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

UNITED STATES OF AMERICA, Plaintiff, v. PUERTO RICO AQUEDUCT AND SEWER AUTHORITY, THE COMMONWEALTH OF PUERTO RICO, and COMPAÑIA DE AGUAS DE PUERTO RICO, INC., Defendants.	)	CIVIL ACTION NO. 01-1709 (JAF)

CONSENT DECREE

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BACKGROUND

WHEREAS, Plaintiff, the United States of America, at the request of the Administrator of the United States Environmental Protection Agency ("EPA"), filed a Complaint in this action, as amended and supplemented and as deemed further amended below (the "Complaint"), alleging that Defendants Puerto Rico Aqueduct and Sewer Authority ("PRASA"), the Commonwealth of Puerto Rico (the "Commonwealth"), and Compañía de Aguas de Puerto Rico, Inc. violated Sections 301 and 402 of the Clean Water Act ("CWA" or the "Act"), 33 U.S.C. §§ 1311 and 1342, and regulations promulgated thereunder, and PRASA's National Pollutant Discharge Elimination System ("NPDES") permits issued pursuant thereto, with regard to certain of PRASA's pump stations;

WHEREAS, PRASA is a public corporation created by legislative enactment and existing under the Laws of Puerto Rico, P.R. Annotated Title 22, § 141, *et seq.*, as amended, to administer the aqueduct and sewer system of Puerto Rico;

WHEREAS, Puerto Rico's Law 328 (December 28, 1998), which amended PRASA's enabling act, grants the PRASA Governing Board the authority to delegate the management, operation, repair and maintenance of all PRASA's systems to one or more private operators and to delegate to a Director of Operations of such private operator(s) all of the functions and the duties of the PRASA Executive Director;

WHEREAS, on May 26, 1995 PRASA entered into an Agreement for the Operation, Management, Repair and Maintenance of an Aqueduct, Sewer and Customer Services System (as amended to date, the "1995 Contract") with Professional Services Group, Inc. ("PSGI," which later assigned its rights and obligations under the contract to PS Group of Puerto Rico, Inc.

("PSG"), and, which in turn, later changed its name to Compañía de Aguas). The 1995 Contract was amended, *inter alia*, on September 15, 1998 (the "First Amendment") and again on March 1, 1999 (the "Second Amendment"). In connection with the First Amendment, PSG assigned all of its rights and obligations under the 1995 Contract to Compagnie Générale des Eaux-SAHIDE, which later changed its name to Compagnie Générale des Eaux ("CGE") and to Air and Water Technologies Corporation, which later changed its name to Aqua Alliance Inc. ("AA"). In connection with the Second Amendment, CGE/AA designated Compañía de Aguas as the entity to receive all payments of the service fee due under the 1995 Contract. In addition, Compañía de Aguas employed most of the individuals that performed the services under the 1995 Contract, through CGE;

WHEREAS, PRASA's Governing Board by Resolution No. 1699, dated February 28, 1999, approved the designation of a CGE employee as Director of Operations and delegated to said Director all of the supervisory and administrative powers necessary to manage the operations of PRASA's systems as generally would be exercised by PRASA's Executive Director;

WHEREAS, PRASA owned and/or, through CAPR, operated at all relevant times certain pump station facilities throughout the Commonwealth of Puerto Rico;

WHEREAS, PRASA entered into a contract on May 2, 2002, effective as of July 1, 2002, with ONDEO de Puerto Rico, Inc. ("ONDEO" or "Current Operator"), a Puerto Rico corporation doing business in the Commonwealth of Puerto Rico, for the operation, management, repair, and maintenance of PRASA's aqueduct and sewer systems, including the pump stations that are the subject of this Consent Decree (owner/operator PRASA and Current Operator ONDEO sometimes hereinafter referred to as "PRASA/ONDEO");

WHEREAS, EPA alleges that Defendants discharged pollutants in violation of Section 301(a) of the Act, 33 U.S.C. §1311(a), and have violated and continue to violate certain terms and conditions of NPDES permits issued to PRASA by EPA pursuant to Section 402 of the Act, 33 U.S.C. §1342, for certain of PRASA's waste water treatment plants ("WWTPs"), the terms of which apply to all pump stations appurtenant to these WWTPs, and alleges further that the Complaint states a claim upon which relief may be granted against the Defendants under Sections 301(a), 309, and 402 of the CWA, 33 U.S.C. §§ 1311, 1319, and 1342;

WHEREAS, the express purpose of the Parties entering into this Consent Decree is to resolve the civil claims alleged in the Complaint, as amended, and certain related civil administrative enforcement actions pertaining to the unpermitted discharges from all PRASA pump stations in the Commonwealth of Puerto Rico, with the goal of implementing a system-wide operation and maintenance plan at the pump stations to eliminate such discharges in the future and to achieve compliance with the Clean Water Act; and

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

NOW THEREFORE, without admission by the Defendants of the non-jurisdictional allegations in the Complaint, upon consent of the Plaintiff United States, the Defendants and ONDEO, it is hereby ORDERED, ADJUDGED, AND DECREED as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction of the subject matter and over the parties to this action pursuant to 28 U.S.C. §§ 1331, 1345, and 1355 and Section 309 of the CWA, 33 U.S.C. § 1319 and also has personal jurisdiction over ONDEO for the limited purpose of entering and enforcing this Consent Decree. The Amended and Supplemental Complaint shall be deemed to be further amended to include allegations of bypass violations of Sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311 and 1342, and regulations promulgated thereunder, and PRASA's National Pollutant Discharge Elimination System ("NPDES") permits issued pursuant thereto, with regard to all pump stations owned and/or operated by Defendants and ONDEO. ONDEO submits to the jurisdiction of this Court for purposes of this settlement and waives inclusion as a defendant in the Complaint. Defendants and ONDEO consent to and shall not challenge entry of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree. Venue is proper in this judicial district under 28 U.S.C. § 1391(b) and (c) and § 1395(a).

II. PARTIES

2. 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;

b. CAPR, being, collectively, Defendant Compañía de Aguas de Puerto Rico, Inc., PSG, PSGI, CGE, AA, and any parent, grandparent, affiliated or related entity or person, natural or juridical, alleged to have worked with said companies and/or acted as operator of any PRASA facilities under the 1995 Contract;

c. PRASA, being Defendant Puerto Rico Aqueduct and Sewer Authority, a

public corporation created by legislative enactment and existing under the Laws of Puerto Rico, P.R. Annotated Title 22, § 141, *et seq.*, as amended, to administer the aqueduct and sewer system of Puerto Rico;

d. ONDEO, being a Puerto Rico corporation doing business in the Commonwealth of Puerto Rico, for the operation, management, repair, and maintenance of PRASA's aqueduct and sewer systems, including the pump stations that are the subject of this Consent Decree; and

e. The Commonwealth of Puerto Rico, joined as a Defendant in this action pursuant to Section 309(e) of the Clean Water Act, 33 U.S.C. §1319(e).

f. "Defendants," for purposes of this Consent Decree only, shall refer to CAPR and PRASA.

III. APPLICATION AND BINDING EFFECT

3. The provisions of this Consent Decree shall apply to, inure to the benefit of, and be binding upon the United States, on behalf of EPA; Defendant PRASA, its officers, directors, employees, successors in interest and assigns, and upon all persons, agents, firms, subsidiaries, divisions, and corporations acting under or for them; Defendant CAPR, operator for PRASA under the 1995 Contract, its officers, agents, directors, employees, parent and related companies, subsidiaries, successors in interest and assigns, Defendant Commonwealth of Puerto Rico, and ONDEO. The undersigned representatives of the United States, Defendants and ONDEO 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.

4. Effective from the date of lodging of this Consent Decree until its termination, PRASA/ONDEO shall give written notice of this Consent Decree to any person or entity to whom PRASA/ONDEO may transfer ownership or operation of the pump stations 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. PRASA/ONDEO 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.

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

6. In any action to enforce this Consent Decree, PRASA/ONDEO shall not raise as a defense the failure by any of its agents, contractors, subcontractors, employees, successors or assigns to take actions necessary to comply with this Consent Decree, except as provided under Section XIII (Force Majeure) of this Consent Decree.

IV. DEFINITIONS

7. 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 used in this Consent Decree will be defined as follows:

a. The term "Complaint" shall mean the complaint filed by the United States in the action captioned *United States v. Puerto Rico Aqueduct and Sewer Authority, et al.*, Civ. No. 01-1709 (JAF), as amended and supplemented and as deemed further amended by Paragraph 1 of this Consent Decree.

b. The term "Consent Decree" shall mean this Consent Decree, including all appendices hereto.

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

d. The term "date of entry" shall mean the date on which this Consent Decree is approved and signed by the Judge for the United States District Court for the District of Puerto Rico.

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

Commonwealth holiday, the period shall continue until the next day other than a Saturday, Sunday, or holiday.

f. Unless otherwise indicated, the term "NPDES Permit" or "permit" as used herein shall mean the National Pollutant Discharge Elimination System permits issued to PRASA for its WWTPs.

g. The terms "point sources," "navigable waters," and "pollutants" shall have the meanings set forth in Section 502 of the CWA, 33 U.S.C. § 1362, and 40 C.F.R. Part 122.

h. For purposes of this Consent Decree only, the term "unanticipated bypass" or "unanticipated bypass event" shall mean any discharge of waste streams from any portion of a pump station that does not meet the requirements set forth in 40 C.F.R. 122.41(m)(3) and (4).

i. For purposes of this Consent Decree only, the term "day of bypass violation" shall mean an event within any portion of the 24 hour calendar day period during which any unanticipated bypass occurs, provided, however, that the day on which the unanticipated bypass event is remedied shall not count as a day of bypass violation for unanticipated bypasses of two or more consecutive days.

j. The term "pump station" or "pump station facility" shall mean the integrated entity composed of the last manhole in the gravity sewer line segment that feeds the wet well, the sewer pipe portion in that section, the entrance channel(s), the wet well, bar screen rack and /or comminutor, back flow preventer, the dry well, the pump housings, level indicators, float switches and controllers, sump pumps, ejectors, pots and air compressors, electrodes, pressure sensing controllers, plug valves, check valves, air exhaust/ventilation system, the electrical motor control center ("MCC") and/or control panels, transfer switch, alternate power

unit ("APU") and its fuel tank, and the discharge line which extends towards the facility property limits.

k. The term "responsible official" shall mean the principal executive officer of PRASA/ONDEO or a duly authorized representative, as set forth in 40 C.F.R. § 122.22(a)(1).

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

V. CIVIL PENALTY

8. Defendants jointly and severally shall pay to the United States a civil penalty in the amount of one million dollars ($1,000,000), to be paid within 30 days of entry of this Consent Decree.

9. 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 current electronic funds transfer procedures, referencing the name, caption, civil action number, U.S.A.O. file number _____, EPA Region II, and DOJ case number 90-5-1-1-06475/1. Payment shall be made in accordance with instructions provided to the Defendants by the Financial Litigation Unit of the United States Attorney's Office for the District of Puerto Rico following lodging of the Consent Decree. Any payments received by the Department of Justice after 4:00 P.M. (Eastern Time) will be credited on the next business day. Defendants shall send notice that such payment has been made to the United States as specified in Section XI and to:

Chief, Financial Management Branch
U.S. Environmental Protection Agency
Region II
290 Broadway
New York, NY 10007-1866

10. If Defendants fail to pay the civil penalty within thirty (30) days of entry of this Consent Decree, then interest shall thereafter accrue at the rate calculated pursuant to 28 U.S.C. § 1961 through the date of payment.

VI. REMEDIAL ACTIONS AT "GROUP A" PUMP STATIONS

11. a. Appendix A of this Consent Decree consists of a list of pump stations (the "Group A Pump Stations") which the United States and PRASA/ONDEO agree may require specific remedial actions in addition to routine operation and maintenance. Within 90 days of entry, PRASA/ONDEO shall submit a detailed list of remedial actions to be performed at each Group A Pump Station and a proposed schedule for completion of same, subject to the conditions set forth in subparagraph b., below. EPA shall have an opportunity to review and comment on the proposed list and on the terms thereof, and PRASA/ONDEO shall submit a revised proposed list within 30 days after receiving EPA's comments. If EPA does not approve the revised proposed list, it shall provide comments and/or revisions to PRASA/ONDEO, and PRASA/ONDEO shall have 15 additional days to submit a final proposed list. The proposed list shall become final upon issuance of written modification and/or approval by EPA, taking into account PRASA's written representation to EPA as to remedial actions taken at certain pump stations during the 18 months prior to the date of lodging. Failure by PRASA/ONDEO to timely submit an acceptable final proposed list shall be deemed a Category D violation for purposes of stipulated penalties.

b. All remedial actions at the Group A Pump Stations shall be completed within 32 months of the date of final approval of Appendix A. The remedial actions will be performed and completed in three stages, as follows. Remedial actions at 25% of the Group A Pump Stations shall be completed within 10 months of the date of final approval of Appendix A. In selecting the first pump stations to be remediated, PRASA/ONDEO shall give first priority to any pump stations on the proposed list that are located upstream of any point of intake for drinking water. Remedial actions at 30% of Group A Pump Stations shall be completed within 20 months of the date of final approval of Appendix A. Remedial actions at the final 45% of Group A Pump Stations shall be completed within 32 months of the date of final approval of Appendix A.

c. PRASA/ONDEO may request in writing that EPA grant an extension of any deadline established in this Paragraph, which EPA shall grant in writing if it determines that good faith efforts to comply with the timetables in Appendix A have been made and good cause for the requested extension has been shown. The granting of such an extension shall be within EPA's sole discretion and shall not be deemed a modification of this Consent Decree requiring approval of the Court.

d. Notwithstanding the remedial action timetables set forth in this Paragraph, PRASA/ONDEO may request at any time that EPA certify that a Group A Pump Station has been remediated and, upon EPA certification, such pump station shall no longer be deemed a Group A Pump Station for purposes of this Consent Decree. EPA's decision to certify that a Group A Pump Station has been remediated shall be within its sole discretion, provided that EPA certification shall not unreasonably be withheld.

VII. OPERATION AND MAINTENANCE

12. All pump stations facilities in Puerto Rico owned and operated or to be owned and operated under this Consent Decree by PRASA/ONDEO will be subject to a system-wide Operation and Maintenance Plan ("OMP"). PRASA/ONDEO shall implement the OMP, to be developed in accordance with the minimum requirements set forth in Appendix B to this Consent Decree, at each of its pump station facilities, including the Group A Pump Stations, and shall comply with the time periods for developing and phasing in the implementation of the OMP as specified in Paragraph 13 below and in accordance with the schedule in the OMP as approved by EPA.

13. As of the date of entry, PRASA/ONDEO agrees to develop and implement an OMP meeting the minimum requirements set forth in Appendix B of this Consent Decree, giving first priority to any pump stations that are located upstream of any point of intake for drinking water, in accordance with the following schedule:

Work to be Performed	**Milestone**
Draft OMP and implementation schedule submitted to EPA for review and comment	Within 90 days of date of entry
Revised OMP submitted to EPA for approval, disapproval, or modification and approval	Within 30 days of receiving EPA's comments
Various phases of OMP implemented	In accordance with approved OMP

14. The operation and maintenance obligations set forth in the OMP shall remain in effect with respect to each pump station for the period such pump station is subject to this

Consent Decree pursuant to Section XXVII (Effectiveness and Termination).

15. Any proposed amendment to the OMP identified therein as critical with respect to any pump station covered by this Consent Decree must be submitted to EPA by PRASA/ONDEO in writing. No such proposed amendment to the OMP shall be effective until EPA approves such amendment in writing.

16. Compliance with the requirements set forth in this Section, the OMP, and Section VIII (Spill Response and Cleanup Plan), and with Appendix A, B and C hereto does not of itself constitute compliance with PRASA's obligations under its NPDES permits.

VIII. SPILL RESPONSE AND CLEANUP PLAN

17. Within 90 days of entry, PRASA/ONDEO shall draft and submit to EPA for approval a Spill Response and Cleanup Plan ("SRCP") that specifies actions to be taken by PRASA/ONDEO for unanticipated bypasses from any pump station facility owned and/or operated by PRASA/ONDEO within Puerto Rico. The minimum elements to be included in the SRCP are set forth in Appendix C to this Consent Decree.

18. Within 20 days of receipt of EPA's comments on the proposed SRCP, PRASA/ONDEO shall modify the SRCP accordingly and resubmit it to EPA for final approval. Upon its approval by EPA, the SRCP shall be fully implemented by PRASA/ONDEO, and be incorporated into, and become enforceable under, this Consent Decree. The parties agree to meet and confer, as needed, to discuss the development and implementation of the SRCP.

19. PRASA/ONDEO shall review the SRCP on an annual basis and update such plan as necessary. Each annual update of the SRCP shall be subject to EPA approval and upon EPA approval shall be incorporated into, and become enforceable under, this Consent Decree.

20. PRASA/ONDEO shall be responsible for familiarizing the responsible officials and appropriate employees of the terms of the SRCP and, in the event of PRASA/ONDEO's failure to implement the SRCP, PRASA/ONDEO shall not raise as a defense its failure so to inform the responsible officials and appropriate employees.

21. Any dispute with respect to any portion of the SRCP shall not delay the development or implementation of the undisputed portions of the SRCP.

22. Any proposed amendment to the provisions of the SRCP identified therein as critical with respect to any pump station covered by this Consent Decree must be submitted to EPA by PRASA/ONDEO in writing. No such proposed amendment to the SRCP shall be effective until EPA approves such amendment in writing.

23. The requirements of this Section shall remain in effect with respect to each pump station for the period such pump station is subject this Consent Decree in accordance with Section XXVII (Effectiveness and Termination).

IX. STIPULATED PENALTIES

24. Commencing on the date of lodging, PRASA/ONDEO shall be jointly and severally liable to pay to the United States, automatically and without further notice of demand, stipulated penalties in the amounts set forth below for the below listed categories of violations of this Consent Decree. Unless otherwise indicated, each below category of violations pertains to all pump stations covered by this Consent Decree:

Category A-1 (Non-Group A Pump Stations):

Stipulated penalties for each day of unanticipated bypass shall be calculated in accordance with the following schedule:

First nine months after date of lodging: $200 per day of bypass violation for the first 30 unanticipated bypasses of each month, and $350 per day of bypass violation for each unanticipated bypass thereafter;

For one year thereafter: $200 per day of bypass violation for the first 20 unanticipated bypasses of each month, and $400 per day of bypass violation for each unanticipated bypass thereafter;

For the next year thereafter: $200 per day of bypass violation for the first 15 unanticipated bypasses of each month, and $500 per day of bypass violation for each unanticipated bypass thereafter;

Thereafter, until termination of the Consent Decree: $200 per day of bypass violation for the first 10 unanticipated bypasses of each month, and $600 per day of bypass violation for each unanticipated bypass thereafter.

Category A-2 (Group A Pump Stations):

Stipulated penalties for each Group A Pump Station shall remain at $200 per day of bypass violation, irrespective of how many total unanticipated bypasses (including unanticipated bypasses at Group A Pump Stations) occur per month, until the remedial action at each such Group A Pump Station is certified as complete. Stipulated penalties at Group A Pump Stations shall be imposed as follows:

At Group A Pump Stations with pump motors rated at less than 40 horsepower: PRASA/ONDEO shall have 48 hours within which to cease an unanticipated bypass without the imposition of stipulated penalties. However, if the unanticipated bypass continues for longer than 48 hours, PRASA/ONDEO shall be liable for the full amount of stipulated penalties, inclusive of the days of bypass violations covered by the 48 hour stipulated penalty exemption.

At Group A Pump Stations with pump motors rated at 40 horsepower or higher: PRASA/ONDEO shall have 96 hours within which to cease an unanticipated bypass without the imposition of stipulated penalties. However, if the unanticipated bypass continues for longer than 96 hours, PRASA/ONDEO shall be liable for the full amount of stipulated penalties, inclusive of the days of bypass violations covered by the 96 hour stipulated penalty exemption.

Category B: Stipulated penalties in the amount of $1500 per day for each unanticipated bypass that is not reported to EPA in accordance with 40 C.F.R. § 122.41(l)(6) and (m)(3)(ii).

Category C: Stipulated penalties in the amount of $500 per day per pump station for failure to timely complete the specified remedial tasks for each Group A Pump Station in accordance with Paragraph 11 and Appendix A to this Consent Decree.

Category D: Stipulated penalties for failure to submit any of the deliverables required under this Consent Decree, including all appendices hereto, on the date required shall be calculated in accordance with the following schedule:

For the first 10 workdays after the deliverable is due to be submitted: $350 per day of violation

Thereafter: $500 per day of violation.

Category E: Stipulated penalties in the amount of $500 for each violation of the Record Retention provision of this Consent Decree; provided, however, that no penalty shall be imposed if the record or document requested by EPA is produced to EPA by PRASA/ONDEO within 15 days of the request.

25. All stipulated penalties begin to accrue on the day that complete performance is due or a violation occurs, and continue to accrue up through, but exclusive of, the day on which

such violation or other noncompliance is remedied. Stipulated penalties shall be paid on a triannual basis. Nothing herein shall preclude the simultaneous accrual of separate stipulated penalties for separate violations of this Consent Decree.

26. In the event that a civil or stipulated penalty is not paid when due without demand, the penalty shall be payable with interest from the original due date to the date of payment, at the statutory judgment rate set forth at 28 U.S.C. § 1961 plus the amount of the United States' reasonable costs, attorneys' fees or other expenses incurred in seeking payment of the civil or stipulated penalty.

27. Stipulated penalties under this section shall be paid at the time Triannual Progress Reports are due by certified check payable to the "Treasurer, United States of America," and shall be tendered to the United States Attorney for the District of Puerto Rico together with a letter referring to the name, caption, and index number of this case. A copy of the check shall be mailed to EPA at the addresses set forth in Section XV (Notices) along with the Triannual Progress Report described in the next section.

28. Upon entry of this Consent Decree, the stipulated penalty provisions of this Decree shall be retroactively enforceable with regard to any and all covered violations that have occurred after the date of lodging of the Consent Decree and prior to the date of entry of the Consent Decree. PRASA/ONDEO shall assess and pay any stipulated penalties that have accrued following lodging of and prior to entry of the Consent Decree in the first Triannual Progress Report required to be submitted under this Consent Decree.

29. 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 any applicable statutes and regulations, including seeking injunctive or other relief for PRASA/ONDEO's failure to implement the OMP and SRCP as agreed to in this Consent Decree.

X. TRIANNUAL PROGRESS REPORT

30. Beginning four months from the date of lodging, and throughout the effective period of this Consent Decree, PRASA/ONDEO shall submit to EPA a written report on a triannual basis detailing the current status and/or progress of the actions taken in compliance with this Consent Decree, in addition to any stipulated penalties incurred during the preceding four-month period. The Triannual Progress Report shall report on PRASA/ONDEO's activities with regard to Sections VI, VII and VIII of this Consent Decree, along with all pertinent deliverables required to be submitted under this Consent Decree, and at a minimum shall set forth:

a. the specific activities undertaken by PRASA/ONDEO relating to completion of work required under the compliance schedules specified in this Consent Decree, and identification of which requirements have been accomplished since the previous report;

b. any impediments encountered by PRASA/ONDEO in meeting the compliance schedules under this Consent Decree, the steps that have been taken by PRASA/ONDEO to overcome such impediments, and the steps that are to be taken by PRASA/ONDEO to overcome such impediments, including the anticipated dates by which such steps will be taken;

c. a list of all pump stations that have been shut down or otherwise taken off-line or consolidated with other pump stations, and all new pump stations that have commenced

operation or existing pump stations that have been returned to service during the preceding reporting period, such list to include the name and address of each such pump station and identification of the NPDES permit of the WWTP to which it is connected;

d. 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

e. a list of pump stations, if any, that were proposed for removal from the designated stipulated penalties provisions since the previous Triannual Progress Report pursuant to Section XIV of this Consent Decree.

31. PRASA/ONDEO shall submit the Triannual Progress Reports within thirty 30 days after the end of the four month period being reported. The above reporting requirements do not relieve PRASA/ONDEO of the obligation to submit reports or information required by the CWA, the regulations promulgated thereunder, the NPDES permits, or any other permit or local or federal law.

32. All Triannual Progress Reports or other submissions required pursuant to this Consent Decree shall be in English and signed by a responsible official and shall contain the following certification:

> "I certify that based on my inquiry of the person or persons directly responsible for gathering the information, the information contained in or accompanying this submission 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, or for failure to submit information required to be submitted under this Consent Decree, including the possibility of fine and imprisonment for knowing violations."

XI. BIANNUAL PROGRESS MEETINGS

33. Representatives of EPA and of PRASA/ONDEO shall convene informally at least on a biannual basis pursuant to a mutually agreed-upon schedule to discuss PRASA/ONDEO's ongoing progress under the Consent Decree. The meeting should cover one or more of 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;

c. Measures that PRASA/ONDEO intend to take to correct problems and deficiencies encountered by PRASA/ONDEO or found by EPA in its inspections of pump stations.

34. If, as a result of discussions at the biannual progress meetings, EPA and PRASA/ONDEO agree on actions to be taken and a schedule for same that are not otherwise provided for in this Consent Decree, the parties shall, after consultation with counsel, follow the procedure set forth in Section XXV (Modification).

XII. BYPASS NOTIFICATIONS

35. PRASA/ONDEO shall submit to EPA a notification for each unanticipated bypass event within 24 hours of becoming aware of the unanticipated bypass. The bypass notification may be in the format of a checklist with comments, but must be a standardized, uniform document to be used throughout Puerto Rico. PRASA/ONDEO agrees to use best efforts to submit the bypass notifications in English to the extent practicable. The bypass notifications must contain at least the following information:

a. Name and address (or detailed description of location) of pump station facility, including Area and PRASA Region;

b. Name of the PRASA WWTP to which the pump station is connected, and NPDES permit number of the WWTP;

c. Date and time unanticipated bypass event started or became known;

d. Date and time unanticipated bypass event ended or is expected to end;

e. Detailed description of the cause of the unanticipated bypass event, if known;

f. Specific action taken to address the cause of the unanticipated bypass event;

g. Identification of any receiving body of water from the unanticipated bypass event;

h. Name, title, signature of person who completed the unanticipated bypass notification, and date notification was completed and signed; and

i. Name of PRASA/ONDEO person, if known, who observed the unanticipated bypass event.

36. The requirement to submit a notification of bypass event pursuant to 40 C.F.R. 122.41 (l)(6) shall apply to each pump station owned and/or operated by PRASA/ONDEO in Puerto Rico. The bypass notification form shall be consistent with the form attached as Appendix D.

XIII. FORCE MAJEURE

37. Defendants'/ONDEO's obligation to comply with one or more of the provisions of this Consent Decree shall be deferred 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 Defendants/ONDEO and their employees, contractors, and consultants that delays or prevents the performance of any obligation or causes a non-compliance under this Consent Decree despite

Defendants'/ONDEO's best efforts to fulfill the obligation. The requirement that Defendants/ONDEO exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure and best efforts to address the effects of any potential force majeure (1) as it is occurring; and (2) following the potential force majeure, such that the delay is minimized to the extent possible. "Force majeure" shall not include any delay due to unanticipated or increased costs of achieving and maintaining compliance with any provision of this Consent Decree or Defendants'/ONDEO's financial inability to implement any provision of this Consent Decree. Defendants'/ONDEO's failure to obtain any necessary permit or approval shall not be deemed a force majeure unless Defendants/ONDEO demonstrate that they exercised due diligence in promptly pursuing such permit application or approval.

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

39. Failure to comply with the above procedures regarding notification and reporting shall preclude Defendants/ONDEO 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. Defendants/ONDEO further agree 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 Defendants/ONDEO that the delay in compliance or the non-compliance in question is attributable to a force majeure event.

40. If EPA agrees that the delay or non-compliance or anticipated delay or non-compliance is attributable to a force majeure, the time for implementation of the applicable portions of this Consent Decree that are affected by the force majeure will be extended by EPA for such time as is reasonably necessary. An extension of the time for performance of the obligations affected by the force majeure shall not, of itself, extend the time for performance of any other obligation. If EPA does not agree that the delay or non-compliance or anticipated delay or non-compliance has been or will be caused by a force majeure, EPA will notify Defendants/ONDEO in writing of its decision. If EPA agrees that the delay is attributable to a force majeure, EPA will notify Defendants/ONDEO in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure.

41. If Defendants/ONDEO elect to invoke the dispute resolution procedures set forth in Section XVII, they shall do so no later than thirty (30) days after receipt of EPA's written notice. In any such proceeding, Defendants/ONDEO shall have the burden of demonstrating by a preponderance of the evidence that the delay or non-compliance or anticipated delay or

non-compliance has been or will be caused by a force majeure, that the duration of the delay or non-compliance or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Defendants/ONDEO complied with the requirements of this Section of the Consent Decree. If Defendants/ONDEO carry this burden, the delay at issue shall be deemed not to be a violation by Defendants/ONDEO of the affected obligation of this Consent Decree identified to EPA and to the Court.

XIV. REMOVAL OF PUMP STATIONS FROM DESIGNATED STIPULATED PENALTIES

42. A pump station may be removed from Category A, B, C, and D of the stipulated penalty provisions ("designated stipulated penalty provisions") of this Consent Decree when PRASA/ONDEO has complied with all applicable requirements of this Consent Decree with regard to that pump station, including payment in full of any and all penalties due under this Consent Decree.

43. A pump station shall be removed from the designated stipulated penalty provisions of this Consent Decree upon a written certification from PRASA/ONDEO that (a) all remedial tasks set forth in Appendix A of this Consent Decree as to that particular pump station have been completed, where applicable; (b) for Group A Pump Stations, there have been no unanticipated bypasses attributable to that pump station for any six (6) month period after certification that all remedial tasks set forth in Appendix A of this Consent Decree as to that particular pump station have been completed, and for non-Group A Pump Stations, there have been no unanticipated bypasses attributable to that pump station for any six (6) month period after the effective date of this Consent Decree; and (c) the OMP has been implemented at such

pump station facility for a period of at least three (3) months. EPA reserves the right to inspect any pump station prior to its removal from the stipulated penalty provisions of this Consent Decree and to condition such removal on EPA's determination that all requirements of this Consent Decree have been met as to the particular pump station. EPA shall inform PRASA/ONDEO in writing within 90 days from receipt of PRASA/ONDEO's written certification if it determines that a pump station does not meet the requirements of this paragraph. Designated stipulated penalties shall be tolled during this 90 day period. If EPA determines that the requirements of this paragraph have not been met as to that pump station, the designated stipulated penalties, if any, shall be retroactively imposed and shall be paid in accordance with the provisions of Section IX (Stipulated Penalties) of this Consent Decree.

XV. NOTICES

44. 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:

Municipal Programs Specialist
Enforcement and Superfund Branch
Caribbean Environmental Protection Division
United States Environmental Protection Agency
Centro Europa Building
1492 Ponce de León Avenue, Suite 417
Santurce, Puerto Rico 00907-4127

Assistant Regional Counsel
United States Environmental Protection Agency
Region II
1492 Ponce de Leon Ave.
Suite 207, San Juan PR 00907-4127

By mail:

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

or By courier or express mail:

Chief, Environmental Enforcement Section
Environment & Natural Resources Division
U.S. Department of Justice
1425 New York Ave., N.W., Rm. 13073
Washington, D.C. 20005

United States Attorney
District of Puerto Rico
Federal Office Building, Rm.101
Carlos E. Chardon Avenue
Hato Rey, Puerto Rico 00918

As to PRASA:

By mail:

Office of General Counsel
Puerto Rico Aqueduct & Sewer Authority
P.O. Box 7066
Sergio Cuevas Bustamente Building
10th Floor
Santurce, Puerto Rico 00916

or By courier or express mail:

Office of General Counsel
Puerto Rico Aqueduct & Sewer Authority
Sergio Cuevas Bustamente Building
604 Avenida Barbosa
10th Floor
Hato Rey, Puerto Rico 00917

Peter Robertson, Esq.
Patton Boggs, LLP
2550 M St., N.W.
Washington, D.C. 20037

As to CAPR (until dismissal from this action):

Carlos Onetti Irizarry, Esq.
Compañía de Aguas de Puerto Rico, Inc.
P.O. Box 9300300
San Juan, Puerto Rico 00930-0300

Douglas H. Wilkins, Esq.
Anderson and Kreiger, LLP
43 Thorndike Street
Cambridge, MA 02141

As to ONDEO:

ONDEO de Puerto Rico
PMB No. 404
P.O. Box 194000
San Juan, Puerto Rico 00919-4000
Attention: Joel Mallevialle

Maria D. Laurino, Esq.
United Water/ONDEO
200 Old Hook Road
Harrington Park, NJ 07640-1799

As to the Commonwealth:

By mail:

Director, Federal Litigation Division
Department of Justice of the
Commonwealth of Puerto Rico
P.O. Box 9020192
San Juan, Puerto Rico 00902-0192

or By courier or express mail:

Director, Federal Litigation Division
Department of Justice of the
Commonwealth of Puerto Rico
Olimpo Street
Miramar, San Juan, Puerto Rico 00907

45. 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.

XVI. ACCESS TO THE FACILITIES

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

XVII. RECORD RETENTION

47. Unless otherwise specified in this Consent Decree, PRASA/ONDEO shall preserve an original or a copy of all records, logs, and documents required to be kept under the OMP and under the Clean Water Act for each individual pump station facility for at least two (2) years after the individual pump station facility is removed from the designated stipulated penalty provisions of this Consent Decree, or as long as is required under the CWA, regulation, or permit, if longer. Upon request by EPA, PRASA/ONDEO shall provide copies to EPA of any such records, logs, and documents during the periods PRASA/ONDEO is required to preserve an original or copy of such records, logs, and documents.

48. For purposes of this Section and of Section IX (Stipulated Penalties), PRASA/ONDEO shall be required to preserve at least the following records, logs and documents:

a. Pump station log books;

b. Bypass notifications (both 24 hour and/or five day notices);

c. Computerized or other written maintenance management system files in which routine pump station maintenance information is loaded or otherwise recorded, including job orders or work orders for corrective or preventive maintenance for each pump station;

d. Inspection punch list or report performed at each pump station, compiled

daily, weekly, monthly, semi-annually or annually, as applicable; and

e. Police reports documenting employee security and/or vandalism-related incidents.

XVIII. DISPUTE RESOLUTION

49. The parties shall make reasonable efforts informally and in good faith to resolve all disputes or differences of opinion regarding the meaning or implementation of this Consent Decree. In the event that the parties cannot resolve any such dispute, then the interpretation advanced by EPA shall be considered binding unless Defendants and/or ONDEO invokes the dispute resolution provisions of this Section.

50. If in the opinion of any party there is a dispute with respect to the meaning or implementation of any provision of this Consent Decree, that party shall send a written notice to the other party which outlines the nature of the dispute and requests informal negotiations to resolve the dispute. Such period of informal negotiations shall not extend beyond forty-five (45) days from the date when the notice was sent unless the parties agree otherwise.

51. If informal negotiations are unsuccessful, following the close of negotiations, EPA shall provide in writing to Defendants/ONDEO its final decision regarding the subject of the dispute within 45 days following the close of negotiations or 90 days from the date the notice was sent, whichever is later. If EPA does not issue its final decision within the prescribed period, Defendants/ONDEO may apply for an order of the Court to require EPA to provide its decision in writing.

52. An administrative record of the dispute shall be maintained by EPA and shall contain all statements of position, including supporting documentation, submitted by either party

and shall contain EPA's final decision. EPA's position shall control unless Defendants/ONDEO file with the Court a petition which shall describe the nature of the dispute and include a proposal for its resolution. Petitions by Defendants/ONDEO must be filed no more than twenty (20) days after receipt by Defendants/ONDEO of EPA's final position. The United States shall then have twenty (20) days to respond to any such petitions. In any such dispute, and subject to the provisions of Section XIII (Force Majeure), Defendants/ONDEO shall have the burden of proving that EPA's position is arbitrary and capricious or otherwise not in accordance with law. Judicial review of EPA's position shall be based on the administrative record.

53. Invocation of this dispute resolution procedure shall not toll the accrual of stipulated penalties or any deadlines affected by the dispute. Payment of any accrued stipulated penalties shall be stayed pending the outcome of the dispute resolution process.

XIX. SUPPLEMENTAL ENVIRONMENTAL PROJECT

54. The majority of Puerto Rico's rural, small, privately-owned water supplies are considered by EPA to be substandard and fail to comply with applicable local and federal regulations for public drinking water supplies. Most are owned and operated by the communities they serve and lack adequate treatment, such as filtration and/or disinfection, to assure a reliable and safe supply of water. None of these systems are serviced by PRASA, and are hereinafter referred to as the "Non-PRASA Systems." The Supplemental Environmental Project ("SEP") described below will improve drinking water quality of selected Non-PRASA Systems by providing technical evaluations, equipment training and/or connection to PRASA water filtration plants. The anticipated environmental benefits and public health protection to be provided by the SEP include provision of safe drinking water to users of select Non-PRASA Systems which

currently lack the financial, operational and organizational resources necessary to provide safe drinking water.

55. a. Within 30 days of entry of this Consent Decree, Defendants jointly and severally shall establish an escrow account in the amount of one million dollars ($1,000,000) (the "SEP amount") to fund the SEP in accordance with the provisions of this Section and Appendix E. The escrow account shall bear interest at the commercial rate.

b. The escrow account shall be in the name of PRASA, shall be established at the Government Development Bank for Puerto Rico, and shall be known as the Non-PRASA System Action Trust Fund (the "Fund"). The Fund shall be funded as provided in subparagraph a. above, and all monies in the Fund shall be held in trust for the purpose of financing PRASA's undertaking of the SEP described below and in Appendix E. Monies in the Fund shall be disbursed to PRASA to pay for costs incurred, under contract or by force account, in implementing the SEP. Disbursements from the Fund shall be documented with written records as to (i) the amount to be paid, (ii) a certification that each item for which payment is sought has been completed, is a proper charge against the Fund, and has not been the basis of any previous requisition, (iii) if a payment is to reimburse PRASA for costs and expenses incurred by PRASA by reason of work performed by PRASA, a certification that the amount does not exceed the actual costs thereof to PRASA, and (iv) if a payment is to reimburse PRASA for payments made by it or to fund payments to be made by PRASA to contractors or vendors, the name of the person, firm or corporation to which payment relates and the nature and the cost of the work performed, supported by customary invoices or other appropriate documentation. The written records described in this paragraph shall be made available to EPA upon request.

56. PRASA shall evaluate Non-PRASA Systems consisting of privately-owned and operated water supplies in Puerto Rico, that are considered by EPA, in consultation with the Puerto Rico Department of Health ("PRDOH"), as substandard and which fail to comply with applicable safe drinking water standards, particularly the Surface Water Treatment Rule set forth in 40 C.F.R. Part 141, Subpart H. The evaluations will serve to determine what actions can be taken to bring the Non-PRASA Systems into compliance with such safe drinking water standards. The evaluations shall consider the Non-PRASA System's financial, operational and organizational capacity to viably be administered by qualified individuals who will be trained in monitoring and treatment techniques to ensure such standards can be sustained after improvements are made. The primary objectives of the Non-PRASA System SEP are to:

- Connect Non-PRASA Systems to PRASA, to the extent practicable.
- Install disinfection in selected Non-PRASA Systems.
- Reduce the overall number of Non-PRASA Systems that derive drinking water from untreated surface water sources.
- Reduce the number of positive bacteriological results in Non-PRASA Systems.
- Provide training to qualified individuals administering the Non-PRASA Systems to ensure proper operation and maintenance of system improvements.

57. With regard to the SEP, PRASA certifies the truth and accuracy of each of the following:

a. That, as of the effective date of this Consent Decree, PRASA is not required to perform or develop the SEP by any federal, state, or local law or regulation, nor is PRASA required to perform or develop the SEP by agreement, grant, or as injunctive relief awarded in any other action in any forum;

b. That the SEP is not a project that PRASA was planning or intending to construct, perform, or implement other than in settlement of the claims resolved in this Consent Decree;

c. That PRASA has not received, and is not negotiating to receive, credit for the SEP in any other enforcement action; and

d. That PRASA will not receive any reimbursement for any portion of the SEP from any other person.

58. In accordance with the Work Plan attached hereto as Appendix E, PRASA shall draft a Scope of Work ("SOW") for the SEP. The SOW shall include, at a minimum, detailed descriptions of each discrete task or phase of the SEP, along with milestones for each such activity, construction plan submissions dates, bidding schedules and award schedules for each construction contract, the total cost of developing and implementing the SEP, and shall provide for submission to EPA of regular progress reports throughout the implementation of the SEP. The SOW shall be subject to EPA approval, and, upon such approval, shall be incorporated by reference into this Consent Decree and be a fully enforceable provision hereof.

59. Subject to the exception set forth in Paragraph 64 below, the total expenditure for the SEP shall be not less than the SEP amount.

60. In addition to the SOW and regular progress reports, PRASA shall submit a final

SEP Completion Report within three months of completion of the SEP, in accordance with the schedule set forth in the SOW. Such final report shall include the following:

a. A detailed description of the completed SEP, any implementation problems encountered, and the solutions thereto;

b. Certification that the SEP has been fully implemented pursuant to the provisions of this Consent Decree;

c. A description of the environmental and public health benefits resulting from implementation of the SEP (with a quantification of the benefits, if feasible);

d. A summary of the final costs associated with the SEP, together with itemization of those costs, documented by copies of invoices, purchase orders and receipts, canceled checks or other documentation that specifically identifies and itemizes the individual costs of goods and/or services for which payment has been made;

e. A certification that no federal grants, low-interest federal loans, federal contracts, or other forms of federal financial assistance or non-financial assistance (e.g., loan guarantees) were used, in whole or in part, to carry out the work required to implement or complete the SEP.

61. PRASA bears the burden of clearly segregating eligible SEP costs from other costs not eligible for SEP credit. Any non-segregable cost items that include non-SEP eligible costs shall be disallowed in their entirety. For purposes of determining SEP costs, acceptable evidence shall include invoices, purchase orders, or other documentation that specifically identifies and itemizes the individual costs of the goods or services for which payment is made. Canceled drafts do not constitute acceptable evidence unless such drafts specifically identify and

itemize the individual costs of the goods or services for which payment is made.

62. PRASA agrees that failure to submit the SOW, regular SEP progress reports, and/or the SEP Completion Report, as required above, shall be deemed a violation of this Consent Decree, and PRASA shall become liable for stipulated penalties in the amounts set forth below.

63. PRASA shall submit all notices and reports required by this Section in the manner and to the persons specified in Section XV (Notices) of the Consent Decree. All SEP-related submissions, including but not limited to the SEP Completion Report, shall be signed by a responsible official and contain the certification specified in Paragraph 32.

64. In the event that PRASA fails to comply with any of the terms or provisions of this Consent Decree relating to the performance of the SEP, and/or to the extent that the actual expenditures for the SEP do not equal or exceed the SEP amount as agreed to herein, PRASA shall be liable for stipulated penalties according to the provisions set forth below:

a. Except as provided in subparagraph. b. of this paragraph, if PRASA fails to complete the SEP approved under this Section satisfactorily pursuant to this Consent Decree, PRASA shall pay as a stipulated penalty to the United States 125 percent of the difference between the SEP amount and the amount actually spent toward completion of the SEP.

b. If the SEP is completed satisfactorily, but EPA determines that PRASA has certified, with supporting documentation, that at least 90 percent of the SEP amount was expended on the SEP, PRASA shall not be liable for any stipulated penalty related to that SEP; however, the balance of the SEP amount, plus any interest that has accrued thereon, shall be applied toward the operation and maintenance of the SEP to the extent practicable.

c. If the SEP is completed satisfactorily, but EPA determines that PRASA has certified, with supporting documentation, that less than 90 percent of the SEP amount was expended on the SEP, PRASA shall be liable for the difference between the SEP amount and the amount actually expended.

d. For failure to submit any report or other document required to be submitted under this Section for the SEP, PRASA shall pay a stipulated penalty in the amount of $350 per day for the first 10 workdays after the deliverable is due and $500 per day thereafter for each day after its due date until the report or other document is submitted.

65. Stipulated penalties for subparagraph d. of the preceding paragraph shall begin to accrue on the day after performance is due, and shall continue to accrue up to, but exclusive of, the date the reports are submitted.

66. The determinations of whether the SEP has been satisfactorily completed and whether PRASA has made a good faith, timely effort to implement the SEP shall be in the discretion of EPA, subject to Section XVIII (Dispute Resolution) of this Consent Decree.

67. PRASA shall pay any stipulated penalties that accrue under this Section within thirty (30) days of receipt of written demand by EPA for such penalties. PRASA shall pay such penalties by certified or cashier's check, made payable to "Treasurer, United States of America," and tender payment to the U.S. Attorney's Office, in the District of Puerto Rico, to the address specified in Section XV (Notices) of this Consent Decree. PRASA shall also send a copy of the transmittal letter and the check to the addresses specified in that Section. Interest and late charges shall be paid in accordance with the applicable provisions of Section IX (Stipulated Penalties) of this Consent Decree.

68. Any public statement, oral or written, in print, film, or other media, made by PRASA making reference to any SEP implemented pursuant to this Section shall prominently include the following language in both English and Spanish:

> "This project was undertaken in connection with the settlement of an enforcement action taken by the United States Environmental Protection Agency for violations of the Federal Clean Water Act."

69. If any event occurs which causes or may cause delays in the completion of any portion of the SEP as required under this Consent Decree, the provisions of Section XIII (Force Majeure) of this Consent Decree shall be controlling.

XX. COMPLIANCE WITH APPLICABLE LAWS

70. Except to the extent provided in Section XXI (Release), this Consent Decree in no way relieves Defendants and ONDEO of their 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. PRASA/ONDEO shall be responsible for obtaining all Commonwealth or local permits which are necessary for the performance of any obligations imposed in this Consent Decree. This Consent Decree shall not be construed as a determination of any issue related to any federal, Commonwealth, or local permit, nor shall it be construed to be an NPDES permit or a modification of any NPDES permit or other permit.

71. Except to the extent specified by the release provided herein, nothing in this Consent Decree relieves PRASA/ONDEO from any requirements imposed on them relating to the Clean Water Act, 42 U.S.C. § 1311, *et seq.*, or any orders or permits issued pursuant to the CWA.

XXI. RELEASE

72. This Consent Decree releases the Defendants and ONDEO, their officers, agents, directors, employees, parent, grandparent and related or affiliated companies, subsidiaries, successors in interest and assigns from civil liability for all unlawful discharges and all known reporting violations at all pump stations owned and/or operated by the Defendants for the five years preceding commencement of this action (including but not limited to those violations that were pled in the Complaint in this action, as deemed amended by this Consent Decree) up to the date of lodging of this Consent Decree.

73. As to CAPR, this release shall become effective when the following conditions have been satisfied:

a. Notice is received by EPA that the civil penalty in the amount of $1,000,000, as required to be paid pursuant to Section V (Civil Penalties) of this Consent Decree, has been paid, along with interest and/or stipulated penalties, if any; and

b. Written confirmation that an interest-bearing escrow account in the amount of $1,000,000 to fund the SEP or SEPs pursuant to Section XIX (Supplemental Environmental Project) of this Consent Decree, has been established, such confirmation to include a true and correct copy of the signed escrow instrument.

74. This Consent Decree supercedes any Administrative Order issued by EPA to PRASA and/or the operator of PRASA's pump stations to the extent that the obligations imposed on PRASA and/or the operator of PRASA's pump stations under this Consent Decree specifically address the obligations imposed under such Administrative Order. In the event of a conflict between the specific tasks and timetables required under this Consent Decree and

specific tasks and timetables required under any Administrative Order issued by EPA, the terms of this Consent Decree shall control.

XXII. RESERVATION OF RIGHTS

75. Except as provided in Section XXI (Release), the entry of this Consent Decree shall not limit or otherwise preclude the United States from taking additional criminal or civil enforcement action with regard to PRASA's facilities, including all appurtenances thereto, pursuant to any federal or Commonwealth law, regulation or permitting condition. EPA reserves the right to order or to require PRASA/ONDEO to take such other corrective action or response measures as EPA deems necessary to protect human health or the environment. Except as otherwise specified in this Consent Decree, the Defendants and ONDEO reserve their right to raise any defense available to them to any such criminal, civil, or other corrective action instituted by the United States.

76. This Consent Decree does not limit or affect the rights of Defendants, ONDEO or the United States against any third parties not named herein, nor the rights of third parties not parties to this Consent Decree against any other parties.

77. The execution of this Consent Decree in no way affects the rights and obligations between PRASA and CAPR, between PRASA and ONDEO, and between CAPR and ONDEO, if any.

XXIII. COSTS OF SUIT

78. Each party shall bear its own costs and attorney's fees in this action.

79. In the event that this Court subsequently determines that the Defendants and/or ONDEO have violated the terms and conditions of this Consent Decree, the

violator-Defendant(s) and/or ONDEO shall be jointly and severally liable for all reasonable costs, attorneys fees, or other expenses incurred by the United States in any action or proceeding against Defendants and/or ONDEO for noncompliance with this Consent Decree.

XXIV. PUBLIC COMMENT

80. Final approval of this Consent Decree by the United States is subject to the public notice and comment requirements of 28 C.F.R. § 50.7. The United States may withdraw or withhold its consent if the public comments establish that entry of this Consent Decree would be inappropriate, improper, inadequate or otherwise not in the public interest. After reviewing the public comments, if any, the United States shall advise the Court by motion whether it seeks entry of this Consent Decree. The Defendants and ONDEO agree to the entry of this Consent Decree, as presented to the Court for lodging, without further notice.

XXV. MODIFICATION

81. No material modification shall be made to this Consent Decree without written agreement of all parties who remain subject to the Consent Decree and written approval of the Court. Nothing in this paragraph shall be deemed to alter the Court's power to supervise this Consent Decree.

XXVI. RETENTION OF JURISDICTION

82. The Court shall retain jurisdiction of this matter until termination of the Consent Decree.

83. 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.

XXVII. EFFECTIVENESS AND TERMINATION

84. Unless otherwise provided herein, this Consent Decree shall be effective upon the date of its entry by the Court.

85. Except for the records retention provision of this Consent Decree, this Consent Decree shall be terminated when the following conditions have been met:

a. All civil penalties and stipulated penalties, if assessed, pursuant to any provision of this Consent Decree have been paid.

b. All SEPs have been satisfactorily completed in accordance with the provisions of Section XIX (Supplemental Environmental Project).

c. PRASA/ONDEO certifies to EPA that all remedial tasks set forth in Appendix A of this Consent Decree as to those particular pump stations have been completed.

d. All requirements of Section XIV (Removal of Pump Stations From Designated Stipulated Penalties) of this Consent Decree have been fulfilled at 95% of all PRASA pump stations then in operation; provided, however, that any pump stations that have been removed from the designated stipulated penalties shall remain subject to the OMP until 95% of all PRASA pump stations then in operation have been so removed and have been operating under the OMP for not less than six consecutive months.

e. EPA and PRASA/ONDEO have met to address the remaining 5% of pump stations not covered by the preceding subparagraph and to stipulate in writing to reasonable capital improvements or remedial actions necessary to achieve satisfactory compliance with the Clean Water Act, applicable regulations and NPDES permits at those pump stations. Unless otherwise agreed by the parties, any such stipulation entered into between EPA or the United

States on behalf of EPA and PRASA/ONDEO shall not, by itself, bar the termination of this Consent Decree if all other conditions of this Section have been met.

f. As to CAPR, this Consent Decree shall terminate and CAPR shall be entitled to dismissal, and shall move for same, from *United States v. Puerto Rico Aqueduct and Sewer Authority, et al.*, Civ. No. 01-1709 (JAF), when each of those conditions set forth in Section XXI (Release) pertaining solely to CAPR have been met. The United States and/or PRASA reserve the right to oppose CAPR's motion to dismiss if either party believes such conditions have not been met.

86. Nothing herein shall relieve PRASA/ONDEO or any subsequent operator of the pump station facilities from the obligation to provide proper operation and maintenance at all pump stations as required by the Clean Water Act, regulations promulgated thereunder, and the terms and conditions of PRASA's NPDES permits after termination of this Consent Decree.

87. The parties may at any time after the conditions in this Section have been met jointly move to terminate this Consent Decree based on their representation that all its requirements have been satisfied.

88. Nothing herein shall be construed to limit the authority of the United States to undertake any action against any person, including PRASA/ONDEO, to abate or correct conditions which may present an imminent and substantial endangerment to the public health, welfare, or the environment, or for any other violation of law or regulation.

So ORDERED this _____ day of _____, 2002.

_____
Hon. JOSE ANTONIO FUSTE
United States District Judge

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States v. Puerto Rico Aqueduct and Sewer Authority, et al.*, Civil No. 01-1709 (JAF).

FOR THE PLAINTIFF UNITED STATES OF AMERICA:

Dated:_____

_____
THOMAS L. SANSONETTI
Assistant Attorney General
Environment and Natural Resources
Division
U.S. Department of Justice

Dated:_____

_____
JONATHAN A. MARKS
Attorney
Environmental Enforcement Section
Environment and Natural Resources
Division
U.S. Department of Justice
1425 New York Ave., N.W.
Washington, D.C. 20005

BERT GARCIA
United States Attorney
District of Puerto Rico

Dated:_____

_____
ISABEL MUÑOZ
Assistant United States Attorney
District of Puerto Rico
Federal Office Building, Rm. 101
Carlos E. Chardon Avenue
Hato Rey, Puerto Rico 00918

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States v. Puerto Rico Aqueduct and Sewer Authority, et al.*, Civil No. 01-1709 (JAF).

Dated: 3/16/03

J. P. SUAREZ
Assistant Administrator for
Enforcement
United States Environmental
Protection Agency
Ariel Rios Bldg.
1200 Pennsylvania Ave., N.W.
Washington, D.C. 20460

Dated: 2/27/03

ERIC SCHAAF
Acting Regional Counsel
EPA Region II

Dated: 2/20/03

EDUARDO J. GONZALEZ
Assistant Regional Counsel
Office of Regional Counsel
EPA Region II

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States vs. Puerto Rico Aqueduct and Sewer Authority, et. al.*, Civil No. 01-1709 (JAF).

FOR THE DEFENDANT PUETO RICO AQUEDUCT AND SEWER AUTHORITY:

Dated: 1/13/03

JUAN AGOSTO ALICEA
Executive President
Puerto Rico Aqueduct and Sewer Authority
PMB 469 – PO Box 7891
Guaynabo, Puerto Rico 00970-7891

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United* States *v.*

Puerto Rico Aqueduct and Sewer Authority, et al., Civil No. 01-1709 (JAF).

FOR THE DEFENDANT COMPAÑIA DE AGUAS DE PUERTO RICO:

Dated: 1/16/02

CARLOS JOSÉ ONETTI IRIZARRY, Esq.
P.O. Box 9300300
San Juan, Puerto Rico 00930-0300

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States v. Puerto Rico Aqueduct and Sewer Authority, et al.*, Civil No. 01-1709 (JAF).

FOR ONDEO:

Dated: _____

_____

United Water/ONDEO
200 Old Hook Road
Harrington Park, NJ 07640-1799

_____

CHARLES DUPONT
General Director
ONDEO DE PUERTO RICO, INC.
PO Box 7066
Santurce, PR 00916

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United* States *v. Puerto Rico Aqueduct and Sewer Authority, et. al.,* Civil No. 01-1709 (JAF).