

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

Filed May 4, 2021 @ 3:46 pm
USEPA – Region II
Regional Hearing Clerk

IN THE MATTER OF:

ALFAYA ESTATE, LLC
P. O. Box 1580
Moca, Puerto Rico 00676

and

KARIMAR CONSTRUCTION, INC.
P. O. Box 8000
Aguada, Puerto Rico 00602

**DESARROLLO DE 9 VILLAS
RESIDENTIAL PROJECT**
Road PR-413, Km. 1.02
Intersection with Black Eagle Road
Rincón, Puerto Rico 00677

RESPONDENTS

**CONSENT AGREEMENT AND
FINAL ORDER**

**DOCKET NUMBER
CWA-02-2020-3452**

CONSENT AGREEMENT AND FINAL ORDER

Complainant, the United States Environmental Protection Agency (“EPA” or “Complainant”), having issued the Complaint referenced herein on September 30, 2020, against Alfaya Estate, LLC (“Respondent Alfaya”) and Karimar Construction, Inc. (“Respondent Karimar”) (hereinafter referred collectively as “Respondents”), and

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

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

I. Preliminary Statement

1. EPA initiated this proceeding for the assessment of a civil penalty pursuant to Section 309(g)(2)(B) of the Clean Water Act (“CWA” or “the Act”), 33 U.S.C. § 1319(g)(2)(B).

2. In the Complaint, EPA alleges that Respondents violated Sections 301(a) and 402(p) of the Act, 33 U.S.C. §§ 1311(a) and 1342(p), for failure to apply for and obtain National Pollutant Discharge Elimination System (“NPDES”) permit coverage for the discharge of pollutants (stormwater runoff associated with small construction activity) from the Desarrollo de 9 Villas Residential Project (the “Project”) located in Rincón, Puerto Rico, and for the discharges of pollutants (stormwater runoff associated with small construction activities) from such Project into waters of the United States without NPDES permit coverage.
3. On October 9, 2020, EPA provided a public notice and notice of opportunity to comment on the proposed administrative penalty assessment. EPA did not receive public comments.
4. On October 16, 2020, EPA notified the Commonwealth of Puerto Rico about this action and offered an opportunity to confer with EPA on the proposed administrative penalty assessment, pursuant to 40 C.F.R. Part 22. The Commonwealth of Puerto Rico did not submit any comments w3
5. Both Respondents filed answers to the Complaint. Complainant and Respondents engaged in settlement negotiations during which Respondents presented new information which altered EPA’s views on certain allegations in the Complaint. These discussions led to this Consent Agreement without any formal amendment of the Complaint.
6. Complainant and Respondents agree, by entering into this Consent Agreement, that settlement of all allegations contained in the Complaint upon the terms set forth in this Consent Agreement is an appropriate means of resolving this case without further litigation.
7. Respondents admit the jurisdictional allegations of the Complaint.
8. Respondents neither admits nor denies specific factual allegations contained in the Complaint.
9. Respondents waive any right to contest the allegations and their right to appeal the proposed Final Order accompanying this Consent Agreement.

II. Terms of Settlement

10. Pursuant to Section 309(g) of the Act, 33 U.S.C. § 1319(g), the nature of the violations and other relevant factors, EPA and Respondents agreed to settle this action for **seventy-five thousand dollars (\$75,000)**.
11. For purposes of settlement, Respondents consent to the issuance of this Consent Agreement and consent to the payment of the civil penalty cited in Paragraph 10, above.

III. Payment of Civil Penalty

12. Respondents shall pay a civil penalty in the amount of **\$75,000** plus accrued interest, according to the following schedule:

Payment Number	Due Date	Payment	Principle	Interest
1	Within 30 Days of File Date	\$3,157.44	\$3,125.00	\$0.00
2	File Date + 60 Days	\$3,157.44	\$3,125.00	\$119.79
3	File Date + 90 Days	\$3,157.44	\$3,125.00	\$57.29
4	File Date + 120 Days	\$3,157.44	\$3,125.00	\$54.69
5	File Date + 150 Days	\$3,157.44	\$3,125.00	\$52.08
6	File Date + 180 Days	\$3,157.44	\$3,125.00	\$49.48
7	File Date + 210 Days	\$3,157.44	\$3,125.00	\$46.88
8	File Date + 240 Days	\$3,157.44	\$3,125.00	\$44.27
9	File Date + 270 Days	\$3,157.44	\$3,125.00	\$41.67
10	File Date + 300 Days	\$3,157.44	\$3,125.00	\$39.06
11	File Date + 330 Days	\$3,157.44	\$3,125.00	\$36.46
12	File Date + 360 Days	\$3,157.44	\$3,125.00	\$33.85
13	File Date + 390 Days	\$3,157.44	\$3,125.00	\$31.25
14	File Date + 420 Days	\$3,157.44	\$3,125.00	\$28.65
15	File Date + 450 Days	\$3,157.44	\$3,125.00	\$26.04
16	File Date + 480 Days	\$3,157.44	\$3,125.00	\$23.44
17	File Date + 510 Days	\$3,157.44	\$3,125.00	\$20.83
18	File Date + 540 Days	\$3,157.44	\$3,125.00	\$18.23
19	File Date + 570 Days	\$3,157.44	\$3,125.00	\$15.63
20	File Date + 600 Days	\$3,157.44	\$3,125.00	\$13.02
21	File Date + 630 Days	\$3,157.44	\$3,125.00	\$10.42
22	File Date + 670 Days	\$3,157.44	\$3,125.00	\$7.81
23	File Date + 700 Days	\$3,157.44	\$3,125.00	\$5.21
24	File Date + 730 Days	\$3,157.44	\$3,125.00	\$2.60
Total		\$75,778.65	\$75,000.00	\$778.65

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13. The payment terms are based on: (a) a signed, certified statement submitted by Respondent Karimar, dated February 18, 2021, in which Respondent Karimar certifies that COVID-19 has significantly impacted its financial health; and (b) financial information and a signed, certified statement submitted by Respondent Alfaya, dated February 18, 2021, describing its inability to pay the full civil penalty within thirty (30) days of the Effective Date without experiencing an undue financial hardship. Any false statement made in the certified statements may result in voiding the penalty portion of this Consent Agreement.
14. Pursuant to Part V of this Consent Agreement, the Effective Date of the Final Order shall be the date of filing with the Regional Hearing Clerk, U.S. EPA Region 2, New York, New York.
15. All payments shall be made by cashier's or certified check payable to the *Treasurer of the United States of America*, by electronic transfer (i.e. wire or automated clearinghouse), or online payment, as provided below:

- (a) If Respondents choose to pay the civil penalty by cashiers' or certified check, either type of check shall be mailed to:

BY U.S. POSTAL SERVICE

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

BY OVERNIGHT MAIL

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
ATTN Box 979077
St. Louis, MO 63101
Contact: Natalie Pearson
Tel.: (314) 418-4087.

- (b) If Respondents choose to pay the civil penalty by wire transfer, the transfer shall be made to:

BY WIRE TRANSFER:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045.

Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency."

BY AUTOMATED CLEARINGHOUSE (ACH) (also known as REX or remittance express):

ACH for receiving US currency
PNC Bank
808 17th Street, NW
Washington, DC 20074
ABA = 051036706
Transaction Code 22 - checking
Environmental Protection Agency
Account 310006—CTX Format
Contact: Jesse White
Tel.: (301) 887-6548.

- (c) An online payment option is available through the United States Department of Treasury. This payment option can be accessed through WWW.PAY.GOV. If Respondents choose to pay the civil penalty using the online payment option, Respondent shall: enter sfo 1.1 in the search field; open the electronic form; and complete required fields.
- (d) Respondents shall clearly identify, regardless of the form of payment, the name and docket number of the case, as follow:

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16. Respondents shall send proof of payment by electronic mail to each of the following EPA officials:

José A. Rivera, BSCE
Lead Environmental Engineer
Clean Water Act Team
Multimedia Permits and Compliance Branch
Caribbean Environmental Protection Agency
United States Environmental Protection Agency Region 2
rivera.jose@epa.gov.

Suzette M. Meléndez-Colón, Esq.
Assistant Regional Counsel
Office of Regional Counsel
United States Environmental Protection Agency, Region 2
melendez-colon.suzette@epa.gov

and

Karen Maples
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
maples.karen@epa.gov

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17. Failure to pay the civil penalty in full according to the above provisions may result in referral of this matter to the United States Department of Justice or the United States Department of the Treasury for collection.
18. Further, if the payment is not received on or before the due date, interest will be assessed at the annual rate established by the Secretary of the United States Department 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 fifteen dollars (\$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 six percent (6%) per annum penalty also will be applied on any principal amount not paid within ninety (90) calendar days of the due date.
19. In addition, pursuant to Section 309(g)(9) of the CWA, 33 U.S.C. § 1319(g)(9), if payment is not received by the due date, a quarterly nonpayment penalty will be imposed for each calendar quarter during which such nonpayment persists. The quarterly nonpayment penalty is twenty percent (20%) of the aggregate amount of penalties and quarterly nonpayment penalties, which are unpaid as of the beginning of such quarter. Respondents may also be required to pay attorney's fees and costs for collection proceedings in connection with nonpayment.

20. The penalty to be paid is a civil penalty assessed by the EPA and shall not be deductible from Respondents' federal or Commonwealth of Puerto Rico taxes.

IV. General Provisions

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

V. Final Order

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

BY: _____ DATE: _____

HELEN FERRARA

Regional Judicial Officer

United States Environmental Protection Agency, Region 2

290 Broadway

New York, New York 10007

Mr

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CERTIFICATE OF SERVICE

I hereby certify that on this date, I filed via the OAL E-Filing System, the original and copy of the Consent Agreement and Final Order entered in **In the Matter of Alfaya Estate, LLC and Karimar Construction Inc., Docket Number: CWA-02-2020-3452**, to the Office of Administrative Law Judges Hearing Clerk; and served electronically a true and correct copy of the filed document to the following parties in the manner indicated below:

Copy by OAL E-Filing System

Mary Angeles
Headquarters Hearing Clerk
U.S. Environmental Protection Agency
Office of Administrative Law Judges

Hon. Susan L. Biro,
Presiding Judge
U.S. Environmental Protection Agency
Office of Administrative Law Judges

Copy by Electronic Mail with Delivery Receipt

Helen Ferrara
Regional Judicial Officer
U.S. Environmental Protection Agency, Region 2
Email: ferrara.helen@epa.gov

Karen Maples
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
Email: maples.karen@epa.gov

Gerardo González-Román, Esq.
Counsel for Respondent Alfaya Estate, LLC
Email: jerrygon6004@yahoo.com

Reinaldo José Franqui-Escandón, Esq.
Counsel for Respondent Karimar Construction,
Inc.
Email: rfranqui@gmail.com

Date:

Guaynabo, Puerto Rico

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