



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. 2
2008 JUL 30 PM 4:00
REGIONAL HEARING
CLERK

CERTIFIED MAIL - RETURN RECEIPT REQUESTS
ITEM NUMBER 70053110000059323090

July 30, 2008

Jose Alberto Feliciano Ramos, Esq.
PO BOX 2411
Bayamón, Puerto Rico 00960-2411

RE: In the Matter of Herminio Cotto Construction
Docket No. CWA-02-2007-3404

Dear Jose:

Enclosed is a copy of the Consent Agreement and Final Order (CA/FO) in the above-referenced matter. This CA/FO was fully executed on July 29, 2008.

Please note that the penalty of \$3,000.00 is required to be paid in full and received by EPA as follows: \$1,000.00 no later than forty-five calendar days after the date of signature on the Final Order; \$1,000.00 no later than August 31, 2008; and \$1,000.00 no later than October 31, 2008.

Sincerely,

Diane T. Gomes, Esq.

Enclosure

cc: Karen Maples
Regional Hearing Clerk (w/enclosures)

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 2**

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REGION 2
2007 JUL 30 PM 4:00
REGIONAL CLERK

IN THE MATTER OF:

Herminio Cotto Construction

NPDES Permit Number PRR10BB24

Respondent

Proceeding pursuant to Section 309(g) of the
Clean Water Act, 33 U.S.C. §1319(g)

**Consent Agreement
And
Final Order**

**DOCKET NO.
CWA-02-2007-3404**

Consent Agreement and Order

Complainant, the United States Environmental Protection Agency ("EPA"),
having issued the Complaint herein on August 29, 2007, against Respondent, Herminio
Cotto Construction ("Respondent"),

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 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 of the Clean Water Act, 33 U.S.C. § 1319.
2. The Complaint alleges that Respondent has failed to comply with conditions of
EPA's National Pollutant Discharge Elimination System- Construction General
Permit and with a request for information made pursuant to Section 308 of the
CWA, and is, therefore in violation of Sections 301, 308 and 402 of the Act, 33
U.S.C. §1311, §1318 and §1342.
3. EPA notified the Commonwealth of Puerto Rico regarding this action and
offered an opportunity for the Commonwealth to confer with EPA on the
proposed penalty assessment, pursuant to 40 CFR Part 22.
4. This action was public noticed. No public comment was received.

5. Respondent filed an Answer and requested a hearing in this matter.
6. This Consent Agreement and Final Order shall apply to and be binding upon Respondent, its officers, directors, employees, successors and assigns, including, but not limited to, subsequent purchasers.
7. Respondent stipulates that EPA has jurisdiction over the subject matter alleged in the Complaint and that the Complaint states a claim upon which relief can be granted against Respondent. Respondent waives any defenses it might have as to jurisdiction and venue, and, without admitting or denying the factual or legal allegations contained in the Complaint, consents to the terms of this Consent Agreement and Final Order.
8. Respondent hereby waives its right to a judicial or administrative hearing or appeal on any issue of law or fact set forth in the Complaint.

II. TERMS OF SETTLEMENT

9. Pursuant to ' 309(g) of the Clean Water Act, 33 U.S.C. ' 1319(g), ~~the nature of the violations,~~ and other relevant factors, including Respondent's ability to pay a penalty, EPA has determined that an appropriate civil penalty to settle this action is in the amount of THREE THOUSAND (\$3,000.00) DOLLARS. 
10. For purposes of settlement, Respondent consents to the issuance of this Consent Agreement and consents to the payment of the civil penalty cited in the foregoing Paragraph.

II. A. Penalty

11. Respondent shall pay the penalty of THREE THOUSAND (\$3,000.00) DOLLARS by cashier's or certified checks, payable to the "Treasurer of the United States of America", identified with a notation of the name and docket number of this case, set forth in the caption on the first page of this document, as follows:

ONE THOUSAND (\$1,000.00) DOLLARS - No later than forty-five (45) calendar days after the date signature on the Final Order (at the end of this document);

ONE THOUSAND (\$1,000.00) DOLLARS- Due on or before August 31, 2008;

ONE THOUSAND (\$1,000.00) DOLLARS – Due on or before October 31, 2008.

These checks shall be mailed to:

**U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000**

Respondents shall also send copies of this payment to each of the following:

**Henry Mazzucca, P.E., Chief
Compliance Section
Water Compliance Branch
U.S. EPA, Region 2
290 Broadway, 20th Floor
New York, NY 10007**

and


**Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th Floor
New York, New York 10007**

Payment must be received at the above by the dates specified above. The dates by which payment must be received shall hereafter be referred to as the "due dates".

- a. failure to pay the penalty in full according to the above provisions will result in a referral of this matter to the United States Department of Justice or the United States Department of the Treasury for collection;**
- b. further, if any of the payments is not received on or before its respective due date, interest will be assessed at the annual rate established by the Secretary of Treasury pursuant to the Debt Collection Act, 31 U.S.C. § 3717, on the overdue amount from the due date through the date of payment. In addition, a late payment handling charge of \$15.00 will be assessed for each 30 day period (or any portion thereof) following the due date in which the balance remains unpaid. A 6% per annum penalty also will be applied on any principal amount not paid within 90 days of the due date;**
- c. in addition, pursuant to Section 309(g)(9) of the Clean Water Act, 33 U.S.C. § 1319(g)(9), if payment is not received by the respective due date, a quarterly nonpayment penalty will be imposed for each calendar quarter during which such nonpayment persists. The quarterly nonpayment penalty is 20% of the aggregate amount of penalties and quarterly nonpayment penalties which are unpaid as of the beginning of such quarter;**
- d. Respondent also may be required to pay attorneys fees and costs for collection proceedings in connection with nonpayment.**

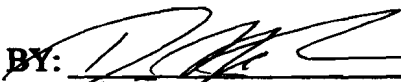

19. Each party shall bear its own costs and attorneys fees in connection with the action resolved by this Consent Agreement and Order.

RESPONDENT:

BY: 
Herminio Cotto
President
Herminio Cotto Construction, Inc.
PO 1600
Suite 1008
Cidra, PR 00739

DATE: 6/30/06

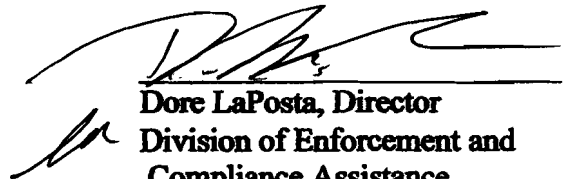
COMPLAINANT:

BY: 
 Dore LaPosta, Director
Division of Enforcement and
Compliance Assistance
U.S. EPA, Region 2
290 Broadway, 21st Floor
New York, New York 10007-1866

DATE: 7/29/08

The Director of the Division of Enforcement and Compliance Assistant, U.S. Environmental Protection Agency Region 2, ratifies the foregoing Consent Agreement. The 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, U.S. EPA Region 2, New York, NY.

7/29/08
Date



Dore LaPosta, Director
Division of Enforcement and
Compliance Assistance
U.S. EPA, Region 2
290 Broadway, 21st Floor
New York, New York 10007-1866

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 2**

IN THE MATTER OF:

Herminio Cotto

NPDES Permit Number PRR10BB24

Proceeding pursuant to Section 309(g) of
the Clean Water Act, 33 U.S.C. §1319(g)

Respondent

**DOCKET NO.
CWA-02-2007-3404**

CERTIFICATE OF SERVICE

I certify that, on the date noted below, I served the foregoing fully executed Consent Agreement and Final Order, bearing the above-referenced docket number, in the following manner.

**Original and One Copy
By Hand:**

Office of Regional Hearing Clerk
U.S. Environmental Protection Agency - Region 2
290 Broadway, 16th floor
New York, New York 10007-1866

**Copy by Certified Mail
Return Receipt Requested:**

Jose Alberto Feliciano Ramos, Esq.
PO BOX 2411
Bayamón, Puerto Rico,
00960-2411

Copy by Hand:

Helen S. Ferrara
Regional Judicial Officer
U.S. Environmental Protection Agency - Region 2
290 Broadway, 16th floor
New York, New York 10007-1866

Dated: 7-30-08



Ana Madera