller storm water retention ponds (ponds 1 and 2) shall be completed no later than November 10, 2013.

b. Construction of the main retention pond located East of the

intersection of Del Rio Street and Street Puro Giraud shall be completed and connected to the La Puntilla Pump Station no later than July 20, 2015.

c. Construction of two smaller retention ponds shall be completed no later than May 11, 2016. These two smaller retention ponds are being constructed to discharge into the main retention pond which will service the New Pump Station. Small retention pond One will be located at the intersection of Israel Arroyo Street, Antonio Gonzalez Street, and Mirta Silva Street, and will have the capacity to store approximately 450,000 gallons per day of storm water. Small retention pond Two will be located at the intersection of Degetau Street, Puro Giraud Street and Santiago Iglesias Street, and will have the capacity to store approximately 265,000 gallons per day of storm water.

d. The two smaller retention ponds (ponds One and Two) referenced above in sub-paragraph c. shall be connected to the larger main retention pond no later than May 11, 2016.

19. **New Pump Station Construction.**

a. Arecibo shall construct a New Pump Station in accordance with the schedule attached as Appendix D.

b. Arecibo may request in writing that EPA grant an extension of any deadline established in Appendix D, which EPA may grant in writing if it determines that good faith efforts to comply with the timetables in Appendix D have been made and good cause for the requested extension exists. Arecibo may substitute different control technology equipment units, or processes for the projects listed in Appendix D, provided that such control technology, equipment units, or processes achieve the same or better results. However, the effectiveness of any control technology, equipment units, or processes is not warranted or endorsed in any way by EPA. The granting of such extension and/or substitution granted pursuant to this Paragraph

shall be within EPA's sole discretion and shall not necessarily be deemed a "material modification" within the meaning of Section XX (Modification) of this Consent Decree. However, any modification to the schedule that allows any item listed in Appendix D to be completed beyond five (5) years after the entry of this Consent Decree shall be deemed a major modification of this Consent Decree.

20. **New Pump Station Operation Procedures.** No later than ninety (90) days before the New Pump Station is put into operation, Arecibo shall submit to EPA for review and approval an Operation and Preventive Maintenance Plan for the New Pump Station. The Operation and Preventive Maintenance Plan for the New Pump Station shall include a proposed sampling plan to monitor the parameters identified in Appendix B until all of the MS4 Evaluation and Repairs referenced below in Paragraph 21 are implemented.

21. **MS4 Evaluation and Repairs.**

a. To date, Defendant has completed a closed circuit television ("CCTV") study of the Buenos Aires Community watershed (also referred to as CCTV Phase III-A). The Buenos Aires Community Watershed is mainly composed of residential units with small commercial pockets. To properly implement the necessary MS4 improvements and repairs, Defendant shall submit to EPA for review and approval a MS4 Design Improvement Report for Phase III-A based upon the findings of the CCTV Study no later than October 31, 2012. The MS4 Design Improvement Report shall include, but not be limited to, proposed actions to repair, replace and/or construct storm sewer pipes, catch basins and manholes and any other construction necessary to properly operate and maintain the MS4 System. The MS4 Design Improvement Report shall also indicate all interconnections found during the CCTV study, and identify the elimination of illicit connections to the MS4 System that have been performed, and plans to eliminate the remaining interconnections.

b. Defendant shall complete a CCTV study of the Downtown Arecibo Area watershed (also referred to as CCTV Phase III-B) no later than May 22, 2012. The Downtown Arecibo Area watershed is primarily composed of commercial units. Defendant shall submit to EPA for review and approval a MS4 Design Improvement Report for Phase III-B based upon the findings of the CCTV Study no later than November 30, 2012. The MS4 Design Improvement Report shall include, but not be limited to, proposed actions to repair, replace and/or construct storm sewer pipes, catch basins and manholes and any other construction necessary to properly operate and maintain the MS4 System. The MS4 Design Improvement Report shall also indicate all interconnections found during the CCTV study, and identify the elimination of illicit connections to the MS4 System that have been performed, and plans to eliminate the remaining interconnections.

c. Defendant completed a CCTV study of Puerto Rico State Road # 2 and its tributary storm water pipes (also referred to as CCTV Phase III-C) on January 19, 2012. Defendant shall submit to EPA for review and approval a MS4 Design Improvement Report for Phase III-C based upon the findings of the CCTV Study no later than July 31, 2012. The MS4 Design Improvement Report shall include, but not be limited to, proposed actions to repair, replace and/or construct storm sewer pipes, catch basins and manholes and any other construction necessary to properly operate and maintain the MS4 System. The MS4 Design Improvement Report shall also indicate all interconnections found during the CCTV study, and identify the elimination of illicit connections to the MS4 System that have been performed, and plans to eliminate the remaining interconnections.

d. If Arecibo identifies additional areas of the Municipality that may be appropriate for CCTV study, Arecibo shall notify EPA of the areas identified for additional CCTV study and submit to EPA for approval a schedule to conduct additional CCTV studies.

Arecibo shall also notify EPA within ten (10) days of discovering any additional interconnections found on its MS4 not related to findings of CCTV studies described above in sub-paragraphs 21 a. – c.

e. If EPA determines that additional areas of the MS4 System need to be inspected by CCTV it shall provide Arecibo notice of this requirement. Within thirty (30) days of receiving notice from EPA, Arecibo shall send a proposed plan of action to conduct the CCTV study to EPA for review and approval. The proposed plan of action submitted to EPA shall include dates for completion of the CCTV study and submission of a report describing the findings of the CCTV study as required above in sub-paragraph 21 d.

VI. REVIEW AND APPROVAL PROCEDURES

22. Unless indicated otherwise in this Consent Decree, the 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 approval pursuant to this Consent Decree:

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 Arecibo to modify the submission;

b. In the event of approval of the complete submission, Arecibo shall proceed to take any actions required by the plan, program, or other approved document, in accordance to the schedule contained therein, as approved in writing by EPA; and

c. In the event of written approval of portions of the submission or

approval upon specified conditions, Arecibo shall proceed to take the actions identified in the non-deficient portion of the plan, program, other document, or portion thereof, if severable, in accordance to any applicable conditions specified by EPA, subject only to Arecibo's right to invoke the Dispute Resolution procedures set forth in Section XV (Dispute Resolution) of this Consent Decree with respect to the conditions imposed or the disapproved portions.

Implementation of any non-deficient portion of the submission shall not eliminate the potential for Arecibo to incur stipulated penalties pursuant to Section VIII (Stipulated Penalties) of this Consent Decree, based on Arecibo's failure 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.

23. Upon receipt of a notice of disapproval of all or part of the submission from EPA, Arecibo shall, within thirty (30) 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 VIII (Stipulated Penalties) of this Consent Decree, shall accrue during the thirty-day period, but shall not be payable unless the resubmission is untimely or is disapproved in whole or is materially deficient.

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

25. If Arecibo 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, Arecibo shall be entitled to an extension of any interim or final deadlines which Arecibo 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 Arecibo, Arecibo may invoke the Dispute Resolution procedures set forth in Section XV (Dispute Resolution) of this Consent Decree.

26. If Arecibo 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, Arecibo shall be deemed to have failed to make the submission, unless Arecibo invokes the Dispute Resolution procedures set forth in Section XV (Dispute Resolution) of this Consent Decree. In the case of a submission or resubmission that fails to contain all the required elements, stipulated penalties begin to accrue on the date the submission or resubmission was due.

27. Arecibo may request in writing that EPA grant an extension of any deadline established by this Consent Decree, and EPA shall grant 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 XX (Modification) of this Consent Decree.

VII. CIVIL PENALTY

28. Arecibo shall pay the sum of \$305,643.00 to the United States as a civil

penalty in three installment payments. Arecibo shall pay the first installment payment of \$152,822.00 to the United States no later than August 15, 2012 with interest accruing from the Effective Date of the Consent Decree. Arecibo shall pay to the United States the second installment civil penalty payment of \$76,411.00 no later than August 1, 2013 with interest accruing from the Effective Date of the Consent Decree. Arecibo shall pay to the United States the third and final installment civil penalty payment of \$76,410.00 no later than April 15, 2014 with interest accruing from the Effective Date of the Consent Decree. Interest on the civil penalty payments shall accrue at the rate calculated pursuant to 28 U.S.C. § 1961 through the date of payment.

29. Payment of the civil penalty referenced in the preceding Paragraph, and any interest thereon, shall be made by FedWire Electronic Funds Transfer (“EFT” or “wire transfer”) to the U.S. Department of Justice account in accordance with the written instructions to be provided to Defendant, following entry of the Consent Decree, by the Financial Litigation Unit of the U.S. Attorney’s Office for District of Puerto Rico, Torre Chardon, Suite 1201 350 Carlos Chardon Avenue, San Juan, PR 00918, (787) 282-1861. At the time of payment, Defendant shall send a copy of the EFT authorization form and the EFT transaction record, together with a transmittal letter, which shall state that the payment is for the civil penalty owed pursuant to the Consent Decree in *Untied States v. Municipality of Arecibo*, and shall reference the civil action number and DOJ case number (DJ# 90-5-1-1-08385), to the United States in accordance with Section XII (Notices) of this Consent Decree; by email to

and by mail to:

EPA Cincinnati Finance Office
26 Martin Luther King Drive
Cincinnati, Ohio 45268

30. Defendant shall not deduct any penalties paid under this Consent Decree pursuant to this Section or Section VIII (Stipulated Penalties) in calculating its federal or local income tax.

VIII. STIPULATED PENALTIES

31. Arcibo shall be liable to pay to the United States, automatically and without notice or demand, stipulated penalties in the amounts set forth below, unless excused under Section XI (Force Majeure) of this Consent Decree. A violation includes failing to perform any obligation required by the terms of this Consent Decree, including any work plan, report, schedule, or other item or document required to be submitted under this Consent Decree, according to all applicable requirements of this Consent Decree and within the specified time schedules established by or approved under this Consent Decree.

32. **Late Payment of Civil Penalty.**

If Arcibo fails to pay the civil penalty required to be paid under Section VII (Civil Penalty) of this Consent Decree when due, Arcibo shall pay a stipulated penalty of \$500.00 per Day for each Day that payment is late.

33. **Compliance Measures.**

For each day that Arcibo 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) of this Consent Decree, and for each day that Arcibo fails to submit a report or plan as required by this Consent Decree and the Appendices, Arcibo shall be liable for stipulated penalties as follows:

<u>Period of noncompliance</u>	<u>Penalty per day per violation</u>
1-60 days	\$400.00

61–120 days	\$1,000.00
Over 120 days	\$ 2,500.00

34. Payment of stipulated penalties pursuant to this Section shall be made within thirty (30) days following submittal of the Quarterly Progress Report for the period in which the violation(s) occurred.

35. All stipulated penalties shall begin to accrue on the day after performance is due or a violation occurs, whichever is applicable, and shall continue to accrue until performance is satisfactorily completed or until the violation ceases. Stipulated penalties shall accrue simultaneously for separate violations of this Consent Decree.

36. The United States may in the unreviewable exercise of its discretion, reduce or waive stipulated penalties otherwise due it under this Consent Decree.

37. Stipulated penalties shall continue to accrue as provided in Paragraph 35, 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 that is not appealed to the Court, the Defendant shall pay accrued penalties determined to be owing, together with interest, to the United States within thirty (30) 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, the Defendant 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, Defendant shall pay all accrued penalties determined to be owing, together with interest, within fifteen (15) Days of receiving the final appellate court decision.

38. Defendant shall pay stipulated penalties owing to the United States in the manner set forth and with the confirmation notices required by Paragraph 29 and Section XII (Notices), except that the transmittal letter shall state that the payment is for stipulated penalties and shall state for which violation(s) the penalties are being paid.

39. If Defendant fails to pay stipulated penalties according to the terms of this Consent Decree, Defendant 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. 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 Arcibo's failure to implement the injunctive relief provisions of this Consent Decree. Where a violation of this Consent Decree is also a violation of the Act, Defendant shall be allowed a credit, for any stipulated penalties paid, against any statutory penalties imposed for such violation.

IX. QUARTERLY PROGRESS REPORTS

40. Beginning July 1, 2012, for the period covering April 2012 through June 2012 and every three (3) months thereafter throughout the effective period of this Consent Decree, Arcibo shall submit to EPA a writing report on a quarterly basis detailing the current status and/or progress of the actions taken in compliance with this Consent Decree. The Quarterly Progress Report on Arcibo's activities with regard to Sections V through VIII (Compliance Measures, Review and Approval Procedures, Civil Penalty, and Stipulated Penalties) of this Consent Decree, along with all the pertinent Deliverables required to be submitted under this Consent Decree, and at a minimum shall set forth:

- a. the specific activities undertaken by Arcibo relating to the

completion of work required under the compliance schedules specified in this Consent Decree, including but not limited to the expected date for the Substantial Completion of any of the remedial actions or capital improvements identified in Section V (Compliance Measures) of this Consent Decree, and identification of those requirements which have been accomplished since the previous report, including the dates of Substantial Completion of any of the remedial actions or capital improvements identified in Section V (Compliance Measures) of this Consent Decree;

b. any impediments encountered by Arecibo in meeting the compliance schedules under this Consent Decree, the steps that Arecibo has taken to overcome such impediments, and the steps that Arecibo will take to overcome such impediments, including the anticipated dates by which such steps will be taken;

c. a description of the requirements of this Consent Decree subject to stipulated penalties which were not complied with, the dates of such non-compliance and the computations made in determining the amount of stipulated penalties due; and

d. any change in Arecibo personnel at the MS4 Management Department, SWMP's Storm Water Management Team, Pump Stations, and Environmental Control Department, as well as any change in the contractors hired to comply with the requirements of this Consent Decree.

41. Arecibo shall submit the Quarterly Reports within thirty (30) days after the end of the three month period being reported. The above reporting requirements do not relieve Arecibo of the obligation to submit reports or information required under the CWA, regulations promulgated thereunder, the NPDES Permit, or any other permit or local or federal law.

42. All Quarterly Progress Reports and other submissions required pursuant to this Consent Decree shall be in English and signed by the Mayor and SWMP Director. The

Quarterly Progress Reports and all other submissions shall contain 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 gathered and evaluated 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 fine and imprisonment for knowing violations.

43. The Parties may agree that Arecibo shall be required to submit Progress Reports on a triannual, rather than on a quarterly basis. Such agreement must be memorialized in writing by both Parties, and shall not be considered a "material modification" for purposes of Section XX (Modification) of this Consent Decree.

X. QUARTERLY PROGRESS MEETINGS

44. Representatives of EPA and Arecibo shall convene informally at least on a quarterly basis pursuant to a mutually agreed-upon schedule to discuss Arecibo's ongoing progress under the Consent Decree. The meeting should cover at least the following subjects:

- a. Progress in the implementation of the actions required by this Consent Decree;
- b. Potential problems that may adversely affect progress in implementing the actions required by this Consent Decree; and
- c. Measures that Arecibo intends to take to correct problems and deficiencies encountered by Arecibo or found by EPA in its inspections of any facility covered by this Consent Decree.

45. If, as a result of discussions at the Quarterly Progress Meetings, EPA and

Arecibo agree on actions to be taken and a schedule for such action that are not otherwise provided for in this Consent Decree, the Parties shall, after consultation with counsel, follow the procedure set forth in Section XX (Modification) of this Consent Decree.

XI. FORCE MAJEURE

46. Arecibo'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 Arecibo, of any entity controlled by Arecibo, or of Arecibo's contractors that delays or prevents the performance of any obligation under this Consent Decree despite Arecibo's best efforts to fulfill the obligation. The requirement that Arecibo exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential *force majeure* event and best efforts to address the effects of any such event (i) as it is occurring; and (ii) after it has occurred to prevent or minimize any resulting delay to the greatest extent possible. "*Force majeure*" shall not include Arecibo's financial inability to perform any obligation under this Consent Decree nor delay due to unanticipated or increased costs of achieving and maintaining compliance with any provision of this Consent Decree. Arecibo's failure to obtain any necessary permit or approval shall not be deemed a *force majeure* event unless Arecibo 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 Arecibo's response 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 circumstance beyond the control of, and without the

fault of Arecibo, or any entity controlled by Arecibo, including Arecibo's consultants or contractors.

47. If any alleged *force majeure* event occurs or has occurred that may delay the performance or cause non-compliance of any obligation under this Consent Decree, Arecibo shall notify EPA no later than five (5) working days after Arecibo first knew or should have known that the event might cause a delay. Within ten (10) days thereafter, Arecibo 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 Arecibo's reason(s) for attributing such delay to a *force majeure*, if Arecibo intends to assert such a claim. Any written claim of a force majeure event shall be detailed and as specific as possible. Arecibo shall include with any notice all available documentation supporting the claim that the delay was attributable to a *force majeure*.

48. Failure to comply with the above procedures regarding notification and reporting shall preclude Arecibo 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. Arecibo 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 Arecibo that the delay in compliance or the non-compliance in question is attributable to a *force majeure* event.

49. If EPA agrees that the delay or non-compliance or anticipated delay or non-compliance is attributable to a *force majeure* event, the time for implementing of the

applicable portions of this Consent Decree that are affected by the *force majeure* event will be extended by EPA for a period of time 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, in 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* event, EPA will notify Arcibo in writing of its decision. If EPA agrees that the delay is attributable to a *force majeure* event, EPA will notify Arcibo in writing of the length of the extension, if any, for performance of the obligations affected by the *force majeure* event.

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

XII. NOTICES

51. 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 Stn.
Washington, D.C. 20044-7611

As to EPA:

Director, Caribbean Environmental Protection Division
United States Environmental Protection Agency
City View Plaza II – Suite 7000
State Road # 165 Km. 1.2
Guaynabo, Puerto Rico 00968-8069

AND

Chief, Water and General Law Branch
Office of Regional Counsel
United States Environmental Protection Agency
Region II
290 Broadway, 16th Floor
New York, New York 10007

As to Arecibo:

Municipality of Arecibo
P.O. Box 1086
Arecibo, P.R. 00613-1086

AND

Eliezer A. Aldarondo-Lopez, Esq.
Aldarondo & Lopez-Bras, P.S.C.
ALB Plaza Suite 400
16 Road 199
Guaynabo, P.R. 00969

For judicial filings only:

United States Attorney
District of Puerto Rico
Federal Office Building, Rm. 101
Carlos E. Chardón Avenue
San Juan, Puerto Rico 00918

52. 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.

53. 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 Protection Division in Puerto Rico.

XIII. ACCESS TO THE FACILITIES

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

XIV. RECORD RETENTION

55. Unless otherwise specified in this Consent Decree, Arecibo 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 two (2) years after the termination of this Consent Decree, or as long as is required under the CWA, 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, Arecibo shall provide copies to EPA of any such records, logs,

and documents during the periods Arcibo is required to preserve the original or copy of such records, logs, and documents. Provided, however, that Arcibo may eliminate documents after five (5) years upon written notice to EPA listing the documents Arcibo plans to destroy and EPA's written approval. If EPA does not respond in writing within 90 days of receiving such notice, Arcibo may destroy such documents.

56. For purposes of this Section and Section VIII (Stipulated Penalties) of this Consent Decree, Arcibo 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

57. 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. Arcibo's failure to seek resolution of a dispute under this Section shall preclude Arcibo from raising any such issue as a defense to an action by the United States to enforce any obligation of Arcibo arising under this Decree.

58. **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 Arcibo 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, Arcibo invokes formal dispute resolution procedures as set forth below.

59. **Formal Dispute Resolution.** Arcibo 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 Arcibo's position and any supporting documentation relied upon by Arcibo.

60. The United States shall serve its Statement of Position within forty five (45) Days of receipt of Arcibo's Statement of Position. 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 Arcibo, unless Defendant files a motion for judicial review of the dispute in accordance with the following Paragraph.

61. Arcibo may seek judicial review of the dispute by filing with the Court and serving on the United States, in accordance with Section XII (Notices) of this Consent Decree, a motion requesting judicial resolution of the dispute. The motion must be filed within ten (10) Days of receipt of the United States' Statement of Position pursuant to the preceding Paragraph. The motion shall contain a written statement of Arcibo's 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.

62. The United States shall respond to Arecibo's motion within the time period allowed by the Local Rules of this Court. Defendant may file a reply memorandum, to the extent permitted by the Local Rules.

63. **Standard of Review.**

a. **Disputes Concerning Matters Accorded Record Review.** Except as otherwise provided in this Consent Decree, in any dispute brought under Paragraph 59 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, Arecibo 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 law.

b. **Other Disputes.** Except as otherwise provided in this Consent Decree, in any other dispute brought under Paragraph 59, Arecibo shall bear the burden of demonstrating that its position complies with this Consent Decree and better further the objectives of the Consent Decree.

64. The invocation of dispute resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of Arecibo 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 first Day of noncompliance, but payment shall be stayed pending resolution of the dispute as provided in Paragraph 37. If Arecibo does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section VIII (Stipulated Penalties).

XVI. COMPLIANCE WITH APPLICABLE LAWS

65. This Consent Decree in no way relieves Arecibo 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 CWA. Arecibo shall be responsible for obtaining all Commonwealth or local permits that 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.

66. Nothing in this Consent Decree relieves Arecibo from any requirements imposed on it relating to the Clean Water Act, laws of the Commonwealth of Puerto Rico, or any orders or Permits issued pursuant to the foregoing, with the exception to the Prior Administrative Enforcement Actions and except as otherwise provided in this Consent Decree or in the Clean Water Act.

67. 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 XX (Modification) of this Consent Decree.

XVII. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS

68. This Consent Decree resolves the civil claims of the United States for the violations alleged in the Complaint filed in this action and the Prior Administrative Enforcement Actions through the date of lodging of this Consent Decree.

69. The United States reserves all legal and equitable remedies available to

enforce the provisions of this Consent Decree, except as expressly stated in Paragraph 68. 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 68. 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, Arecibo's Facilities, whether related to the violations addressed in this Consent Decree or otherwise.

70. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, civil penalties, other appropriate relief relating to Arecibo's violations, Arecibo 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 68 of this Section.

71. This Consent Decree is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. Arecibo is responsible for achieving and maintaining complete compliance with all applicable federal, State, and local laws, regulations, and permits; and Arecibo's compliance with this Consent Decree shall be no 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 Arecibo's compliance 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.

72. This Consent Decree does not limit or affect the rights of Arcibo or of 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 Defendant, except as otherwise provided by law.

73. 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

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

XIX. PUBLIC COMMENT

75. 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. Arcibo 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 Arcibo in writing that it no longer supports entry of the Decree.

XX. MODIFICATION

76. 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.

77. Any disputes concerning modification of this Decree shall be resolved pursuant to Section XV (Dispute Resolution) of this Consent Decree, provided, however, that, instead of the burden of proof provided by Paragraph 63, 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

78. 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 XV (Dispute Resolution) and XX (Modification) of this Consent Decree, or effectuating or enforcing compliance with the terms of this Decree.

79. 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

80. The Effective Date of this Consent Decree shall be the date upon which this 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 Defendant hereby agrees that it shall be bound to perform duties scheduled to occur prior to the Effective Date. In the event 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

81. After Defendant has completed the requirements of Section V (Compliance Measures) of this Decree, and has paid the civil penalty and any accrued stipulated penalties as required by this Consent Decree, Defendant may serve upon the United States a Request for Termination, stating that Defendant has satisfied those requirements, together with all necessary supporting documentation.

82. Following receipt by the United States of Defendant's Request for Termination, the Parties shall confer informally concerning the Request and any disagreement that the Parties may have as to whether Defendant 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.

83. If the United States does not agree that the Decree may be terminated, Defendant may invoke Dispute Resolution under Section XV (Dispute Resolution) of this Consent Decree. However, Defendant shall not seek Dispute Resolution of any dispute regarding termination, under Paragraph 59 of Section XV (Dispute Resolution) of this Consent Decree, until ninety (90) after service of its Request for Termination.

XXIV. SIGNATORIES/SERVICE

84. Each undersigned representative of Arecibo 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.

85. This Consent Decree may be signed in counterparts, and its validity shall not be challenged on that basis. Defendant 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

86. This Consent Decree constitutes the final, complete, and exclusive agreement and understanding among 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 deliverables 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

87. 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 Arecibo. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

APPENDICES

The following appendices are attached to and part of this Consent Decree:

“Appendix A” contains the SWMP Implementation Itinerary;

“Appendix B” contains the list of Parameters to Sample and Monitor;

“Appendix C” is the Pump Station Checklist; and

“Appendix D” is the New Pump Station Construction Schedule

SO ORDERED this ____ day of _____, 2012.

Honorable
United States District Judge

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States v. Municipality of Arecibo*, Civil No. _____.

FOR THE PLAINTIFF UNITED STATES OF AMERICA:

Dated: 5/20/12

IGNACIA S. MORENO
Assistant Attorney General
Environment and Natural Resources Division
United States Department of Justice

Dated: _____


PATRICIA A. MCKENNA
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District of Puerto Rico
Torre Chardon, Suite 1201
350 Carlos Chardon Avenue
San Juan, PR 00918


THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States v. Municipality of Arecibo*, Civil No. _____.

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:


Dated: 5/14/12

 _____
JUDITH A. ENCK
Regional Administrator
Region 2
U.S. Environmental Protection Agency
290 Broadway
New, York, New York 10007-1866

Dated: 5/14/12

 _____
ERIC SCHAAF
Regional Counsel
U.S. Environmental Protection Agency, Region 2

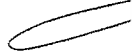
Dated: 05/07/2012

ROBERTO M. DURANGO 
Assistant Regional Counsel, Caribbean Team
U.S. Environmental Protection Agency, Region 2
City View Plaza II, Suite 7000
48 RD. 165 Km. 1.2
Guaynabo, PR 00968-8069

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States v. Municipality of Arecibo*, Civil No. _____.

FOR THE DEFENDANT MUNICIPALITY OF ARECIBO:

Dated: May 4, 2012



HONORABLE LEMUEL SOTO
Mayor
Municipality of Arecibo

Dated: May 4, 2012

ELIEZER A. ALDARONDO-LOPEZ
Aldarondo & Lopez-Bras, P.S.C.
ALB Plaza Suite 400
16 Road 199
Guaynabo, P.R. 00969
Tel: (787) 474-5447

Appendix A:

Storm Water Management Plan Implementation Itinerary

Control Measure			
<i>1. Public Education and Outreach on Storm Water Impacts</i>			
Milestone	Completion Deadline	Frequency	Permit Year(s)
Develop General Awareness Message	Nov 2011	1 time	2011
Develop Educational Material	Jan 2012	1 time	2011-2012
Distribution of Educational Material	Nov 2015		2011-2015
Develop the EEP	May 2012	1 time	2011-2012
Start the EEP Implementation Implement EEP	June 2012	--	2012-2012
Conduct Storm Water School Workshops	Nov 2015	2 workshops/school 20% of schools/yr	2011-2015
Conduct Recycling School Workshops	Nov 2015	2 workshops/school 20% of schools/yr	2011-2015
Conduct Solid Waste Management School Workshops	Nov 2015	2 workshops/school 20% of schools/yr	2011-2015
Establish Environmental Programs in Schools	Nov 2015	20% of schools/yr	2011-2015
Conduct Municipal Employees General Awareness training	Nov 2015	1 training/yr	2011-2015
Conduct Directors Training	Nov 2015	1 training/yr	2011-2015
Conduct Job-Specific BMP Training	June 2015	2 departments/yr	2012-2015
Conduct Farmers Training	Nov 2015	2/year	2011-2015
Conduct Downtown Commerce Owners Training	Nov 2015	3 trainings/yr	2011-2015
Post General Storm Water Information on Website	Nov 2011	--	2011
Conduct Home owners' Septic System Educational Conferences	Nov 2015	2 communities meetings/yr	2011-2015
Perform Community Recycling Educational Workshops	Nov 2015	2/year	2011-2015
Publish Articles on Storm Water Pollution Prevention	Nov 2015	2/year	2011-2015

Control Measure			
<i>2. Public Involvement/Participation</i>			
<i>Milestone</i>	<i>Completion Deadline</i>	<i>Frequency</i>	<i>Permit Year(s)</i>
Inform and Solicit Public Input at the Municipality' Mayor Annual Plan Presentation Meetings	Nov 2015	1/year	2011-2015
Volunteer Events (i.e., stream and lake cleanups)	Nov 2015	3/year	2011-2015
Post Storm Water Blog section on Municipality Website	Oct 2011	--	2011
Post SWMP Information on Website	Oct 2011	--	2011
Develop & Implement the Storm Drain Labeling Program	Nov 2015	2 wards/year	2011-2015
-Downtown Area	June 2012	100%	2012
Control Measure			
<i>3. Illicit Discharge Detection and Elimination</i>			
<i>Milestone</i>	<i>Completion Deadline</i>	<i>Frequency</i>	<i>Permit Year(s)</i>
Review of Existing Ordinance(s)	Nov 2011	--	2011
Development and Adoption of IDDE Ordinance	May 2012	--	2011 -2012
Storm Sewer Mapping	Nov 2012	100% completed	2011-2012
Downtown Arecibo MS4 Maps	June 2012	100% Year 2	2011-2012
Phase I to IV urban areas MS4 maps	Nov 2012		2011-2012
Develop the IDDE Plan	Nov 2012		2011-2012
Develop the Municipal Website	Sept 2011	--	2011
Post IDDE Information and Interactive Tool on Municipal Website	Nov 2012	--	2011-2012
Investigate Illicit Discharges Reported	Nov 2015	100%	2011-2015
Completion of Priority Dry Weather Inspections	Nov 2015	100% Downtown-2 nd yr; then 2 wards/yr	2011-2015
Conduct Directors Training and Municipal Staff	Feb 2015	1/year	2011-2015
Develop Illicit Discharge Investigation SOP	June 2012	--	2011-2012
Conduct IDDE Training	March 2015	1/year	2011-2015
Identify and Eliminate Illicit Discharges	Nov 2015		2011-2015
Develop Septic System Educational Program	Oct 2012	--	2011-2012
Identify Farming Activities	Nov 2012		2011-2012
Identify the Municipal Facilities with Pollution Potential	Nov 2012	100% of the Downtown	2011-2012
Implement the Storm Drain Labeling Program	Nov 2015	100% Downtown-2 nd yr; then 2 wards/yr	2011-2015

Control Measure			
<i>4. Construction Site Storm Water Runoff</i>			
Milestone	Completion Deadline	Frequency	Permit Year(s)
Development and Adoption of the Construction Ordinance	May 2012	--	2011-2012
Develop Erosion and Sediment Control Plan Review SOP	June 2012	--	2012
Develop Construction Project Inspection SOP	June 2012	--	2012
Revise and Modify BID documents and Contracts	June 2012	--	2012
Develop ERP	June 2012	--	2012
Develop Construction SW Pollution Prevention Educational Material	Feb 2012	--	2012
Conduct Plan Review Staff Trainings	April 2015	1/year	2012-2015
Conduct Inspection Staff Trainings	April 2015	1/year	2012-2015
Conduct Construction Contractor Training/Workshops	April 2015	1/year	2012-2015
Conduct the Public Project Inspections	April 2015	100% of projects/year	2012-2015
Private Project Inspections	April 2015	100% of projects/year	2012-2015
Municipal Website Development	Sept 2011	--	2011
Construction Educational Information on Website	June 2015	Updated quarterly	2011-2015
Construction SW Pollution Reporting Events Interactive Section in Website	April 2012	--	2011-2012
Distribution Contractors' Brochure on Storm Water Events	Nov 2015	2 SW Events/yr	2012-2015
Conduct Plan Reviews & Inspections	Oct 2015	100% of projects/year 3	2012-2015
Control Measure			
<i>5. Post-Construction Storm Water Management in New Development and Redevelopment</i>			
Milestone	Completion Deadline	Frequency	Permit Year(s)
Development and Adoption of Post Construction Ordinance	May 2012	--	2011 -2012
Develop BMPs O&M Plan Review SOP	June 2012	--	2012
Develop Post Construction Measures O&M Inspection SOP	June 2012	--	2012
Develop Storm Water Post Construction ERP	Aug 2012	--	2012
Conduct O&MP Plan Review Staff	March 2015	1/year	2012-2015

Training			
Conduct O&MP Inspection Staff Trainings	March 2015	1/year	2012-2015
Conduct Post Construction BMP O&M plan revision for adequacy	Nov 2015	100% of projects/yr	2012-2015
Conduct "as built" inspections performed prior occupancy	Nov 2015	100% of projects/yr	2012-2015
Development of Post Construction Educational Material	Jan 2012	--	2011-2012
Development of Municipal Website	Sept 2011	--	2011
Publish Post-Construction Information on Website	Jan 2012	--	2011-2012
Control Measure			
<i>6. Pollution Prevention/Good Housekeeping for Municipal Operations</i>			
Milestone	Completion Deadline	Frequency	Permit Year(s)
Perform Initial Facility Inventory & Inspections	Oct 2011	--	2011
Develop Municipal Facility List	Oct 2011	--	2011
Develop a Municipal Facilities Site Plan	Oct 2011	100% of Facilities	2011
Development of SWPPPs and/or FPPP as apply.	Nov 2013	1Facility/yr	2011-2013
Develop Spill Response Plan for Municipal Facilities	June 2012	100% of Facilities	2012
Incorporate Municipal Facilities on MS4 GIS Maps	Nov 2011	100% of Facilities	2011
Conduct Municipal Facilities Staff Training on Specific BMPs	June 2015	1/year	2012-2015
Implement Facility BMPs	June 2014	2 Facilities/year	2011-2014
Inspect Municipal Facilities	Oct 2015	1/year	2012-2015
Review Activities for Discharge Potential	Nov 2015	Continuous	2011-2015
Develop Activity-Specific SOPs	Nov 2012	100% Completed	2011-2012
Clean Debris from MS4	Nov 2015	Monthly	2011-2015
Sweep Streets	Nov 2015	Daily	2011-2015
Review Facility Prioritization	Nov 2015	Yearly	2011-2012
Develop La Puntilla Pump Station Operation and Preventive Maintenance Plan	Jan 2012	---	2011-2012
Health and Safety Pump Station Audit	Feb 2012	---	2011-2012
Solid Waste Collection and Disposal Monthly Report	Nov 2015		2011-2015

Appendix B—Parameters to Monitor

Water Body – Perdomo Channel

Water Body Classification – Class SB as per the Puerto Rico Environmental Quality Board .¹ Class SB Waters are coastal waters and estuarine waters intended for use in primary and secondary contact recreation, and for propagation and preservation of desired species, including threatened or endangered species.

PARAMETER	UNITS	EFFLUENT LIMIT
pH ⁱ	S.U.	7.3 – 8.5
Dissolved Oxygen	mg/L	>5.0
Temperature	°C	≤32.2
Non-Filterable Solids (TSS)	mg/L (average concentration)	30
Biochemical Oxygen Demand	mg/L (average concentration)	30
Oil and Grease		Substantially free from floating nonpetroleum oils and grease as well as petroleum derived oils and greases.

¹ The parameters listed in this Appendix were based on the March 2010 PRWQS and classification of the receiving water. These parameters are subject to change based on the classification of the receiving water, the receiving water itself, or changes and/or amendments to the applicable PRWQS. Such changes are in EPA's sole discretion.

Radioactive Materials ⁱⁱ	picocuries per liter	In the waters of Puerto Rico the concentration of Radium-226 and Strontium-90 shall not exceed 3 and 10 picocuries per liter respectively. In the absence of Strontium-90 and alpha emitters, the gross beta concentrations shall not exceed 1,000 picocuries per liter.
Asbestos ⁱⁱ	MFL (million fibers per liter)	In order to assure for the protection of human health from the potential carcinogen effects of exposure to asbestos, the waters of Puerto Rico shall not exceed 7 MFL (million fibers per liter) of asbestos, except when established that such presence is due to the natural occurrence of geologic deposits of asbestiform materials.
Color ⁱ	Pt-Co	Shall not be altered except by natural causes.
Turbidity ⁱ	NTU	10
Surfactants	ug/L as MBAS	<500
Sulfates	mg/L	<2,800
Coliform, Fecal	col/100 mL % of exceedance	The fecal Coliform geometric mean of a series of representative samples (at least five samples) of the waters taken sequentially shall not exceed 200 colonies/100 mL, and not more than 20 percent of the samples shall exceed 400 colonies/100 mL.
Enterococci ⁱ	colonies/100 mL	The enterococci density, in terms of geometric mean of at least five representative samples taken sequentially, shall not exceed 35 colonies/100 mL. No single sample should exceed the upper confidence limit of 75% using 0.7 as the log standard deviation, until sufficient site data exist to establish a site-specific log standard deviation.
Cadmium	ug/L	8.85

Copper, Total ⁱ	ug/L	3.73
Lead, Total ⁱ	ug/L	8.52
Nickel ⁱ	ug/L	8.28
Mercury ⁱ	ug/L	0.051
Silver, Total	ug/L	2.24
Zinc, Total	ug/L	85.62
Cyanide (Free CN) ⁱ	ug/L	1.0
Sulfide (S) (undissociated H ₂ S)	ug/L	2.0
Chlorpyrifos	ug/L	0.0056
Hardness, Total	mg/L as CaCO ₃	---
Estimated Total Flow ⁱⁱⁱ	MGD	---
Residual Chlorine, Total	mg/L	0.5
Nitrogen, Total	ug/L	5,000
Chloroform ⁱⁱ	ug/L	4,700
Dichlorobromomethane ⁱⁱ	ug/L	170
Di-n Buthyl Phthalate ⁱⁱ	ug/L	4,500
Phenols ⁱⁱ	ug/L	1,700,000

ⁱ On or about March 15, 2012, PR-EQB clarified that the designation of the Perdomo Channel is an SB Water (as opposed to an SD Water). As a result of this change, the Consent Decree includes additional parameters to monitor. In order to sequentially reach compliance with the PR-WQS to the maximum extent practicable, the parameters with an (i) designation shall be initially monitored for eighteen (18) consecutive months. Monitoring shall begin with the first month of sampling after the date of lodging of this Consent Decree. After the 18 month period expires, Paragraph 16 of this Consent Decree shall fully apply to the parameters with an (i) designation.

ⁱⁱ The parameters with an (ii) designation shall be monitored for six (6) consecutive months, which shall begin with the first month of sampling after the date of lodging of this Consent Decree. After the six month period expires, EPA in its sole discretion will decide whether monitoring shall continue based on reasonable potential for exceedance, pursuant to Paragraph 16 of this Consent Decree.

ⁱⁱⁱ This parameter shall only be monitored for information gathering/reporting purposes.

Appendix C: Pump Station Checklist

DAILY OPERATION & MAINTENANCE PROCEDURE & CHECKLIST LA PUNTILLA STORM WATER PUMPING STATION



1.0 PURPOSE

- 1.1 To establish the standard procedure to complete the daily checklist and operational parameters collection for La Puntilla Storm Water Pump Station in Arecibo's Municipality

2.0 REQUIREMENTS

- 2.1 All personnel that follow this procedure are required to comply with the safety rules established by law. These include, but are not limited to Safety Guards (29 CFR 1910.211), Falls Prevention (29 CFR 1910.23), Falls Prevention Equipment (29 CFR 1926.507), Personal Protection Equipment (29 CFR 1910.132) and Hazardous Materials Stored in Containers (EPA 40 CFR 264 and 265).
- 2.2 Use Checklist, on page 4, "Daily Operation and Operational Parameters Collection Checklist" to record all daily tasks conducted at La Puntilla Pump Station.
 - 2.2.1 Record the current date in the space provided.
 - 2.2.2 If a task can't be conducted or verified, place an asterisk (*) in the space provided and document the reason and/or the situation in the comments section.
 - 2.2.3 If there are no comments, draw a line starting at the upper left side through the lower right side and type N/A.
 - 2.2.4 When the shift ends verify that checklist, on page 4, has been entirely completed (without any empty spaces) and proceed to sign it in the space provided.
- 2.2.1 The supervisor must sign all the checklist pages at the end of the day.

3.0 DAILY CHECK PROCEDURE

- 3.1 Perform the daily check as first activity when starting the shift.
- 3.2 Conduct the daily check as specified in checklist on page 4.
Note: There are checklists that are required to be done at specific time of the day. Follow the instructions.
- 3.3 Complete Checklist, on page 4, checking in the space provided below Yes, when it is completely verified as established.
- 3.4 Complete Checklist, on page 4, checking in the space provided below No, if it could not be verified as established.
 - 3.4.1 Indicate in the space provided for 'Deficiencies / Corrective Actions' any incident or situation that is not specified on the checklist.
- 3.5 Complete the comments section providing any additional information including, but not limited to:
 - 3.5.1 Information related to contractors visiting or working in the pump station.
 - 3.5.2 Information related to visits to the Pump Station
 - 3.5.3 Any irregular situation
 - 3.5.4 If there are no comments, draw a line starting at the upper left side through the lower right side and type N/A.

DAILY OPERATION & MAINTENANCE PROCEDURE & CHECKLIST
LA PUNTILLA STORM WATER PUMPING STATION



4.0 OPERATIONAL TIME PROCEDURE OF PUMPS

- 4.1 Record three daily readings of the pumps operational time.
- 4.2 These readings will take place at 7:00 a.m., 11:00 a.m. and 3:00 p.m.
- 4.3 In the section of 'time of operation of the pumps',
 - 4.3.1 Write in the section "Pump #1", the hours of operation shown on the display.
 - 4.3.2 Write in the area "Pump #2", the hours of operation shown on the display.
- 4.4 Use the checklist comments section to record any strange or unusual situation.

5.0 WEEKLY TEST PROCEDURE FOR THE EMERGENCY GENERATOR.

- 5.1 Every Monday (at least once a week) the generator will be automatically or manually turned on as part of its normal operation.
- 5.2 Using Table A
 - 5.2.1 Write down the generator's startup time.
 - 5.2.2 Write down the time when the generator stopped.
- 5.3 Use the comments section to record any strange or unusual situation.

6.0 RESIDUAL CHLORINE PROCEDURE FOR WET PIT

- 6.1 Check the residual chlorine reading on a daily basis and in one hour intervals starting at 7:00 a.m. and ending at 3:00 p.m. and record the residual chlorine reading in the display every hour in the daily checklist.
- 6.2 Get a water sample from pit.
 - 6.2.1 Perform a chlorine residual test to the sample at 7:00 a.m. and at 3:00 p.m. and record the result in the space provided in the checklist.
 - 6.2.2 If you get a reading of less than 0.5 ppm, repeat the sample and notify immediately to your supervisor.
- 6.3 In Section V - Specifically in the 'Residual Chlorine Reading inside the Pump Station' column
 - 6.3.1 Record the reading as displayed in the chlorination system and the residual chlorine test results in ppm units.
- 6.4 Use the checklist comments section to record any strange or unusual situation.

7.0 RESIDUAL CHLORINE MEASUREMENT AT THE DISCHARGE

- 7.1 Check the residual chlorine on a daily basis and at intervals not less than one hour readings while the pumps are in operation, starting at 7:00 a.m. and finishing at 3:00 p.m.
- 7.2 Take the water sample from the discharge.
 - 7.2.1 Perform a residual chlorine test to the sample
- 7.3 In Section V - Specifically in the 'Residual Chlorine Reading - Pump Station Effluent' column,
 - 7.3.1 Record the time at which the chlorine test was conducted.
 - 7.3.2 Record the chlorine test results in ppm units.

**DAILY OPERATION & MAINTENANCE PROCEDURE & CHECKLIST
LA PUNTILLA STORMWATER PUMPING STATION**



7.4 Use the checklist comments section to record any strange or unusual situation

8.0 RAIN DATA LOG PROCEDURE

8.1 Record the rain inches in daily basis.

8.2 Using the checklist, on Section VIII:

8.2.1 Record the registered amount

8.2.2 Record in the comments section any strange or unusual situation (for example, any runoff other than storm water.)

8.3 Verify that the rain water meter is working properly and write down any anomalies in the comments section.

9.0 PARTS STORAGE AND INVENTORY

9.1 Keep an inventory of essential spare parts and manuals for the instruments and equipment that are used during the normal operation, and maintenance of the La Puntilla Pump Station.

**DAILY OPERATION & MAINTENANCE PROCEDURE & CHECKLIST
LA PUNTILLA STORM WATER PUMPING STATION**



TABLE A- DAILY CHECKLIST

DATE: / /

I. Pump System Inspection

Tasks	Pump no. 1		Pump no. 2		DEFICIENCY / CORRECTIVE ACTION
	YES	NO	YES	NO	
1. The pump's Switch is set to "auto".					
2. Verify that the oil level is above minimum.					
3. Check if there is any oil leak. Identify if there is any oil slick around the equipment.					
4. Check that the outer surface of the electric motor has no dirt, dust or other foreign materials.					
5. Check that the engine ventilation grills have no dirt, dust or other foreign materials.					
6. Verify that each of the two (2) pumps have no excessive vibration, unusual noises or any other observable failure.					
Comments:					

II. Grid Inspection

Tasks	7 AM		3 PM		DEFICIENCY / CORRECTIVE ACTION
	YES	NO	YES	NO	
1. Clean the grid until it is waste free.					
2. Verify that the oil absorbent (oil boom) is installed correctly. It should be in horizontal position, attached to the grid.					
3. Check if the oil absorbent (oil boom) needs replacement. Check the installation date. Replacement must be weekly.					
Comments:					

Operator Name

Operator Signature

Supervisor Signature

**DAILY OPERATION & MAINTENANCE PROCEDURE & CHECKLIST
LA PUNTILLA STORMWATER PUMPING STATION**



TABLE A DAILY CHECKLIST

III. ISNTALATION AND SURROUNDING AREAS INSPECTION

Tasks	YES	NO	DEFICIENCY / CORRECTIVE ACTION
1. Check that the fence is not broken, has grass or other materials.			
2. Verify that the facilities are clean and orderly.			
• Sweep and pick up all garbage or strange material found on the of station floor			
• Dispose the trash or any strange material in the designated waste container.			
• Place in the designated areas any materials or equipment located on the floor			
3. Check that the green areas are free of foreign materials and cropped vegetation.			
4. Verify that non hazardous waste containers are properly covered and labeled.			
5. Check that containers for the oil absorbent (oil booms) are adequately covered and labeled.			
6. Make sure that all the drains and manholes lids are in place.			
7. Make sure that all drains are in good condition and are not corroded.			
8. Verify that walls, doors and windows are clean.			
9. Make sure that the doors and windows are in good operating condition.			
10. Check that doors and windows are not corroded.			
11. Inspect the Chlorine solution storage containers (that is full, labeled).			
Comments:			

Operator Name

Operator Signature

Supervisor Signature

**DAILY OPERATION & MAINTENANCE PROCEDURE & CHECKLIST
LA PUNTILLA STORMWATER PUMPING STATION**



TABLE A DAILY CHECKLIST

IV. EMERGENCY GENERATOR UNIT INSPECTION

Tasks	YES	NO	DEFICIENCY / CORRECTIVE ACTION
1. Check that the fence is not broken, has no incrusted grass or other materials.			
2. Check the fuel level.			
3. Check that the coolant level is above minimum.			
4. Check that the oil level is over the minimum.			
5. Make sure that all the light bulbs and solar panel meters are functional.			
6. Record the time the electric generator was in operation. If used more than once daily proceed to document the information in the comments section.			Starting Time _____ End time _____ Amount of fuel added (gals) _____
7. Check the battery status (the battery terminals, electrolytes)			
Comments:			

V. Chlorination and Monitoring

Hour	Residual Chlorine Reading inside the Pump Station (ppm)		Chlorine Manual Reading (ppm)	Pumps Work Time		Residual Chlorine Reading - Pump Station Effluent ¹ (ppm)	
	Automatic	Manual		Pump 1 (hrs.)	Pump 2 (hrs.)	Time	Result
7:00							
8:00							
9:00							
10:00							
11:00							
12:00							
1:00							
2:00							
3:00							
Total Worked Hours							
Comments:							

Note: 1 After each pump discharge, take a discharge sample.

Operator Name _____

Operator Signature _____

Supervisor Signature _____

**DAILY OPERATION & MAINTENANCE PROCEDURE & CHECKLIST
LA PUNTILLA STORM WATER PUMPING STATION**



TABLE A DAILY CHECKLIST

VI. Bi-Monthly Effluent Sampling

Date of sampling	
Time of sampling - start	
Time of sampling - finish	
Chain of custody completed and filed	<input type="checkbox"/> Yes <input type="checkbox"/> No
Manifest no.	
Comments:	

VII. Monthly Pit Cleaning

Date of cleaning	
Starting Time	
Volume extracted from truck No. 1	
Volume extracted from truck No. 2	
Total extracted volume	
No. Completed and Filed Manifests	
Sediments Final Disposition	
Finishing Time	
Comments:	
Signature of the supervisor in charge of the cleaning:	

VIII. Rain Water Meter Inspection

Tasks	YES	NO	DEFICIENCY / CORRECTIVE ACTION
1. Verify that the rain water meter is working (batteries, digits on the display, antenna).			
2. Make sure that there are replacement batteries for the rain water meter.			
3. Check that the display of the rain water meter is working (e.g. that all digits are visible).			
Parameter	Data		
Rainfall inches			
Time of reading			
Comments (Record any strange or unusual situation):			

Note: Please include in this section information related to the visit and/or work of contractors in the station area.

Operator Name

Operator Signature

Supervisor Signature

**DAILY OPERATION & MAINTENANCE PROCEDURE & CHECKLIST
LA PUNTILLA STORMWATER PUMPING STATION**



TABLE A DAILY CHECKLIST

COMMENTS:

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Operator Name

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Operator Signature

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Supervisor Signature

Appendix D: New Pump Station Construction Schedule

Task	Start Date	End Date
Phase II, New Pump Station & Retention Pond	1/19/09	7/20/15
Joint Permit Application USACE	10/22/10	5/30/12
Land Acquisition	2/15/11	9/30/12
Tree Inventory Submission and Reforestation DNER	1/31/11	11/20/12
Interested Parties/Agencies	10/24/12	1/30/13
Bid Documents	12/25/12	2/28/13
Bidding Period	2/28/13	3/30/13
Contract Selection and Award Period	3/30/13	4/12/13
Phase II Construction	4/19/13	7/20/15
Construction Permits	4/19/13	7/30/13
Earth Stabilization	7/30/13	7/30/13
Pile drives and Foundation Construction	11/30/13	2/28/14
Main Retention Pond Construction	2/28/14	7/20/15
Pumps Station Construction	2/28/14	7/20/15
Equipment Purchase and Installation	02/28/14	7/20/15