

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

IN THE MATTER OF:

**CONSTRUCCIONES DEL VIVI &
AGREGADOS CORP.**

(formerly, Constructora del Viví, Inc.)

P. O. Box 472

Utuado, Puerto Rico 00641

Sand and Gravel Mining Site

PR-123 Road, Km. 60.4, Río Abajo Ward

Utuado, Puerto Rico

RESPONDENT

**CONSENT AGREEMENT AND
FINAL ORDER**

DOCKET NUMBER

CWA-02-2019-3351

CONSENT AGREEMENT AND FINAL ORDER

Complainant, the United States Environmental Protection Agency (“EPA” or “Complainant”), having issued the Complaint referenced herein on September 19, 2019, against Construcciones del Vivi & Agregados Corp.¹ (formerly, “Constructora del Vivi, Inc.”) (herein after referred as “Respondent” or “CDV”), and

Complainant and Respondent having agreed that settlement of this matter is in the public interest, and that entry of this Consent Agreement and Final Order (“Consent Agreement”) without further litigation is the most appropriate means of resolving this matter.

NOW, THEREFORE, before the taking of any testimony, upon the pleadings, without adjudication of any issue of fact or law, and upon consent and agreement of the Parties, it is hereby agreed, and ordered as follows:

I. Preliminary Statement

1. EPA initiated this proceeding for the assessment of a civil penalty pursuant to Section 309(g)(2)(A) of the Clean Water Act (“CWA” or the “Act”), 33 U.S.C. § 1319(g)(2)(A).
2. In the Complaint, EPA alleges that Respondent violated Sections 301(a) and 402(p) of the Act, 33 U.S.C. §§ 1311(a) and 1342(p), for its failure to apply for and obtain National Pollutant Discharge

¹ The original complaint issued on September 19, 2023, was issued to Constructora del Viví, Inc. The sand and gravel mining site subject to the Complaint is now owned and operated by Construcciones del Vivi & Agregados Corp.

Elimination System (“NPDES”) permit coverage for its storm water discharges associated with industrial activity from its sand and gravel mining site (the “Facility”) located in Utuado, Puerto Rico, and for its discharges of pollutants (storm water runoff associated with industrial activities) from this mining site into waters of the United States without NPDES permit coverage. EPA sought an administrative penalty of thirty-two thousand one hundred forty-one dollars (\$32,141.00) for these violations.

3. Pursuant to 40 C.F.R. Part 22, on October 23, 2019, EPA notified the Commonwealth of Puerto Rico about the issuance of the Complaint and offered an opportunity to confer with EPA on the proposed administrative penalty assessment. The Commonwealth of Puerto Rico did not submit any comments.
4. On October 29, 2019, Respondent submitted to EPA a letter to address the claims in the Complaint.²
5. On November 1, 2019, EPA published a public notice on the proposed administrative penalty assessment. EPA did not receive public comments.
6. After the issuance of the Complaint, Complainant and Respondent held several informal settlement conference meetings, during which Respondent presented new information to EPA regarding certain allegations in the Complaint. These discussions led to this Consent Agreement without any formal amendment of the Complaint.
7. On August 3, 2021, Respondent submitted an electronic Notice of Intent (“NOI”) form seeking permit coverage for the Facility under the 2021 NPDES Multi-Sector General Permit for Stormwater Discharges from Industrial Activity (“MSGP”). On October 2, 2021, EPA granted Respondent permit coverage for the Facility under the MSGP (NPDES ID PRR05J02C).
8. On February 9, 2022, Respondent filed an electronic Notice of Termination (“NOT”) form requesting termination of its MSGP coverage for the Facility. Respondent certified in the NOT that it had ceased operations at the Facility, and/or there are not or no longer will be discharges of storm water associated with industrial activity from the Facility, and Respondent has already implemented necessary sediment and erosion controls, as required by Part 2.1.2.5 of the MSGP.
9. On February 9, 2022, EPA granted Respondent MSGP coverage termination for the Facility based on Respondent’s certification in the NOT.
10. On September 28, 2022, Respondent filed a new NOI seeking coverage for the Facility under the MSGP. Respondent’s coverage under the MSGP became effective on November 27, 2022, under NPDES ID PRR05J030.
11. After obtaining coverage under the MSGP, Respondent has filed a couple of NOI changes as follows:

² A review of the docket reveals that Respondent did not file an answer to the Complaint with the Regional Hearing Clerk.

- a. On February 15, 2023, Respondent submitted a change to the NOI, certifying that the Facility was inactive and unstaffed; and
 - b. On May 2, 2024, Respondent submitted a change to the NOI, certifying that the Facility is no longer inactive and unstaffed.
12. Respondent hereby certifies compliance with all the claims in the Complaint.
 13. Complainant and Respondent agree, by entering into this Consent Agreement, that settlement of all allegations contained in the Complaint upon the terms set forth in this Consent Agreement is an appropriate means of resolving this case without further litigation.
 14. Respondent admits the jurisdictional allegations of the Complaint.
 15. Respondent neither admits nor denies specific factual allegations contained in the Complaint.
 16. Respondent waives any right to contest the allegations and their right to appeal the proposed Final Order accompanying this Consent Agreement.

II. Terms of Settlement

17. Pursuant to Section 309(g) of the Act, 33 U.S.C. § 1319(g), the nature of the violations and other relevant factors, EPA and Respondent agreed to settle this action for **eight thousand dollars (\$8,000)**.
18. For purposes of settlement, Respondent consents to the issuance of this Consent Agreement and consents to the payment of the civil penalty cited in Paragraph 15, above.

III. Payment of Civil Penalty

19. Respondent agrees to pay a civil penalty in the amount of **EIGHT THOUSAND DOLLARS (\$8,000)** (“Assessed Penalty”) within thirty (30) days after the date the Final Order ratifying this Consent Agreement is filed with the Regional Hearing Clerk (“Filing Date”).
20. Respondent shall pay the Assessed Penalty and any interest, fees, and other charges due using any method, or combination of appropriate methods, as provided on the EPA website: <https://www.epa.gov/financial/makepayment>. For additional instructions see: <https://www.epa.gov/financial/additional-instructions-making-payments-epa>.
21. When making a payment, Respondent shall:
 - a. identify every payment with Respondent’s name and the docket number of this Consent Agreement, CWA-02-2019-3351, and
 - b. concurrently with any payment or within 24 hours of any payment, Respondent shall serve proof of such payment to the following person(s):

Karen Maples
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
290 Broadway
New York, NY 10007
maples.karen@epa.gov

Jaime López
Senior Enforcement Officer
United States Environmental Protection Agency Region 2
Caribbean Environmental Protection Division
Multimedia Permits and Compliance Branch/Clean Water Act Team
48 Road 165, Suite 7000
Guaynabo, PR 00968
lopez.jaime@epa.gov

Evelyn Rivera-Ocasio, Esq.
Assistant Regional Counsel
United States Environmental Protection Agency, Region 2
Office of Regional Counsel, Caribbean Team
48 Road 165, Suite 7000
Guaynabo, PR 00968
rivera-ocasio.evelyn@epa.gov

and

U.S. Environmental Protection Agency
Cincinnati Finance Center
Via electronic mail to:
CINWD_AcctsReceivable@epa.gov

“Proof of payment” means, as applicable, a copy of the check, confirmation of credit card or debit card payment, or confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate that payment has been made according to EPA requirements, in the amount due, and identified with the appropriate docket number and Respondent’s name.

22. Interest, Charges, and Penalties on Late Payments. Pursuant to 31 U.S.C. § 3717, 31 C.F.R. § 901.9, and 40 C.F.R. § 13.11, if Respondent fails to timely pay the full amount of the Assessed Penalty per this Consent Agreement, EPA is authorized to recover, in addition to the amount of the unpaid Assessed Penalty, the following amounts:
- a. Interest. Interest begins to accrue from the Filing Date. If the Assessed Penalty is paid in full within thirty (30) days, interest accrued is waived. If the Assessed Penalty is not paid in full within thirty (30) days, interest will continue to accrue until any unpaid portion of the Assessed

Penalty as well as any interest, penalties, and other charges are paid in full. To protect the interests of the United States the rate of interest is set at the IRS standard underpayment rate, any lower rate would fail to provide Respondent adequate incentive for timely payment.

- b. Handling Charges. Respondent will be assessed monthly a charge to cover EPA's costs of processing and handling overdue debts. If Respondent fails to pay the Assessed Penalty in accordance with this Consent Agreement, EPA will assess a charge to cover the costs of handling any unpaid amounts for the first thirty (30) day period after the Filing Date. Additional handling charges will be assessed every thirty (30) days, or any portion thereof, until the unpaid portion of the Assessed Penalty as well as any accrued interest, penalties, and other charges are paid in full.
 - c. Late Payment Penalty. A late payment penalty of six percent (6%) per annum, will be assessed monthly on all debts, including any unpaid portion of the Assessed Penalty, interest, penalties, and other charges, that remain delinquent more than ninety (90) days. Any such amounts will accrue from the Filing Date.
23. Late Penalty Actions. In addition to the amounts described in the prior Paragraph, if Respondent fails to timely pay any portion of the Assessed Penalty, interest, or other charges and penalties per this Agreement, EPA may take additional actions. Such actions EPA may take include, but are not limited to, the following:
- a. Refer the debt to a credit reporting agency or a collection agency, per 40 C.F.R. §§ 13.13 and 13.14.
 - b. Collect the debt by administrative offset (i.e., the withholding of money payable by the United States government to, or held by the United States government for, a person to satisfy the debt the person owes the United States government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, per 40 C.F.R. Part 13, Subparts C and H.
 - c. Suspend or revoke Respondent's licenses or other privileges or suspend or disqualify Respondent from doing business with EPA or engaging in programs EPA sponsors or funds, per 40 C.F.R. § 13.17.
 - d. Refer this matter to the United States Department of Justice for litigation and collection, per 40 C.F.R. § 13.33.
24. Allocation of Payments. Pursuant to 31 C.F.R. § 901.9(f) and 40 C.F.R. § 13.11(d), a partial payment of debt will be applied first to outstanding handling charges, second to late penalty charges, third to accrued interest, and last to the principal that is the outstanding Assessed Penalty amount.
25. Tax Treatment of Penalties. Penalties, interest, and other charges paid pursuant to this Consent Agreement shall not be deductible for purposes of federal taxes.

IV. General Provisions

26. The provisions of this Consent Agreement shall be binding upon Respondent, its officers, directors, agents, servants, authorized representatives and successors or assigns, including but not limited to, subsequent purchasers. No transfer of ownership or operation shall relieve Respondent of its obligation to comply with this Consent Agreement.
27. Respondent waives any right it may have pursuant to 40 C.F.R. § 22.8 to be present during discussions with or to be served with and to reply to any memorandum or communication addressed to the Director of the EPA Region 2 Caribbean Environmental Protection Division or the EPA Region 2 Regional Administrator where the purpose of such discussion, memorandum, or communication is to discuss a proposed settlement of this matter or to recommend that such official accept this Consent Agreement and issue the accompanying Final Order.
28. Nothing in this Consent Agreement shall be construed as prohibiting, altering or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this Consent Agreement or of the statutes and regulations upon which this Consent Agreement is based, or for Respondent's violation of any applicable provision of law.
29. This Consent Agreement shall not relieve Respondent of its obligation to comply with all applicable provisions of the CWA and the regulations implementing it, nor shall it be construed as the issuance of a permit or a ruling on, or determination of, any issues related to any federal, state or local law, regulation or permit.
30. Full payment of the civil penalty shall only resolve Respondent's liability for federal civil penalties for the violations and facts alleged in the Complaint. Full payment of this penalty shall not in any case affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.
31. Each undersigned representative of the parties to this Consent Agreement certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this Consent Agreement and to execute and legally bind that party to it.
32. Each party shall bear its own costs and attorney's fees in connection with the action resolved by this Consent Agreement.

FOR RESPONDENT CONSTRUCCIONES DEL VIVI & AGREGADOS CORP.:

BY: Jesús Arce Ramos
Mr. Jesús Arce Ramos
President
Construcciones Del Vivi & Agregados Corp.
(formerly Constructora del Vivi Inc.)

DATE: 25-Julio-2024

FOR COMPLAINANT UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:

BY: _____
Carmen R. Guerrero Pérez
Director
Caribbean Environmental Protection Division
United States Environmental Protection Agency
Region 2

DATE: _____

V. Final Order

The Regional Judicial Officer of the United States Environmental Protection Agency, Region 2, ratifies the foregoing Consent Agreement. The Consent Agreement entered into by the parties is hereby approved, incorporated herein, and issued as an Order. The effective date of this Order shall be the date of filing with the Regional Hearing Clerk, United States Environmental Protection Agency, Region 2.

BY: _____
HELEN FERRARA
Regional Judicial Officer
United States Environmental Protection Agency
Region 2

DATE: _____