

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

IN THE MATTER OF:

Martex Development, S.E.
P.O. Box 3402,
Carolina, Puerto Rico 00984

**Villas de La Central Victoria Housing
Development**
NPDES CGP Number PRR10BT64

RESPONDENT

DOCKET NUMBER CWA-02-2011

PROCEEDING PURSUANT TO SECTION
309(G) OF THE CLEAN WATER ACT,
33 U.S.C. § 1319(G), TO ASSESS CLASS I
CIVIL PENALTY

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG.11
2011 SEP 27 A 11:52
REGIONAL HEARING
CLERK

**ADMINISTRATIVE COMPLAINT, FINDINGS OF VIOLATION,
NOTICE OF PROPOSED ASSESSMENT OF AN ADMINISTRATIVE PENALTY,
AND NOTICE OF OPPORTUNITY TO REQUEST A HEARING**

I. Statutory and Regulatory Authorities

1. This Administrative Complaint, Findings of Violation, Notice of Proposed Assessment of a Civil Penalty, and Notice of Opportunity to Request a Hearing (Complaint) is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency (EPA) by Section 309(g)(2)(A) of the Clean Water Act ("CWA" or "Act"), 33 U.S.C. § 1319(g)(2)(A). The Administrator has delegated this authority to the Regional Administrator of EPA, Region 2, who in turn has delegated it to the Director, Caribbean Environmental Protection Division (CEPD) of EPA, Region 2 (Complainant).

2. Pursuant to Section 309(g)(2)(A) of the Act, and in accordance with the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits" (CROP), 40 C.F.R. Part 22 a copy of which is attached, Complainant hereby requests that Regional Administrator assess a civil penalty against Martex Development, S.E., (hereinafter, the "Respondent"), as a result of Complainant's determination that the Respondent is in violation of Section 301 of the Act, 33 U.S.C. § 1311, for Respondent's failure to comply with certain requirements of the National Pollutant Discharge Elimination System (NPDES) Construction General Permit for discharges associated with construction activities at the Villas de la Central Victoria Housing Development (the "Project"), in violation of Section 301 of the Act, 33 U.S.C. § 1311.

3. Section 301(a) of the Act, 33 U.S.C. § 1311(a), provides in part that "[e]xcept as in compliance with this Section and Sections ...402, and 404 of the Act, the discharge of any pollutant by any person shall be unlawful."

4. Section 308(a)(A) of the Act, 33 U.S.C. § 1318(a)(A), establishes that whenever required to carry out the objective of the Act, the Administrator shall require the owner or operator of any point source to, among other things :establish and maintain such records; make such reports; install, use and monitor such equipment or methods; sample such effluents; and provide such other information as may be required in order to carry out Section 402 of the Act, 33 U.S.C. § 1342.

5. Section 402 of the Act, defines NPDES as the national program for, among other things, issuing and enforcing permits.

6. Section 402 of the Act, authorizes the Administrator to issue a NPDES permit for the discharge of any pollutant, or combination of pollutants, subject to certain requirements of the Act and such conditions as the Administrator determines are necessary.

7. Section 402 (p) (2) (B) of the Act, requires a permit with respect to a discharge associated with industrial activity.

8. The Administrator of EPA has promulgated regulations at 40 C.F.R. §122.26(a)(1)(ii) and § 122.26(b)(14) which require operators to obtain a NPDES permit for storm water discharges associated with industrial activity, including construction activity.40 C.F.R. § 122.5(b) requires permits for the discharge of any pollutant from any point source into bodies of the United States.

9. The Act and its implementing regulations and applicable NPDES permit contain the following definitions:

- a) "Commencement of construction activities" for the purposes of the NPDES storm water general permit for construction activities and in the context of storm water associated with construction activity (68 FR 39087 - Appendix A) means the initial disturbance of soils associated with clearing, grading, excavation activities or other construction-related activities.
- b) "Construction activity" as clearing, grading and excavating activities that result in the disturbance of one (1) or more acres of total land area. 40 CFR § 122.26(b)(14)(x) and 40 CFR §122.26(b)(15)(i).
- c) "Discharge of a pollutant" as any addition of any pollutant to navigable waters and/or waters of the United States from any point source. Section 502(12) of the Act, 33 U.S.C. § 1362(12), and 40 CFR § 122.2;

- d) "Facility," as any NPDES point source or any other facility or activity (including land or appurtenances thereto) that is subject to the regulations of the NPDES program. 40 CFR § 122.2
- e) "Navigable waters" as the waters of the United States, including the territorial seas., pursuant to Section 502(7) of the Act, 33 U.S.C. § 1362(7); "Waters of the United States" means all waters such as lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, among others, and their tributaries. 40 C.F.R. § 122.2
- f) "Operator" for the purposes of the NPDES storm water general permit for construction activities and in the context of storm water associated with construction activity (57 FR 41190 and 63 FR 7859), means any party associated with a construction project that meets either of the following two (2) criteria:
 - i) The party has operational control over construction plans and specifications including the ability to make modifications to those plans and specifications; or
 - ii) The party has day-to-day operational control of those activities at a project which are necessary to ensure compliance with a storm water pollution prevention plan for the site or other permit conditions.
- g) "Point source" as any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharged. Section 502(14) of the Act, 33 U.S.C. § 1362(14), and 40 CFR § 122.2;
- h) "Pollutant" as including, among others, solid waste, dredged spoil, rock, sand, cellar dirt, sewage, sewage sludge and industrial, municipal and agricultural waste discharged into water. Section 502(6) of the Act, 33 U.S.C. § 1362(6), and 40 C.F.R. § 122.2;

10. On July 1, 2003, EPA issued the "NPDES General Permit for Discharges from Large and Small Construction Activities" (the "Construction Permit" or "Permit").

11. The Construction Permit was published in the Federal Register on July 1, 2003 (68 FR 39087). The Construction Permit became effective on July 1, 2003 and expired at midnight, July 1, 2008. Coverage under the Construction Permit was extended until February 15, 2012:

- a) Subpart 1.3 of the Permit establishes eligibility requirements for those owners or operators seeking permit coverage for their construction.
- b) Subpart 1.3.A.1 of the Permit authorizes the discharge of pollutants in storm water associated with large and small construction activities subject to compliance with the terms and conditions of the Permit.
- c) Subpart 2.1 of the Permit indicates that when an owner or operator submits a Notice of Intent ("NOI") after September 30, 2003 and prior to the expiration date of the Permit, the owner or operator is authorized to discharge storm water from the construction activities under the terms and conditions of the Permit seven (7) calendar days after the acknowledgement of receipt of the operator's complete NOI is posted on EPA's NPDES website.
- d) Section 2.3.A of the Construction Permit establishes application deadlines for owners or operators of new projects. Such owners or operators were required to file a complete and accurate NOI form prior to commencement of construction activities.
- e) Section 3.1.A of the Construction Permit requires that an owner or operator prepare a Storm Water Pollution Prevention Plan (SWPPP) prior to submission of the NOI.
- f) Section 3.1.D of the Construction Permit requires that an owner or operator implement the SWPPP as written from commencement of construction activity until final stabilization is complete.

12. The EPA regulations at 40 C.F.R. § 122.26(b)(14)(x), requires that owners or operators of construction activities apply and obtain NPDES permit coverage for storm water discharges associated with construction activities

13. An owner or operator of a construction site is required to submit an individual permit application no later than ninety (90) days, before the date on which construction is to commence, unless the owner or operator obtains authorization under an NPDES storm water general permit for construction activities. 40 C.F.R. § 122.21.

II. Jurisdictional Findings

14. Respondent Martex Development, S.E., conducts business in the Commonwealth of Puerto Rico. Its physical address is Gurabo Abajo Ward, Road No. 185, Km. 3.5, Las Piñas Sector, Juncos, Puerto Rico. Respondent is a "person" within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5). Mr. Venancio Marti is the President of Martex Development, S.E.

15. Respondent is the owner of the Project, as defined in 40 C.F.R. § 122.2.
16. To the best of EPA's knowledge, Respondent hired Martex General Contractors, Inc., to conduct construction activities at the Project. Martex General Contractors, Inc. is a corporation authorized to do business in the Commonwealth of Puerto Rico and Mr. Venancio Marti is also the corporation's President. Both Respondent and Martex General Contractors, Inc., have the same physical address.
17. The Project is located at State Road 185, Km.19.0, Sector Las Piñas, Gurabo Abajo Ward, Gurabo, Puerto Rico, 00778. The Project consists of the development of approximately 350 single family-units. Construction activities associated with the project include earth movement activities, including clearing and grubbing, cut and fill, excavation, site preparation, infrastructure installation and street construction activities. The construction activities at the Project are best described by the Standard Industrial Classification code 1521 (Single-Family Housing). Earth movement activities at the Project involve clearing, grading and excavation on approximately 66 acres of land. Earth movement activities associated with the construction of the Project began on or about September 9, 2010 and will end on September 30, 2013.
18. Based upon information and belief, after commencement of activities associated with the Project, as described above in paragraph 17, Respondent submitted a NOI to EPA, dated November 30, 2010, seeking coverage under the Construction Permit. EPA granted Permit coverage beginning on December 7, 2010. The Permit number assigned for the Project is PRR10BT64.
19. At all relevant times, Respondent's Project was and is a "construction activity" as defined in 40 C.F.R. § 122.26(b)(14)(x).
20. Respondent's Project was and is, at all relevant times, a "point source" within the meaning of Section 502(14) of the Act, 33 U.S.C. § 1362(14), and 40 C.F.R. § 122.2.
21. Respondent is authorized to discharge storm water associated from construction activities from the Project run into an unnamed creek which discharges into Rio Gurabo which flows into Rio Grande de Loiza eventually reaching the Atlantic Ocean.
22. The Atlantic Ocean is a water of the United States, pursuant to Section 502(7) of the Act, 33 U.S.C. § 1362(7), and 40 C.F.R. § 122.2.
23. At all relevant times, Respondent's Project was subject to the requirements and conditions of the Permit for construction activities.

III. Findings of Violations

24. Complainant re-alleges Paragraphs 14-23 above.
25. On February 22, 2011, a representative of EPA Region 2 conducted an inspection of the Project. At the time of the inspection EPA found that:

- a) Respondent had failed to Implement effective erosion and sediment controls, necessary to minimize erosion and sedimentation in order to avoid the discharge of pollutants from the construction site;
- b) The Project's storm water retention pond was not adequate and did not manage sediments from project runoff because the retention period was not enough for sedimentation to occur. The overflow control was too low and sediment from the Project's runoff was reaching the receiving body of water;
- c) Construction activities were ongoing; and
- d) Respondent did not have a SWPPP available for EPA at the Project at the time of the inspection.

26. Respondent commenced construction activities (earth movement) before filing the NOI to obtain permit coverage.

27. Respondent was in violation of Section 2.3 of the Permit, which authorizes an owner/operator to discharge storm water from construction activities seven calendar days after acknowledgment of receipt of its NOI.

28. Section 3.6 of the Permit requires proper maintenance of control measures at the site:

- a) Respondent has to maintain all control measures and other protective measures in effective operating conditions. If inspections required under the permit identify Best Management Practices (BMPs) that are not operating effectively, Respondent must perform maintenance as soon as possible to maintain the continued effectiveness of storm water controls,
- b) If existing BMPs have to be modified, or additional BMPs are needed, Respondent is required to implement them as soon as possible,
- c) Respondent must remove sediment from sediment traps or sedimentation ponds when design capacity has been reduced by 50%, and
- d) Respondent must remove trapped sediment from silt fence before a deposit reaches 50% of the above-ground fence height.

29. Section 5.2 requires that a SWPPP have regarding site and activity description: identification of the site operators; the nature of the construction; a legible site map; a description of the construction and waste materials expected to be stored on-site; and a description and identification of other industrial storm water discharges.

30 Section 5.2.C established that the legible site map, showing the entire site has to identify, among other things, directions of storm water flow and approximate slopes anticipated after grading activities, locations where storm water discharges to a surface water and locations of all water of the United States.

31. Section 5.10 requires that Respondent maintain and update the SWPPP to reflect modifications to storm water control measures made in response to a change in design, construction, operation or maintenance of the site that has or could have a significant effect on the discharge of pollutants to the waters of the United States that has not been previously addressed in the SWPPP.

32. Section 5.11.C. requires that the SWPPP must be made available upon request by EPA. A copy of the SWPPP is required to be kept on-site or readily available to EPA at the time of an on-site inspection. Respondent did not have a copy of the SWPPP at the Project. Section 5.3 requires that Respondent maintain

33. Respondent is required to maintain all erosion and sediment controls and all other protective measures identified in the SWPPP.

34. On July 18, 2011, EPA issued an Administrative Compliance Order (Compliance Order) (Docket Number CWA-02-2011-3117) against Respondent for the violations found during the Inspection, in order to bring Respondent into compliance.

35. The Compliance Order required that Respondent, among other things:

- a) Cease and desist from discharging storm water runoff from the Project into Rio Gurabo;
- b) Cease and desist all clearing, grading and excavation activities at the Project, except in those areas where certain activities needed to be performed in accordance with the requirements of the Compliance order;
- c) Amend the SWPPP to include the site map and the inspection report forms to comply with Parts 3, 4 and 5 of the Construction Permit;
- d) Submit the SWPPP to EPA; and
- e) Submit a Compliance Plan to comply with the requirements of the Construction Permit and the Act.

36. EPA obtained a copy of Respondent's SWPPP after the Inspection. A review of the SWPP showed that:

- a) The SWPPP was not adequate and did not reflect the actual

Project, it did not include site changes made during the construction process;

- b) The SWPPP did not have a eligible site map showing the storm water flow and the location where the storm water discharges into the receiving body of water;
- c) The SWPPP was not signed by an authorized representative; and
- d) The SWPPP did not contain copies of the inspection reports conducted by Respondent for the construction site as required by Part 5.9 of the CGP.

37. Respondent informed EPA it had ceased and desisted from discharging sediment from storm water runoff from the project into the Rio Gurabo, and that it had also ceased and desisted from the activities requested by the Compliance Order.

Based on the findings on paragraphs 24-37 above, Respondent is liable for the violations of Sections 402 and 301(a) of the Act, 33 U.S.C. §§ 1342 and 1311(a), as specified below:

a. **Claim 1 – Failure to apply for and obtain NPDES permit coverage before commencement of construction activities**

Respondent did not submit an individual NPDES permit application as required by 40 C.F.R. § 122.21, nor did it file a complete and accurate NOI form prior to commencement of construction activities as required by Part 2 of the Construction Permit, at least from September 9, 2010 (date when Respondent began to perform earth movement activities at the Project), through November 30, 2010 (date when Respondent filed the NOI form seeking NPDES coverage under the Construction Permit for its storm water discharges associated with its construction activities).

b. **Claim 2 – Illegal discharges of pollutant (storm water) into waters of the United States without NPDES permit coverage.**

Respondent discharged pollutants from the Project into waters of the United States without NPDES permit coverage, in violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a), at least from September 9, 2010 (date when Respondent began to perform earth movement activities at the Project), through November 30, 2010 (date when Respondent filed the NOI form seeking NPDES coverage under the Construction Permit for its storm water discharges associated with its construction activities).

c. **Claim 3 – Failure to develop a complete and adequate SWPPP.**

Respondent's SWPPP was inadequate since it did not have: a legible site map with drainage patterns, location of storm water discharges and storm water management controls. Respondent failed to develop and implement

an adequate and complete SWPPP as required by Part 5 of the Construction Permit from at least December 7, 2010 (date of CGP coverage) to August 15, 2011, (the date of Respondent's letter when he informed EPA it had ceased and desisted) for **approximately 252 days**. Respondent also failed to sign and/or certify the SWPPP. Respondent failed to sign and/or certify the SWPPP as required by Part 5.1.7 of the Construction Permit this is a **one-time occurrence**.

d. **Claim 4 – Failure to design, implement or maintained BMPs.**

Respondent did not properly implement BMPs at the site to control storm water discharges associated with construction activities and failed to maintain existing BMPs as required by Part 3 of the Construction Permit from February 22, 2011 (date when EPA performed the CEI at the Project) to August 15, 2011 (the date of Respondent's letter when he informed EPA it had ceased and desisted) Respondent failed to design, implement or maintained BMPs for **approximately 175 days**.

e. **Claim 5 – Failure to conduct inspections.**

Respondent did not implement the SWPPP by not conducting inspections as required by Part 4 of the Construction Permit. Respondent did not provide evidence that inspections were performed. Respondent failed to conduct inspections as required by Part 4 of the Construction Permit from December 7, 2010 (date of permit coverage) to August 15, 2011 in **18 occasions**.

The EPA will notify the Commonwealth of Puerto Rico regarding this proposed action by mailing a copy of this Complaint and Notice and offering an opportunity for the Commonwealth to confer with EPA on the proposed penalty assessment.

IV. Notice of Proposed Order Assessing a Civil Penalty

Based on the foregoing Findings of Violation, and pursuant to the authority of Section 309(g) of the Act, 33 U.S.C. § 1319(g), EPA, Region 2 hereby proposes to issue a Final Order Assessing Administrative Penalties (Final Order) to Respondent assessing a penalty of **\$28,303.00**. The proposed penalty has been determined in accordance with the applicable factors under Section 309(g)(3) of the Act, 33 U.S.C. § 1319(g)(3). EPA is required to take in consideration the nature, circumstances, extent and gravity of the violation (or violations), and Respondent's prior compliance history, degree of culpability, economic benefit or savings accruing to Respondent by virtue of the violations, and Respondent's ability to pay the proposed penalty. EPA has also taken in consideration the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, which requires EPA to adjust penalties for inflation on a periodic basis.

Based on the Findings set forth above, Respondent has been found to have violated in numerous occasions the NPDES regulations and the Act. Respondent failed to apply

for coverage under the CGP prior to commence construction activities and illegally discharged pollutants (storm water) into waters of the United States without NPDES permit coverage perform inspections, prepare an adequate storm water pollution prevention plan, implement BMPs, as required by the Construction Permit. Respondent are culpable for the violations. EPA took into account Respondent' knowledge of the NPDES regulations, the Construction Permit, and the risks to human health and the environment posed by the uncontrolled discharges of storm water runoff from the Project into the Rio Gurabo which discharges into the Rio Grande de Loiza and eventually the Atlantic Ocean, a water of the United Sates.

The violations discussed in this Complaint are serious since Respondent's failure to timely apply for CGP coverage, to develop and adequate and complete storm water pollution prevention, to design, implement and maintain BMPs, and to conduct inspections at the Project could have caused a significant amount of sediments to reach surface water that could cause direct and indirect negative effects on human health and the environment. Respondent knew of their obligations under the NPDES regulations, Construction Permit, and the Act. Respondent does not have a prior history of violations under the NPDES program. EPA may issue a final Order Assessing Administrative Penalties thirty (30) days after Respondent' receipt of this Notice, unless Respondent, within that time files an answer to the Complaint and, requests a hearing on this Notice pursuant to the following section.

V. Procedures Governing This Administrative Litigation

The rules of procedure governing this civil administrative litigation have been set forth in the CROP, which have been codified at 40 C.F.R. Part 22. A copy of these rules accompanies this Complaint.

A. Answering the Complaint

Where Respondent intends to contest any material fact upon which the Complaint is based, to contend that the proposed penalty is inappropriate or to contend that Respondent is entitled to judgment as a matter of law, Respondent must file with the Regional Hearing Clerk of EPA, Region 2, both an original and one copy of a written Answer to the Complaint, and such Answer must be filed within thirty (30) days after service of the Complaint. 40 C.F.R. § 22.15(a). The address of the Regional Hearing Clerk of EPA, Region 2, is:

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

Respondent shall also then serve one copy of the Answer to the Complaint upon Complainant and any other party to the action. 40 C.F.R. § 22.15(a).

Respondent's Answer to the Complaint must clearly and directly admit, deny, or explain each of the factual allegations that are contained in the Complaint and with regard to which Respondent has any knowledge. 40 C.F.R. § 22.15(b). Where Respondent lacks knowledge of a particular factual allegation and so states in its Answer, the allegation is deemed denied. 40 C.F.R. § 22.15(b). The Answer shall also set forth: (1) the circumstances or arguments that are alleged to constitute the grounds of defense, (2) the facts that Respondent disputes (and thus intends to place at issue in the proceeding), (3) the basis for opposing the proposed relief, and (4) whether Respondent requests a hearing. 40 C.F.R. § 22.15(b).

Respondent's failure to affirmatively raise in the Answer facts that constitute or that might constitute the grounds of its defense may preclude Respondent, at a subsequent stage in this proceeding, from raising such facts and/or from having such facts admitted into evidence at a hearing.

B. Opportunity to Request a Hearing

If requested by Respondent in the Answer, a hearing upon the issues raised by the Complaint and Answer may be held. 40 C.F.R. § 22.15(c). If, however, Respondent does not request a hearing, the Presiding Officer (as defined in 40 C.F.R. § 22.3) may hold a hearing if the Answer raises issues appropriate for adjudication. 40 C.F.R. § 22.15(c).

Any hearing in this proceeding will be held at a location determined in accordance with 40 C.F.R. § 22.21(d). A hearing of this matter will be conducted in accordance with the applicable provisions of the Administrative Procedure Act, 5 U.S.C. §§ 551-59, and the procedures set forth in Subpart D of 40 C.F.R. Part 22.

Should Respondent request a hearing on this proposed penalty assessment, members of the public, to whom EPA is obligated to give notice of this proposed action, will have a right under Section 309(g)(4)(B) of the Act, 33 U.S.C. § 1319(g)(4)(B), to be heard and to present evidence on the appropriateness of the penalty assessment. Should Respondent not request a hearing, EPA will issue a Final Order, and only members of the public who submit timely comment on this proposal will have an additional thirty (30) days to petition EPA to set aside the Final Order and to hold a hearing thereon. EPA will grant the petition and will hold a hearing only if the petitioner's evidence is material and was not considered by EPA in the issuance of the Final Order.

C. Failure to Answer

If Respondent fails in the Answer to admit, deny, or explain any material factual allegation contained in the Complaint, such failure constitutes an admission of the allegation. 40 C.F.R. § 22.15(d). If Respondent fails to file a timely [i.e., in accordance with the 30-day period set forth in 40 C.F.R. § 22.15(a)] Answer to the Complaint, Respondent may be found in default upon motion. 40 C.F.R. § 22.17(a). Default by Respondent constitutes, for purposes of the pending proceeding only, an admission of all facts alleged in the Complaint and a waiver of Respondent's right to contest such

factual allegations. 40 C.F.R. § 22.17(a). Following a default by Respondent for a failure to timely file an Answer to the Complaint, any order issued therefore shall be issued pursuant to 40 C.F.R. § 22.17(c).

Any penalty assessed in the default order shall become due and payable by Respondent without further proceedings thirty (30) days after the Default Order becomes final pursuant to 40 C.F.R. § 22.27(c). 40 C.F.R. § 22.17(d). If necessary, EPA may then seek to enforce such Final Order of Default against Respondent, and to collect the assessed penalty amount, in federal court.

VI. Informal Settlement Conference

Whether or not Respondent requests a formal hearing, EPA encourages settlement of this proceeding consistent with the provisions of the Act and its applicable regulations. 40 C.F.R. § 22.18(b). At an informal conference with a representative(s) of Complainant, Respondent may comment on the charges made in this complaint, and Respondent may also provide whatever additional information that it believes is relevant to the disposition of this matter, including: (1) actions Respondent has taken to correct any or all of the violations herein alleged, (2) any information relevant to Complainant's calculation of the proposed penalty, (3) the effect the proposed penalty would have on Respondent's ability to continue in business, and/or (4) any other special facts or circumstances Respondent wishes to raise.

Complainant has the authority to modify the amount of the proposed penalty, where appropriate, to reflect any settlement agreement reached with Respondent, to reflect any relevant information previously not known to Complainant or to dismiss any or all of the charges, if Respondent can demonstrate that the relevant allegations are without merit and that no cause of action as herein alleged exists. Respondent is referred to 40 C.F.R. § 22.18.

Any request for an informal conference or any questions that Respondent may have regarding this Complaint should be directed to the EPA attorney named in Section VIII, Paragraph 2, below.

The parties may engage in settlement discussions irrespective of whether Respondent has requested a hearing. 40 C.F.R. § 22.18(b)(1). Respondent's requesting a formal hearing do not prevent them from also requesting an informal settlement conference; the informal conference procedure may be pursued simultaneously with the formal adjudicatory hearing procedure. A request for an informal settlement conference constitutes neither an admission nor a denial of any of the matters alleged in the Complaint. Complainant does not deem a request for an informal settlement conference as a request for a hearing as specified in 40 C.F.R. § 22.15(c).

A request for an informal settlement conference does not affect Respondent's obligation to file a timely Answer to the Complaint pursuant to 40 C.F.R. § 22.15. No penalty reduction, however, will be made simply because an informal settlement conference is held.

Any settlement that may be reached as a result of an informal settlement conference shall be embodied in a written Consent Agreement. 40 C.F.R. § 22.18(b)(2). In accepting the Consent Agreement, Respondent waives its right to contest the allegations in the Complaint and waives any right to appeal the Final Order that is to accompany the Consent Agreement. 40 C.F.R. § 22.18(b)(2). In order to conclude the proceeding, a Final Order ratifying the parties' agreement to settle will be executed. 40 C.F.R. § 22.18(b)(3).

Respondent's entering into a settlement through the signing of such Consent Agreement and its complying with the terms and conditions set forth in such Consent Agreement terminates this administrative litigation and the civil proceedings arising out of the allegations made in the Complaint. Respondent's entering into a settlement does not extinguish, waive, satisfy or otherwise affect its obligation and responsibility to comply with all applicable statutory and regulatory requirements, and to maintain such compliance.

VII. Resolution of this Proceeding Without Hearing or Conference

Instead of filing an Answer, Respondent may choose to pay the total amount of the proposed penalty within 30 days after receipt of the Complaint, provided that Respondent file with the Regional Hearing Clerk, Region 2 (at the address noted above), a copy of the check or other instrument of payment. 40 C.F.R. § 22.18(a). A copy of the check or other instrument of payment should be provided to the EPA Assistant Regional Counsel identified on Section VIII, paragraph 2. Payment of the penalty assessed should be made by sending a cashier's or certified check payable to the "**Treasurer, United States of America**", in the full amount of the penalty assessed in this complaint to the following addressee:

**Regional Hearing Clerk
U. S. Environmental Protection Agency, Region 2
PO Box 360188
Pittsburgh, Pennsylvania 15251.**

Pursuant to 40 C.F.R. § 22.18(a)(3), if Respondent elects to pay the full amount of the penalty proposed in the Complaint within thirty (30) days of receiving the Complaint, then, upon EPA's receipt of such payment, the Regional Administrator of EPA, Region 2 (or, if designated, the Regional Judicial Officer), shall issue a Final Order in accordance with 40 C.F.R. § 22.18(a)(3). In accordance with 40 C.F.R. § 22.45(c)(3), no Final Order shall issue until at least ten (10) days after the close of the comment period on this

Compliant. Issuance of a Final Order terminates this administrative litigation and the civil proceedings arising out of the allegations made in the Complaint. Further, pursuant to 40 C.F.R. § 22.18(a)(3), the making of such payment by Respondent shall constitute a waiver of Respondent's right both to contest the allegations made in the Complaint and to appeal said Final Order to federal court. Such payment does not extinguish, waive, satisfy or otherwise affect Respondent's obligation and responsibility to comply with all applicable statutory and regulatory requirements, and to maintain such compliance.

VIII. Filing of Documents

1. The original and one copy of the Answer and any Hearing Request and all subsequent documents filed in this action should be sent to:

**Regional Hearing Clerk
U.S. Environmental Protection Agency
290 Broadway - 16th Floor
New York, New York 10007-1866.**

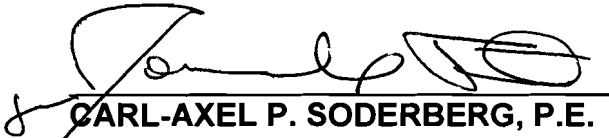
2. A copy of the Answer, any Hearing Request and all subsequent documents filed in this action shall be sent to:

**Lourdes del Carmen Rodríguez, Esq.
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 2
1492 Ponce de León Ave., Suite 417
San Juan, Puerto Rico 00907-4127
Telephone: (787) 977-5819
Fax: (787) 729-7748.**

IX. General Provisions

1. Respondent has a right to be represented by an attorney at any stage of these proceedings.
2. This Complaint does not constitute a waiver, suspension or modification of the requirements of the Act, regulations promulgated thereunder, or any applicable permit.
3. Neither assessment nor payment of an administrative civil penalty pursuant to Section 309(g) of the Act will affect Respondent's continuing obligation to comply with the Act, and with any separate Compliance Order issued under Section 309(a) of the Act, 33 U.S.C. § 1319(a), for the violations alleged herein.

ISSUED THIS _____ DAY OF _____ **0 9 2 6 1 1**



CARL-AXEL P. SODERBERG, P.E.
Director,
Caribbean Environmental Protection Division
United States Environmental Protection Agency - Region 2
1492 Ponce de León Ave., Suite 417
San Juan, Puerto Rico 00907-4127

To: Mr. Venancio Marti
President
Martex Development, S.E.
P.O. Box 3402,
Carolina, Puerto Rico 00984

cc: **Roberto Ayala**
Director
Water Quality Area
PR Environmental Quality Board
P. O. Box 11488
San Juan, PR 00910

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region 2**

**Villas de La Central Victoria Housing
Development
NPDES CGP Number PRR10BT64**

**SECTION 305(G) OF THE CLEAN
WATER ACT, 33 U.S.C. § 1319(G), TO
ASSESS CLASS I CIVIL PENALTY**

Docket No. CWA-02-2011-3359

RESPONDENT

CERTIFICATE OF SERVICE

This is to certify that on this date, I caused to be mailed a true and correct copy of the foregoing "ADMINISTRATIVE COMPLAINT, FINDINGS OF VIOLATION, NOTICE OF PROPOSED ASSESSMENT OF AN ADMINISTRATIVE PENALTY, AND NOTICE OF OPPORTUNITY TO REQUEST A HEARING" and with a copy of the "Consolidated Rules of Practice Governing the Administrative Assessments of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits," 40 C.F.R. Part 22, by:

Certified Mail/Return Receipt Requested, to:

Mr. Venancio Marti
President
Martex Development, S.E.
P.O. Box 3402,
Carolina, Puerto Rico 00984

The Original and a copy for filing by Overnight Mail to:

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

Dated:

September 26, 2011



San Juan, Puerto Rico