

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

U.S. Environmental
Protection Agency-Reg 2
2016 MAR 21 AM 9 03
REGIONAL HEARING
CLERK

In the Matter of:

A.B.E.F. Development Corporation
PMB 363/200 Ave. Rafael Cordero, Suite 140
Caguas, Puerto Rico 00725-3757

Herminio Cotto Construction Corporation
P.O. Box 1600, Suite 1008
Cidra, Puerto Rico 00739

DOCKET NUMBER
CWA-02-2010-3465

Respondents

Proceeding pursuant to Section 309(g)(2)(A) of the
Clean Water Act, 33 U.S.C. § 1319(g)

**MOTION FOR ENTRY OF DEFAULT AS TO PENALTY AGAINST
RESPONDENT COTTO AND FOR ENTRY OF DEFAULT AS TO LIABILITY AND
PENALTY AGAINST RESPONDENT ABEF**

Counsel for the Complainant, the United States Environmental Protection Agency ("EPA"), respectfully submits the following Motion for Entry of Default as to Penalty against Herminio Cotto Construction ("Respondent Cotto") and for Entry of Default as to Liability and Penalty against A.B.E.F. Development Corporation ("Respondent ABEF"), (herein collectively referred to as "Respondents").

PROCEDURAL BACKGROUND

1. On September 29, 2010, EPA filed an Administrative Complaint, Findings of Violation, Notice of Proposed Assessment of a Civil Penalty, and Notice of Opportunity to Request a Hearing ("Complaint") against Respondents Herminio Cotto Construction and A.B.E.F.

Development Corp. pursuant to the authority contained in Section 309(g) of the Clean Water Act (the "Act"), 33 U.S.C. § 1319(g). See Attachment 1.

2. The Complaint proposes that a penalty of fifty eight thousand seven hundred and sixty five dollars (\$58,765.00) be assessed against Respondents for the unlawful discharge of stormwater, in violation of Section 301(a) and 402 of the Act, 33 U.S.C. §§ 1311 and 1342.

Default as to Liability against Respondent ABEF

3. Complainant informed in its Motion Requesting a Default Order as to Liability against Respondent Cotto that Respondent ABEF had been in communication with Complainant and sent a letter to EPA, as an answer to the Complaint, on December 2, 2010. See Attachment 2.
4. Upon Complainant's request to ABEF to have it properly file an Answer to the Complaint that would satisfy the requirements of the CROP, ABEF's representative stated that an Answer to the Complaint would be filed, following the procedures prescribed in the CROP and restated in the Complaint.
5. Respondent ABEF never submitted any other document than the one referred to on paragraph 2.
6. According to Respondent ABEF's letter dated December 2, 2010, Respondent ABEF received the Complaint on October 6, 2010. See Attachment 3.
7. Respondent ABEF was required to file an Answer to the Complaint within thirty (30) days after service of the Complaint. Thus, they were required to file an Answer on or before November 5, 2010. See Attachment 3.
8. Respondent ABEF was duly notified of its right to file an Answer within thirty (30) days after service of the Complaint. Complainant provided notice to Respondent through:

- (a) the cover letter attached to the Complaint;
- (b) the Complaint; and
- (c) a copy of 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 (2003).

9. Pursuant to 40 C.F.R. § 22.15(a), a respondent shall file an original and one copy of a written answer to the Complaint with the Regional Hearing Clerk and shall serve copies of the answer on all other parties. Any such answer to the Complaint must be filed with the Regional Hearing Clerk within 30 days after service of the Complaint.
10. Pursuant to 40 C.F.R. § 22.17(a), a party may be found to be in default after motion, upon failure to file a timely answer to the Complaint.
11. At the time the Motion for Default was submitted, Complainant chose not to file a Motion for Default against Respondent ABEF after taking into consideration the fact that they made an attempt to address EPA's Complaint, even though it did not comply with the requirements stated in the CROP nor was it filed with the Regional Hearing Clerk.
12. However, as of today, Respondent ABEF has not file an Answer to the Complaint as it had committed to do.
13. Pursuant to 40 C.F.R. § 22.17(a), a party may be found to be in default: after motion, (...) upon failure to comply with the information exchange requirements of §22.19(a) or with an order of the Presiding Officer; or upon failure to appear at a conference or hearing.
14. On February 10, 2011 and April 4, 2011, Complainant sent electronic communications to Respondent ABEF, urging them to provide an Answer and providing Ability to Pay information requested by Respondent, in order to help them articulate a response. See Attachment 4.

15. EPA's counsel as well as the Office of Regional Counsel's Administrative Assistant continued to call and email Respondent ABEF explaining that our letters were not been received at the address given to EPA.
16. In an electronic message sent to ABEF on May 16, 2011, Complainant restated the need to get a correct address from Respondent, since EPA had repeatedly confirmed with ABEF the address and documents mailed were consistently sent back to us. The electronic message also states (in Spanish) the following: "Keep in mind that we agreed that you were going to file an Answer to the Complaint, in agreement with the requirements stated in the Complaint." See Attachment 5.
17. On May 19, 2011, Complainant sent another electronic communication restating its two petitions to Respondent ABEF; explaining that our letters had not been received at the address provided by Respondent ABEF to us; and asking them to file an Answer to the Complaint as agreed. See Attachment 6.
18. As stated above, on February 29, 2012, an Order on Default granted Complainant's Motion Requesting a Default Order as to Liability against Respondent Cotto.
19. EPA continued to make several other attempts to communicate with Respondent ABEF by email, mail and telephone. During 2015, Complainant has record of emails sent to Respondent ABEF on March 18, 2015; March 20, 2015; March 24, 2015; March 30, 2015; August 17, 2015; August 19, 2015 and March 9, 2016. On every email, EPA states that it also tried to reach Respondent by phone. See Attachment 7.
20. On the occasions when Complainant was able to reach Respondent ABEF by phone, the most recent on August 20, 2015 and November 2, 2015, Respondent ABEF expressed

willingness to discuss further actions with Complainant. However, Respondent ABEF did not follow through.

21. On August 18, 2015, in compliance with an Order instructing the Parties to offer the status of the case, Complainant filed an Informative Motion restating the intention to file a Motion for Default. However, Complainant expressed repeatedly that its objective was to pursue settlement negotiations with Respondent ABEF. For that reason, Complainant requested additional time in order to allow settlement conversations to materialize.
22. On August 31, 2015, an Order Requiring Respondent ABEF to File Answer and Requiring Complainant to File Motions for Default was issued.
23. On October 5, 2015, Respondent sent a letter addressed to the Regional Hearing Clerk, requesting fifteen (15) days to answer the Complaint.
24. On October 8, 2015, via email, ABEF sent EPA a copy of the letter requesting an Extension. See Attachment 8.
25. As of today, March 23, 2016, no answer has been submitted by Respondent ABEF.
26. Respondent ABEF has not returned the latest calls nor electronic communications from Complainant.
27. Complainant takes into consideration the fact that Respondent ABEF has expressed an intention to make an effort to resolve the matter of reference. However, it has not lead to any substantive conversation that could possibly lead to a resolution of this matter.

Default as to Penalty against Respondent Cotto and ABEF

28. In April 2011, Complainant filed a Motion Requesting a Default Order as to Liability against Respondent Cotto.
29. On February 29, 2012, an Order on Default granted Complainant's Motion Requesting a Default Order as to Liability against Respondent Cotto.

30. For the reasons set forth in the accompanying memorandum, the United States Environmental Protection Agency requests that the Regional Judicial Officer assess a penalty against Respondents. A Memorandum in Support of Motion for Assessment of Penalty on Default as to Respondent Cotto and Respondent ABEF is filed herein in support of this request for assessment of penalty on default.

RELIEF REQUESTED

31. A default order as to penalty should be issued against Respondent Cotto for its failure to file the Answer to the Complaint within thirty (30) days after service of the same.

32. A default order as to liability and penalty should be issued against Respondent ABEF for its failure to file the Answer to the Complaint within thirty (30) days after service of the same.

33. As stated in Section 22.17(a) of the CROP, 40 CFR §22.17(a), a default order resolves all of the instant proceedings because Respondent's failure to file an answer to the Complaint constitutes an admission of all the facts alleged in the Complaint:

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.

PRAYER

34. Complainant submits this Motion for Entry of Default against Respondents and respectfully requests the Presiding Officer to:

- i. Find Respondent Cotto in default as to penalty;
- ii. Issue a default order as to penalty against Respondent Cotto, pursuant to 40 C.F.R. § 22.17(a);
- iii. Find Respondent ABEF in default as to liability and penalty; and

- iv. Issue a default order against Respondent ABEF, pursuant to 40 C.F.R. § 22.17(a).

I hereby certify that a true copy of this Motion for Entry of Default was served to: Herminio Cotto Construction, Inc., P.O. Box 1600, Suite 1008, Cidra, Puerto Rico, 00739; and Louis Rosado-Viana, Urb. Montehiedra, Calle Zorzal 214, San Juan, Puerto Rico, 00926-7111.

Respectfully submitted, in San Juan, Puerto Rico, this 24th day of March, 2016.



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Respondents

Proceeding pursuant to Section 309(g)(2)(A) of the
Clean Water Act, 33 U.S.C. § 1319(g)

**MEMORANDUM IN SUPPORT OF MOTION FOR ASSESSMENT OF PENALTY ON
DEFAULT**

This memorandum is filed in support of the motion for assessment of penalty on default filed by the United States Environmental Protection Agency (EPA). EPA requests that the Regional Judicial Officer assess a penalty of \$58,765.00 against Respondents Herminio Cotto Construction Corporation (Respondent Cotto) and A.B.E.F. Development Corporation (Respondent ABEF), (herein collectively referred to as "Respondents").

II. BACKGROUND

On September 29, 2010, EPA filed an administrative penalty complaint (the Complaint) for the unlawful discharge of stormwater, in violation of Section 301(a) and 402 of the Act, 33 U.S.C. §§ 1311 and 1342. The Complaint proposed that Respondent Cotto, along with Respondent ABEF pay an administrative penalty of \$58,765 for these violations. Although Respondents were served with a copy of the Complaint, they did not file an answer.

On April 15, 2011, EPA filed a motion for default on liability against Respondent Cotto. EPA attempted to serve it on Respondent Cotto at his address where a copy of the complaint was received. The copy was received on April 19, 2011.

On February 29, 2012, the Regional Judicial Officer issued a Default Initial Decision and Order (the Liability Order), finding Respondent Cotto to be in default and liable as a matter of law for having discharge stormwater, in violation of Section 301(a) and 402 of the Act. Copies of the Liability Order were sent to Respondent Cotto.

III. STANDARD FOR FINDING DEFAULT

A respondent may be found in default upon failure to file a timely answer to an administrative complaint. A respondent's default constitutes, for purposes of the pending proceeding only, an admission of all facts alleged in the complaint and a waiver of the respondent's right to contest such factual allegations. 40 C.F.R. § 22.17(a).

A motion for default may seek resolution of all or part of the proceeding. When EPA requests a penalty in a motion for default, EPA must specify the amount of, and explain the legal and factual basis for, the penalty it seeks. 40 C.F.R. § 22.17(b).

When a Presiding Officer finds that a default has occurred, the relief proposed in a Complaint or Motion for Default shall be ordered unless the requested relief is clearly inconsistent with the record of the proceeding or the particular statute authorizing the proceeding at issue. 40 C.F.R. § 22.17(c).

IV. ARGUMENT

As indicated above, liability in this case already has been established. The only remaining question is the penalty amount.

Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(G)(2)(B), authorizes EPA to assess civil administrative penalties for discharging pollutants without a permit in violation of Sections 301(a) and 402 of the Act, 33 U.S.C. §§ 1311 and 1342. The maximum amount of any such penalty is not to exceed \$125,000. This amount has been adjusted for inflation to \$137,500 for violations occurring after March 16, 2004, through January 12, 2009, and to \$157,500 for violations occurring after January 12, 2009. 40 C.F.R Part 19.

The requested penalty of \$58,765.00 is well within this amount. In addition, as demonstrated below, it is consistent with the record in this proceeding, the Clean Water Act, case law, and EPA's general penalty policy.

In assessing an administrative Clean Water Act penalty, EPA is to take into account the nature, circumstances, extent, and gravity of the violation and, with respect to the violator, ability to pay, any prior history of violations, the degree of culpability, economic benefit resulting from the violation, and such other matters as justice may require. Section 309(g)(3) of the CWA, 33 U.S.C. § 1319(g)(3).

A. **Facility Description**

This case is about the construction of a 26.50 acre construction project which consists of 224 residential units known as “Extensión Praderas de Ceiba Norte” (“Project”). The construction activities at the Project involve land disturbance, utilities installation and general construction. Clearing activities began on or about February 2, 2009.

1. Name – “Extensión Praderas de Ceiba Norte” Construction Project (“Project”).
2. 2008 NPDES Storm Water General Permit for Construction Activity (“2008 Permit” or 2008 CGP) – ABEF’s Permit Number is PRR10BO92 and Cotto Construction Permit Number is PR10BN72.
3. Site Location – State Road PR-935, Km. 3.1, Juncos, Puerto Rico.
4. Standard Industrial Classification (“SIC”) Code - 1521 General Contractors-Single Family Houses
5. Owner/ Operator – A.B.E.F. Development Corp. (“ABEF”)
6. Operator – Herminio Cotto Construction, Inc. (“HCC”)
7. Receiving Waters – “Quebrada Ceiba”
8. Estimated area to be disturbed – 26.50 acres
9. Estimated date of commencement of construction activities – February 2, 2009
10. The Project consists of clearing, grading and construction activities for the construction of 224 residential units.

Respondents are corporations, and as such, are “persons” within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5). A.B.E.F. Development Corporation owns and is developing the Project. The Project is a residential construction development. ABEF

contracted HCC to conduct earth movement activities and the construction of the streets, according to the contract signed on October 18, 2008. The 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).

Summary of Events

On April 8, 2009, EPA authorized Enforcement Officers, upon presentation of credentials to ABEF’s representatives, performed a Compliance Evaluation Inspection (“CEI”) of the Project. The findings of the Inspection were documented in an Inspection Report (“Report”) dated June 24, 2009.

Based on the findings of the Inspection and the review of EPA Notice of Intent (“NOI”) Processing Center Database, EPA found ABEF and HCC in violation of the CWA, and issued an Administrative Compliance Order (“ACO”), Docket Number CWA-02-2009-3132 against ABEF and Cotto Construction on June 26, 2009. The ACO incorporated Findings, Conclusion of Law, and Ordered Provisions, and among others, required ABEF and HCC to cease and desist the discharges from the Project into waters of the United States, cease and desist earth movement activities at the Project, file a NOI to obtain coverage under the 2008 CGP, amend the Storm Water Pollution Prevention Plan (“SWPPP”), and submit a Compliance Plan to bring the Project into compliance.

On July 15, 2009, ABEF and HCC submitted the acknowledgements as required by the ACO. The Project activities were ceased by August 24, 2009, according to the letter dated October 26, 2009. The construction activities were ceased 53 days after ABEF received the ACO (July 2, 2009), and 49 days after Cotto Construction received the ACO (July 6, 2009). The amended SWPPP was submitted to EPA offices on September 18, 2009.

HCC submitted a NOI to seek coverage under the 2008 CGP on May 11, 2009. By letter dated May 11, 2009, EPA acknowledged receipt of HCC NOI and informed that their coverage under the 2008 CGP began at the conclusion of the seven-day waiting period, on May 18, 2009. HCC’s 2008 CGP Tracking Number is PRR10BN72.

ABEF submitted a NOI to seek coverage under the 2008 CGP on July 14, 2009. By letter dated July 14, 2009, EPA acknowledged receipt of ABEF’s NOI and informed ABEF that its coverage under the 2008 CGP began at the conclusion of the seven-day waiting period, on July 21, 2009. ABEF’s 2008 CGP Tracking Number is PRR10BO92.

On November 24, 2009, EPA Enforcement Officers conducted a Follow up Inspection, in order to ascertain compliance with the ACO. At the time of the Follow up Inspection, EPA

observed how construction activities were being performed and most of the houses had been completed, making evident the fact that Respondents did not comply with the requirements of the cease and desist order. During the Follow up Inspection, Mr. Burgos (father) stated that the Project had been detained approximately 2 months, around the month of August, because of financing problems. EPA Enforcement Officers were accompanied on the follow up inspection by Mr. Guillermo Burgos (father). Eng. Guillermo Burgos Amaral (son) is the ABEF representative who has been in contact with EPA during this case. During the Follow up Inspection, EPA Enforcement Officers identified some deficiencies.

On December 2, 2009, Respondents sent EPA an Inspection Report prepared by Inspector Guillermo Burgos-Amaral, in which Respondents addressed the observations made during the Follow up Inspection and brought evidence of the measures taken to cure said deficiencies.

On December 8, 2009, EPA issued a letter indicating that after taking notice of the measures taken by Respondents, EPA was closing the Administrative Order.

B. Calculation of the Proposed Penalty with Respect to the Violation

[Section 309(g)(3), 33 U.S.C.A. § 309(g)(3), states that the agency shall take into account the nature, circumstances, extent, and gravity of the violation, or violations, and, with respect to the violator, ability to pay, any prior history of such violations, the degree of culpability, economic benefit or savings (if any) resulting from the violation and such other matters as justice may require. In addition, EPA's General Enforcement policies #GM21 and #GM22, provide guidance to the user on how to develop a medium specific penalty.]

1. Gravity

a. Nature

Respondents violated Section 301(a) of the Act by their failure to:

Claim 1 – Respondents ABEF and HCC failed to apply for and obtain NPDES permit coverage.

Respondent HCC 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 2008 Construction General Permit (CGP). Respondents began to perform earth movement activities at the Project on February 2, 2009, and HCC filed a NOI form seeking NPDES coverage under the Construction Permit on May 11, 2009.

Respondent ABEF 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 2008 CGP. Respondents began to perform earth movement activities at the Project on February 2, 2009, and ABEF filed a NOI form seeking NPDES coverage under the Construction Permit on July 14, 2009.

Claim 2 – Respondent HCC illegally discharged pollutants (storm water) into waters of the United States (without NPDES permit coverage).

Respondent HCC 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), from February 2, 2009 (date when Respondents began to perform earth movement activities at the Project), through May 18, 2009 (date when Respondent HCC obtain coverage under the 2008 Construction General Permit for its storm water discharges associated with its construction activities).

Respondent ABEF 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), from February 2, 2009 (date when Respondents began to perform earth movement activities at the Project), through May 18, 2009 (date when Respondent ABEF obtain coverage under the 2008 Construction General Permit for its storm water discharges associated with its construction activities).

Claim 3 - Failure to post a sign and retain a copy of the SWPPP at the Project.

Respondents did not post a sign or other notice at the Project concerning the NOI and did not maintain a SWPPP available at the site for EPA review and copying at the time of the CEI as required by Section 5.11 of the 2008 CGP.

Claim 4 - Failure to develop a complete and adequate SWPPP.

Respondents did not prepare a complete and adequate SWPPP, to provide storm water pollution prevention for the Project, as required under Part 5 of the 2008 CGP. The

SWPPP remained incomplete and inadequate from February 2, 2009 (date when earth movement activities began at the Project) until September 18, 2009 (date in which they submitted an amended SWPPP).

Claim 5 - Failure to adequately implement the SWPPP at the Project.

Respondents did not adequately implement the SWPPP at the Project, as required under Part 5 of the CGP, from February 2, 2009 (date when earth movement activities began at the Project) until September 18, 2009 (date in which they submitted an amended SWPPP).

b. Circumstances

Claim 1 – Respondents ABEF and HCC failed to apply for and obtain NPDES permit coverage.

On April 7, 2009, an EPA official conducted reviews of the EPA National Storm Water Processing Center database¹ and the EPA files (EPA review). The EPA Review revealed that on April 7, 2009, neither ABEF nor HCC filed an individual NPDES permit for the construction activities or a NOI seeking coverage under the 2008 CGP, prior to commencement of construction activities at the Project as required by Part 2 of the 2008 Permit.

Claim 2 – Respondents ABEF and HCC illegally discharged pollutants (storm water) into waters of the United States (without NPDES permit coverage).

Respondent HCC 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), from February 2, 2009 (date when Respondents began to perform earth movement activities at the Project) through May 11, 2009 (date when Respondent HCC filed the NOI).

Respondent ABEF 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), from February 2, 2009 (date when Respondents began to perform earth movement activities at the Project) through July 14, 2009 (date when Respondent ABEF filed the NOI).

¹ <http://www.epa.gov/npdes/stormwater>

On September 17, 2010, EPA reviewed rain event data from National Oceanic and Atmospheric Administration's National Climatic Data Center for year 2009 for the station known as "Juncos 1 SE Station" located in the Municipality of Juncos, Puerto Rico, near the Project. EPA has determined that this rain data for the Juncos Station can be correlated to the Project.

A rain event of approximately 0.5 inches or more can cause a storm water discharge from the Project into "Quebrada Ceiba".

Table 1 below includes a summary of the data of rain events of 0.5 inches or more for the "Juncos 1 SE Station."

**Precipitation Data for the Extension Area
Year: 2009**

Year	Month	Day	Precipitation (≥ 0.5 in)
2009	2	7	0.52
2009	3	5	2.24
2009	3	6	0.64
2009	3	23	4.22
2009	3	26	0.52
2009	4	14	0.62
2009	5	6	0.64
2009	5	7	0.81
2009	5	9	2.19
2009	5	13	0.6
2009	5	14	0.71
2009	5	21	1.45
2009	5	22	0.81
2009	6	3	1.37
2009	6	4	2.39
2009	6	6	0.56
2009	6	11	1.2

2009	6	12	0.78
2009	6	14	0.84
2009	6	17	0.54
2009	7	6	1.47
2009	8	4	0.76
2009	8	18	0.55
2009	8	20	0.70
2009	8	30	0.50
2009	9	5	3.08
2009	9	6	3.54
2009	9	17	0.85
2009	9	21	2.10
2009	10	13	1.98
2009	10	25	0.52
2009	11	11	1.09
2009	11	19	1.06
2009	11	29	0.75

Year	Month	Day	Precipitation (≥ 0.5 in)
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Based on the 2009 rain event data for the “Juncos 1 SE Station”, my professional judgment, and considering the fact that Respondent HCC obtained NPDES coverage under the Construction Permit on May 18, 2009, Respondent HCC illegally discharged pollutants from the Project into waters of the United States in 11 occasions. Considering the fact that Respondent ABEF obtained coverage under the CGP on July 21, 2010, Respondent HCC illegally discharged pollutants from the Project into waters of the United States in 21 occasions.

Claim 3 - Failure to post a sign and retain a copy of the SWPPP at the Project.

During April 8, 2009 Inspection, EPA noticed that Respondents did not post a sign or other notice at the Project concerning the NOI and did not maintain a SWPPP available at the site for EPA review and copying at the time of the CEI as required by Section 5.11 of the 2008 CGP.

Claim 4 - Failure to develop a complete and adequate SWPPP.

Respondents did not prepare a complete and adequate SWPPP, in order to provide storm water pollution prevention at the Project, as required under Part 5 of the Construction Permit.

The SWPPP did not comply with the requirements of the 2008 CGP as established in Part 5.1 of the 2008 CGP. The SWPPP did not include the sequence and timing of the activities that will disturb soils at the site and the site map did not have all the information required; among others. See April 8, 2009 Inspection Report for the evaluation of the SWPPP.

Claim 5 - Failure to adequately implement the SWPPP at the Project.

Respondents did not adequately implement the SWPPP at the Project, as required under Part 5 of the 2008 Construction Permit. According to the SWPPP on Part 5.3 (Purposed and Limitation of the Plan), HCC is responsible to implement and maintain the Best Management Practices (“BMPs”) until the completion of the “Project.” ABEF is responsible to insure that the Operator complies with the provisions of this plan.

The project entrance was not stabilized, no sediment basin was installed, and concrete washout was identified on several locations at the project, among others.

c. Extent

Claim 1 – Respondents ABEF and HCC failed to apply for and obtain NPDES permit coverage.

Respondent HCC failed to apply for and obtain NPDES permit coverage from February 2, 2009 (date when Respondents began to perform earth movement activities at the Project) through May 18, 2009 (date when Respondent HCC obtained coverage under the 2008 CGP) for a total of 105 days in violation.

Respondent ABEF failed to apply for and obtain NPDES permit coverage from February 2, 2009 (date when Respondents began to perform earth movement activities at the Project) through July 21, 2009 (date when Respondent ABEF obtained coverage under the 2008 CGP) for a total of 169 days in violation.

Claim 2 – Respondents ABEF and HCC illegally discharged pollutants (storm water) into waters of the United States without NPDES permit coverage.

Respondent HCC illegally discharged pollutants into waters of the United States without NPDES permit coverage from February 2, 2009 (date when Respondents began to perform earth movement activities at the Project) through May 18, 2009 (date when Respondent HCC obtained authorization to discharge stormwater from construction activities under the terms and conditions of the 2008 CGP).

Respondent ABEF illegally discharged pollutants into waters of the United States without NPDES permit coverage from February 2, 2009 (date when Respondents began to perform earth movement activities at the Project) through July 21, 2009 (date when Respondent ABEF obtained authorization to discharge stormwater from construction activities under the terms and conditions of the 2008 CGP).

Claim 3 - Failure to post a sign and retain a copy of the SWPPP at the Project.

On April 8, 2009 Inspection, Respondents did not post a sign or other notice at the Project concerning the NOI and did not maintain a SWPPP available at the site for EPA review and copying at the time of the CEI as required by Section 5.11 of the 2008 CGP.

Claim 4 - Failure to develop a complete and adequate SWPPP.

The SWPPP remained incomplete from February 2, 2009, (date when earth movement activities began at the Project) until September 18, 2009 (date when Respondents submitted a complete SWPPP) for a total of 228 days of violations.

Claim 5 - Failure to adequately implement the SWPPP at the Project.

Respondents did not adequately implement the SWPPP at the Project, as required under Part 3 of the Construction Permit, from February 2, 2009 (date when earth movement

activities began at the Project) until September 18, 2009 (date when Respondents submitted a complete SWPPP). The number of days that Respondents failed to adequately implement the SWPPP are 228.

d. Seriousness of the Violation

Based on the findings discussed above, Respondents have violated the Construction Permit and NPDES regulations which implement Sections 301(a) and 308 of the Act. Failure to comply with the CWA and NPDES regulations meant that the implementation of the NPDES program was hindered. These permits are designed to reduce or minimize the discharge of pollutants which might impair or degrade the water quality of receiving waters.

The NPDES permitting program relies significantly in self-reporting requirements by the regulated community, such as, filing of permit applications (e.g. NOI), discharge monitoring reports, and compliance certifications. Besides Respondents not having a permit to discharge storm water associated with industrial activities, they also failed to develop and implement a complete SWPPP.

Failure to comply with the CWA and its NPDES implementing regulations meant that implementation of the NPDES program was hindered and the benefits, such as protecting the water quality of the "Quebrada Ceiba", that otherwise would have been obtained by the NPDES program, were not recovered. These violations are serious

and have an indirect effect on human health and the environment in that the EPA's requirement that certain industrial facilities obtain permits is designed to reduce or minimize the discharge of pollutants which might impair or degrade the water quality of the receiving waters.

Storm water can wash nutrients, metals, oils, and other substances associated with industrial activities into surface waters. The concentration of contaminants in this runoff depends on the extent of the source, the type of contaminant, the intensity and duration of a storm, and the timing between storms. Highest contaminant concentrations are generally found in the first flush of runoff that is generated at the beginning of a storm. This could increase the loadings of pollutants at the receiving water. Also, it could have caused a violation of the water quality standard designated by the Puerto Rico Environmental Quality Board for such receiving waters.

The pollution prevention plan is considered to be the most important requirement of the general permit. Each industrial facility covered by the general permit must develop a plan, tailored to the site specific conditions, and designed with the goal of controlling the amount of pollutants in storm water discharges from the site. The permit requires that the plan contain a description of potential pollutant sources and a description of the measures and controls to prevent or minimize pollution of storm water.

Storm water runoff becomes polluted by picking up soil particles and other pollutants (from construction materials as it flows over surfaces where construction activities are occurring). By requiring certain construction sites to apply for NPDES storm water permits, this regulation provides a way for States and EPA Regions to monitor and manage these discharges, and reduce or ultimately eliminate the amount of pollutants present in them.

Respondents did not develop an adequate SWPPP for the Project. Their failure to prepare and implement an adequate SWPPP resulted in environmental harm to the "Quebrada Ceiba".

EPA enforcement officers that work for the NPDES Enforcement program are required to calculate the environmental benefit of an enforcement action taken against a violator of the CWA. Attachment 5 of this Memorandum includes a spreadsheet printout contains an estimate of soil loss reduction for the Project based on the Office of Compliance Estimation of Sediment Loss Reductions for Construction Sites. This estimate can be correlated to the discharges of sediments into the receiving waters if ABEF and HCC would have implemented an adequate SWPPP at the Project. The calculated soil was 57.11 tons (114,223 pounds) during 2009.

Considering the nature of construction activities and the resulting pollutants, and the variable nature of storm events, EPA determined that the best approach for storm water management for these sites is through the use of self-designed Storm Water

Pollution Prevention Plans. Therefore, by Respondents' lack of a permit and a complete SWPPP and their failure to implement a complete SWPPP posed a potential harm to the "Quebrada Ceiba".

The Puerto Rico Environmental Quality Board ("PREQB"), as the designated State environmental agency, in accordance with the Environmental Public Policy Act (Law Number 9) of June 18, 1970, as amended, promulgated the Puerto Rico Water Quality Standards Regulation ("PRWQSR", as amended in 2003). This Regulation established, as goals, the need to preserve, maintain and enhance the quality of the waters of Puerto Rico to assure that they are compatible with the social and economic needs of Puerto Rico.

The PRWQSR's purpose was to designate the use for which the quality of the waters of Puerto Rico shall be maintained and protected; prescribe the water quality standards required to sustain the designated uses; identify other rules and regulations applicable to sources of pollution that may affect the quality of waters subject to the PRWQSR; and prescribe additional measures necessary for implementing, achieving, and maintaining the prescribed water quality. "Quebrada Ceiba" was classified as SD, which is defined as surface waters.

On November 24, 2009, EPA Enforcement Officers conducted a follow up inspection, in order to ascertain compliance with the ACO. At the time of the Inspection, EPA observed how construction activities were being performed and that most of the houses had been completed, making evident the fact that Respondents did not comply with the requirements of the cease and desist order. The Administrative Compliance Order issued against ABEF and HCC on June 26, 2009 ordered the cease and desist of all clearing, grading and excavation activities at the Project immediately. Mr. Guillermo Burgos, father of Eng. Guillermo Burgos Amaral, stated that the project was detained for approximately 2 months, around the month of August because of financing problems. According to the letter dated October 26, 2009 and signed by Eng. Guillermo Burgos Amaral (Lic. 16711-PE), the construction activities at the project were ceased on August 24, 2009.

e. Proposed Gravity Component

In the instant case, based upon the above findings, the threats to the “Quebrada Ceiba” (water of the United States) and my professional experience, a gravity penalty component of **\$42,180.00** is being proposed after taking into consideration the length of the violations, the negative environmental effects to the receiving waters and human health, the importance of compliance and seriousness of the violations.

2. Economic Benefit or Savings Calculation (**\$1,585.00**)

The objective of the Economic Benefit (BEN) calculation is to place Respondents in the same financial position as it would have been had they complied on time. BEN results from a number of avoided or delayed expenditures associated with the failure to undertake each of the several types of construction activity requirements. The different types of avoided and delayed expenditures in this Complaint are discussed below.

The following paragraphs provide an explanation of the economic benefit or savings obtained. The EPA BEN Model Software (BEN) was used for the calculation of each benefit or saving.

a. Economic Benefit or Savings for Claim 1 – Respondent DEC failed to apply for and obtain NPDES permit coverage

Respondent HCC obtained an economic benefit for its delay in submitting the NOI form for coverage under the Construction Permit. The calculated economic benefit is **\$6.00** (see BEN Calculation Printout).

Respondent ABEF obtained an economic benefit for its delay in submitting the NOI form for coverage under the Construction Permit. The calculated economic benefit is **\$9.00** (see BEN Calculation Printout).

- b. Economic Benefit or Savings for Claim 2 – Respondents illegally discharged of pollutant (storm water) into waters of the United States without NPDES permit coverage

This Economic Benefit has been taken into consideration in Claim 5, failure to implement the SWPPP at the Project.

- c. Economic Benefit or Savings for Claim 3 – Failure to post a sign and retain a copy of the SWPPP at the Project

This calculation is negligible.

- d. Economic Benefit or Savings for Claim 4 - Failure to develop a complete and adequate SWPPP

Respondents were required to develop and implement a SWPPP. The Respondents have a SWPPP develop by *G. Burgos Engineering Professional Corporation* signed by Juan Félix Algarín Carmona of ABEF and by Herminio Cotto of Cotto Construction. The SWPPP was review and found to be incomplete. After the ACO was issued, ABEF contracted the services of *PR Green Design* and they submitted the amended SWPPP on September 18, 2009. EPA request additional information to fulfill the requirements of the 2008 CGP and it was submitted on October 26, 2009. The economic benefit of the amended SWPPP is \$57.

- e. Economic Benefit or Savings for Claim 5 - Failure to implement the SWPPP at the Project

Respondent HCC obtained an economic benefit for their failure to implement storm water controls at the Project. The calculated economic benefit is \$1,357.00. Respondent HCC also obtained an economic benefit for their failure to provide maintenance to the BMPs. The calculated economic benefit is \$156.00 (see Ben Calculation Printout).

The BEN for failure to implement BMPs and the BEN for failure to maintain the BMPs will be added and assigned to HCC. According to the SWPPP on Part 5.3 (Purposed and Limitation of the Plan); HCC is responsible for the implementation and maintenance the BMPs until the completion of the “Project.” ABEF is responsible to insure that the Operator complies with the provisions of the SWPPP.

$$\text{BEN}_{\text{BMPs}} + \text{BEN}_{\text{O\&M}} = \$1,357.00 + \$156.00 = \mathbf{\$1,513.00}$$

Table 2: BEN Calculation summary for ABEF and HCC.

	A.B.E.F. Development Corporation	Herminio Cotto Construction, Inc.
Claim 1-Failure to Submit NOI	\$ 9.00	\$ 6.00
Claim 3- Inadequate SWPPP	N/A	\$ 57.00
Claim 4 – Failure to implement a SWPPP	N/A	\$1,513.00
TOTAL	\$9.00	\$1,576.00

In summary, Respondents obtained an Economic Benefit in the amount of

$$\text{Economic Benefit} = \$9.00 + \$6.00 + \$57.00 + \$1,513 = \mathbf{\$1,585.00}$$

$$3. \quad \text{Preliminary Proposed Penalty} = (\text{Proposed Gravity Component}) + (\text{Economic Benefit})$$

$$\text{Preliminary Proposed Penalty} = \mathbf{\$42,180.00 + \$1,585.00 = \$43,765.00.}$$

NOTES:

- * The estimated cost figures are based on 1996 dollars.
- * Installations, where applicable, are considered in the final estimated benefit.
- * A review of the economic benefit will be necessary when information from Respondents become available.

C. Calculation of the Penalty Adjustment Factors with Respect to the Violator

1. Prior History of Violations

ABEF does not have a prior history of violations under the CWA. Cotto Construction has prior history of violations under CWA Section 301. On 2006, an Order was issued against Herminio Cotto Construction, Inc. for unpermitted discharges. The Docket Number was CWA-02-2006-3041 and the total compliance action cost was \$10,000.

For this reason we are increasing the Penalty \$5,000.

2. Degree of Culpability

Respondents did not comply with the related NPDES storm water regulations developed to ensure prevention and minimization of contamination of storm water by the Project's construction activities.

Respondents obtained an economic benefit as a result of its noncompliance with the Act and the NPDES regulations. HCC have prior history of violations under the CWA 301(a).

Respondents are in violation of the Act for their failure to comply with certain requirements of the permit, Respondents unlawful discharge of pollutants (storm water runoff associated with construction activities) into navigable waters and its failure to timely apply for a NPDES storm water permit. Respondents should have known of their obligations and complied with its NPDES permit and the Act. ABEF and HCC knowingly violated Section 301(a) of the Act, and the NPDES regulations which implements the Act. They were and are aware of the NPDES storm water permit application regulations for construction activities. On the Follow up Inspection, EPA enforcement officers observed how construction activities were being performed and that most of the houses had been completed, making evident the fact that Respondents did not comply with the requirements of the cease and desist ordered in the ACO.

The penalty is increased in **\$10,000** for Respondents' degree of culpability.

3. Ability to Pay

- No ability to pay argument is anticipated. Therefore, the proposed penalty has not been reduced for an inability to pay.

D. **Final Proposed Penalty** = (Proposed Gravity Component) + (Economic Benefit) +/- (Adjustment Factors)

Final Proposed Penalty = \$42,180.00+ \$1,585.00+ 5,000 + 10,000

Final Proposed Penalty = \$58,765.00

E. **Recommendations**

In conclusion, the final proposed penalty is **\$58,765.00**. Therefore, I recommend that a Complaint be issued against Respondents for the amount of **\$\$58,765.00**.

This recommendation is consistent with my application of the statutory factors in § 309(g), to the facts of this case. My findings and analysis fully support the penalty.

ATTACHMENT 1

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

In the Matter of:

A.B.E.F. Development Corp.
PMB 363/200 Ave. Rafael Cordero, Suite 140
Caguas, Puerto Rico 00725-3757

Herminio Cotto Construction, Inc.
P.O. Box 1600, Suite 1008
Cidra, Puerto Rico 00739

Respondents

Proceeding pursuant to Section 309(g)(2)(B) of the
Clean Water Act, 33 U.S.C. § 1319(g)

**PROCEEDING TO AESS
A CLASS II CIVIL PENALTY**

**DOCKET NUMBER
CWA-02-2010-3465**

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

I. STATUTORY AUTHORITY

1. This Administrative Complaint, Findings of Violation, Notice of Proposed Assessment of an Administrative 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)(B) of the Clean Water Act ("CWA" or the "Act"), 33 U.S.C. § 1319(g)(2)(B). 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)(B) 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 (2001), a copy of which is attached, Complainant hereby requests that the Regional Administrator assess a civil penalty against A.B.E.F. Development Corp. (ABEF) and Herminio Cotto Construction, Inc. (Cotto Construction), (collectively, "Respondents"), as a result of Complainant's determination that Respondents are in violation of Sections 301 and 402 of the Act, 33 U.S.C. §1311 and § 1342, for the unlawful discharge of pollutants into navigable waters without authorization by a National Pollutant Discharge Elimination System (NPDES) permit

3. Section 301(a) of the Act, 33 U.S.C. § 1311(a), provides in part that except 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 of the Act, 33 U.S.C. § 1318, provides, in relevant part, that the Administrator of EPA may require the owner or operator of any point source to, among other things: maintain such records; make such reports; install, use and monitor such equipment; sample such effluents; and provide such other information as may reasonably be required in order to carry out Section 402 of the Act, 33 U.S.C. § 1342.
5. Section 402 of the Act, 33 U.S.C. § 1342, authorizes the Administrator of EPA to issue an 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.
6. The Act and its implementing regulations contain the following definitions:
 - a) "Person" means, but is not limited to, an individual, corporation, partnership or association, pursuant to Section 502(5) of the Act, 33 U.S.C. § 1362(5).
 - b) "Pollutant" means, but is not limited to, solid waste, dredged spoil, rock, sand, cellar dirt, sewage, sewage sludge, and industrial, municipal and agricultural waste discharged into water, pursuant to Section 502(6) of the Act, 33 U.S.C. § 1362(6).
 - c) "Navigable waters" means the waters of the United States and territorial seas, pursuant to Section 502(7) of the Act, 33 U.S.C. § 1362(7).
 - d) "Discharge of a pollutant" means any addition of any pollutant to navigable waters from any point source, pursuant to Section 502(12) of the Act, 33 U.S.C. § 1362(12).
 - e) "Point source" means 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, or vessel or other floating craft, from which pollutants are or may be discharged, pursuant to Section 502(14) of the Act, 33 U.S.C. § 1362(14).
 - f) The term "owner" or "operator" means the owner or operator of any "facility" or "activity" subject to regulation under the NPDES program, pursuant to Appendix A of the 2008 Construction General Permit ("2008 CGP" or the "Permit") and 40 C.F.R. § 122.2.

7. The term 2008 CGP or Permit means the NPDES General Permit for Stormwater Discharges from Construction Sites issued by EPA on September 29, 2008 (see www.epa.gov/npdes/stormwater/cgp). The 2008 CGP became effective on September 29, 2008, and expired on June 30, 2010.
8. The term "commencement of construction activities" means the initial disturbance of soils associated with clearing, grading, excavation activities or other construction-related activities, pursuant to Appendix A of the 2008 CGP.
9. The term "large construction activity" means construction activities including clearing, grading and excavation that result in land disturbance of 5 or more acres, pursuant to 40 C.F.R. § 122.26(b)(14)(x).
10. The term "operator" for the purpose of the NPDES storm water general permit for construction activity and in the context of storm water associated with construction activity (57 Fed. Reg. 41,190, 63 Fed. Reg. 7,859, and 73 Fed. Reg. 40,338), means any party associated with a construction project that meets either of the following two criteria:
 - a. the party has operational control over construction plans and specifications including the ability to make modifications to those plans and specifications; or
 - b. 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 (SWPPP) for the site or other permit conditions.

II. JURISDICTIONAL BASIS

11. ABEF is a for profit corporation organized under the laws Puerto Rico.
12. ABEF is a person within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5).
13. ABEF is the owner and operator of "Extensión Praderas de Ceiba Norte" (the Project), as defined in 40 C.F.R. § 122.2.
14. Cotto Construction is a for profit corporation organized under the laws of Puerto Rico.
15. Cotto Construction is a person within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).
16. Cotto Construction is the operator of the Project, as defined in 40 C.F.R. § 122.2.

17. The Project is located at State Road PR-935, Km. 3.1, in Juncos, Puerto Rico.
18. On or about October 16, 2008, ABEF hired Cotto Construction, a construction company, to conduct clearing, grading and excavating activities.
19. The construction activities associated with the Project consist of clearing, grading and the construction of 224 residential units.
20. According to the Notice of Intent (NOI) submitted by Cotto Construction on May 11, 2009,¹ the Project impacted a total area of 26.50 acres.
21. According to the NOI submitted by Cotto Construction on May 11, 2009, the Project start date was February 2, 2009.
22. Quebrada Ceiba is a tributary of the Río Gurabo, which, in turn, is a tributary of the Río Grande de Loíza.
23. According to blueprints developed for the Project in December 2007, the Project discharges at "Quebrada Ceiba" in 5 distinct points.
24. The Project discharges pollutants into "Quebrada Ceiba."
25. The Quebrada Ceiba, the Río Gurabo, and the Río Grande de Loiza, are waters of the United States pursuant to Section 502(7) of the Act, 33 U.S.C. § 1362(7).
26. The Project is a "point source" pursuant to Section 502(14) of the Act, 33 U.S.C. § 1362(14).
27. The Administrator of EPA promulgated regulations, which require operators of construction activities to apply for and obtain NPDES permit coverage for the storm water discharges, pursuant to 40 C.F.R. §§ 122.21, 122.26(b) and 122.26(e).
28. The NPDES storm water permit application regulations require operators of construction sites to submit an individual permit application no later than ninety (90) days before the date on which construction is to commence, unless the operators obtain authorization under an NPDES storm water general permit for construction activities, pursuant to 40 C.F.R. § 122.21.

¹ Cotto Construction had submitted an incomplete NOI to EPA on September 2, 2008, seeking coverage under the CGP.

29. According to the 2008 CGP, prior to commencement of construction activities of a new project, the permittee must submit a complete and accurate NOI and wait for EPA to authorize the discharge.
30. The earth movement activities at the Project are covered by the NPDES storm water regulations for construction activities, pursuant to 40 C.F.R. § 22.26(b)(14)(x).
31. Respondents were required to apply for and obtain an NPDES permit for all the discharges associated with industrial activity from their construction activities at the Project into waters of the United States, pursuant to Sections 301(a) and 402(p) of the CWA, 33 U.S.C. §§ 1311(a) and 1342(p), and 40 C.F.R. §§ 122.21 and 122.26.
32. Based on the paragraphs above, Respondents are subject to the Provisions of the Act.

III. FINDINGS OF VIOLATIONS

33. On April 8, 2009, EPA enforcement officers, upon presentation of credentials to ABEF's representatives, performed a Compliance Evaluation Inspection (CEI) of the Project.
34. The findings of the CEI are included in the Inspection Report dated June 24, 2009. See Attachment 1.
35. The findings of the CEI revealed the following:
 - a. Respondents operated the Project without applying for an NPDES storm water permit.
 - b. The SWPPP developed for the Project, dated August 18, 2008, was incomplete and did not comply with the minimum requirements of the 2008 CGP.
 - c. The Project lacked implementation and maintenance of erosion and sediment controls (e.g. Sediment Basin).
 - d. The Project discharged pollutants into waters of the United States.
36. Based on the findings of the CEI, EPA found that Respondents were in violation of the CWA and the 2008 CGP, and issued an Administrative Compliance Order (ACO), Docket Number CWA-02-2009-3132, against Respondents on June 26, 2009.

37. The ACO incorporated findings of violation of the CEI, and ordered Respondents to:
- a. cease and desist from discharging storm water runoff from the project into Quebrada Ceiba;
 - b. immediately cease and desist all clearing, grading and excavation activities at the Project;
 - c. provide temporary stabilization to areas where clearing, grading and excavation activities had temporarily ceased;
 - d. provide final stabilization to areas where clearing, grading and excavation activities will no longer be performed;
 - e. construct and install Best Management Practices (BMPs);
 - f. provide maintenance for the existing and future BMPs;
 - g. install and maintain sediment and erosion controls required by EQB, provided that a written notification is submitted no later than 5 calendar days before the commencement of such activity. Such notification shall include a description and itinerary of implementation of the activities to be undertaken;
 - h. amend the SWPPP to comply with the terms and requirements of the Permit and address the findings documented in the Inspection Report, and submit the amended SWPPP to EPA for review by June 24, 2009; and
 - i. submit a Compliance Plan to comply with the requirements of the Permit and the Act.
38. On May 11, 2009, Cotto Construction submitted a NOI to seek coverage under the 2008 CGP.
39. By letter dated May 11, 2009, EPA acknowledged receipt of Cotto Construction's NOI and informed that its coverage under the 2008 CGP would begin at the conclusion of the seven-day waiting period, on May 18, 2009.
40. Cotto Construction's 2008 CGP Tracking Number is PRR10BN72.
41. On July 14, 2009, ABEF submitted a NOI to seek coverage under the 2008 CGP.

42. By letter dated July 14, 2009, EPA acknowledged receipt of ABEF's NOI and informed Respondent that its coverage under the 2008 CGP would begin at the conclusion of the seven-day waiting period, on July 21, 2009.
43. ABEF's 2008 Permit Tracking Number is PRR10BO92.
44. By July 2009, both Respondents had coverage under the 2008 CGP.
45. ~~On September 18, 2009, the amended SWPPP~~ was submitted to EPA offices.
46. By letter dated October 26, 2009, ABEF's representative Guillermo Burgos-Amaral informed EPA that on August 24, 2009, Respondents had ceased and desisted from discharging storm water runoff from the Project into waters of the United States.
47. On November 24, 2009, EPA Enforcement Officers conducted a Follow up Inspection, in order to ascertain compliance with the ACO.
48. During the Follow up Inspection, EPA observed that construction activities continued to be performed and that most of the houses had been constructed. It was, therefore, evident that Respondents failed to comply with the requirements of the ACO.
49. During the Follow up Inspection, Mr. Burgos (Mr. Guillermo Burgos-Amaral's father) stated that the Project had been detained approximately 2 months, around the month of August, because of financing problems.
50. During the Follow up Inspection, EPA Enforcement Officers inspected the BMPs implemented by Respondents.
51. The findings of the Follow up Inspection revealed that:
 - a. construction activity was being performed and that the houses were already built, evidencing incompliance with the provisions of the ACO;
 - b. the concrete washout was not properly constructed; and
 - c. the inlet protections showed lack of maintenance.
52. On December 2, 2009, Respondents sent Complainant an Inspection Report prepared by Inspector Guillermo Burgos-Amaral, in which Respondents addressed the observations made during the Follow up Inspection and brought evidence of the measures taken to cure said deficiencies.

53. On December 8, 2009, Complainant issued a letter notifying Respondents that the ACO was being closed, based on Respondents' compliance with the Ordered Provisions of the ACO.

54. **CLAIM 1—Failure to Apply for an NPDES Permit for the Project**

Respondents violated Sections 301(a) and 402(p) of the CWA, 33 U.S.C. §§1311(a) and 1342(p), by failing to submit an NPDES permit application to discharge storm water associated with industrial activities from construction activities at the Project into Quebrada Ceiba.

55. **CLAIM 2—Illegal discharges of pollutants into waters of the United States without NPDES permit coverage**

Respondents 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).

56. **CLAIM 3—Failure to post a sign and retain copy of the SWPPP at the Project.**

Respondents did not post a sign or other notice at the Project concerning the NOI and did not maintain a SWPPP available at the site for EPA review and copying at the time of the CEI as required by Section 5.11 of the 2008 CGP.

57. **CLAIM 4—Failure to develop a complete and accurate SWPPP.**

Respondents did not prepare a complete SWPPP, in order to provide storm water pollution prevention for the Project, as required under Part 5 of the 2008 CGP. The SWPPP remained incomplete until September 18, 2009 (date when Respondents submitted a complete SWPPP).

58. **CLAIM 5—Failure to adequately implement the SWPPP at the Project.**

Respondents did not adequately implement the SWPPP at the Project, as required under Part 5 of the 2008 CGP, until September 18, 2009 (date when they submitted an amended SWPPP).

59. 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**

60. 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), and the Debt Collection Improvement Act of 1996, EPA, Region 2, hereby proposes to issue a Final

Complaint Against ABEF Development Corp. and
Herminio Cotto Construction, Inc.

CWA Docket No. CWA-02-2010-3465

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Order Assessing Administrative Penalties (Final Order) to Respondent assessing a penalty of **\$58,765.00**.

61. EPA determined the proposed penalty after taking into account the applicable factors identified at Section 309(g)(3) of the Act, 33 U.S.C. § 1319(g)(3). They are: the nature, circumstances, extent and gravity of the violation (or violations), and Respondents' 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. Such determination is found in the September 21, 2010 memorandum prepared for this case.
62. EPA may issue the Final Order Assessing Administrative Penalties thirty (30) days after Respondents' receipt of this Notice, unless Respondents, within that time, file an Answer to the Complaint and request a Hearing on this Notice pursuant to the following section.

V. PROCEDURES GOVERNING THIS ADMINISTRATIVE ACTION

63. The rules of procedure governing this civil administrative litigation have been set forth in the CROP.

a. Answering the Complaint

64. Where Respondents intend to contest any material fact upon which the Complaint is based, to contend that the proposed penalty is inappropriate or to contend that Respondents are entitled to judgment as a matter of law, Respondents 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, per 40 C.F.R. § 22.15(a).
65. 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
66. Respondents shall also then serve one copy of the Answer to the Complaint upon Complainant and any other party to the action, per 40 C.F.R. § 22.15(a).
67. Respondents' 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 the Respondents have any knowledge, per 40 C.F.R. § 22.15(b).

68. Where Respondents lack knowledge of a particular factual allegation and so state in their Answer, the allegation is deemed denied, per 40 C.F.R. § 22.15(b).
69. The Answer shall also set forth:
- a) the circumstances or arguments that are alleged to constitute the grounds of defense;
 - b) the facts that Respondents dispute (and thus intend to place at issue in the proceeding);
 - c) the basis for opposing the proposed relief; and
 - d) whether Respondents request a Hearing, per 40 C.F.R. § 22.15(b).
70. Respondents' failure to affirmatively raise in the Answer facts that constitute or that might constitute the grounds of a 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

71. If requested by Respondents in their Answer, a Hearing upon the issues raised by the Complaint and Answer may be held, per 40 C.F.R. § 22.15(c).
72. If, however, Respondents do 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, per 40 C.F.R. § 22.15(c).
73. Any Hearing in this proceeding will be held at a location determined in accordance with 40 C.F.R. § 22.21(d).
74. 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.
75. Should Respondents 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.
76. Should Respondents not request a Hearing, EPA will issue a Final Order, and only members of the public who submit timely comments 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.

77. 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

78. If Respondents fail in any Answer to admit, deny, or explain any material factual allegation contained in the Complaint, such failure constitutes an admission of the allegation, pursuant to 40 C.F.R. § 22.15(d).

79. If Respondents fail 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, Respondents may be found in default upon motion, per 40 C.F.R. § 22.17(a).

80. Default by Respondents 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, per 40 C.F.R. § 22.17(a).

81. Following a default by Respondents 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).

82. 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), per 40 C.F.R. § 22.17(d).

83. If necessary, EPA may then seek to enforce such Final Order of Default against Respondents, and to collect the assessed penalty amount in Federal Court.

VI. INFORMAL SETTLEMENT CONFERENCE

84. Whether or not Respondents request a formal Hearing, EPA encourages settlement of this proceeding consistent with the provisions of the Act and its applicable regulations, per 40 C.F.R. § 22.18(b).

85. 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 is believed to be relevant to the disposition of this matter, including:

- a) actions Respondents have taken to correct any or all of the violations herein alleged;

- b) any information relevant to Complainant's calculation of the proposed penalty;
 - c) the effect the proposed penalty would have on Respondents' ability to continue in business; and/or
 - d) any other special facts or circumstances Respondents wish to raise.
86. Complainant has the authority to modify the amount of the proposed penalty, where appropriate, to reflect any settlement agreement reached with Respondents, to reflect any relevant information previously not known to Complainant or to dismiss any or all of the charges, if Respondents can demonstrate that the relevant allegations are without merit and that no cause of action as herein alleged exists. Respondents are referred to 40 C.F.R. § 22.18.
87. Any request for an informal conference or any questions that Respondents may have regarding this Complaint, should be directed to the EPA attorney named in Section VII, Paragraph 107, below.
88. The parties may engage in settlement discussions irrespective of whether Respondent has requested a Hearing, per 40 C.F.R. § 22.18(b)(1).
89. Respondents' requesting a formal Hearing does not prevent Respondents from also requesting an informal settlement conference; the informal conference procedure may be pursued simultaneously with the formal adjudicatory hearing procedure.
90. 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).
91. A request for an informal settlement conference does not affect Respondents' obligation to file a timely Answer to the Complaint pursuant to 40 C.F.R. § 22.15.
92. No penalty reduction, however, will be made simply because an informal settlement conference is held.
93. Any settlement that may be reached as a result of an informal settlement conference shall be embodied in a written Consent Agreement, per 40 C.F.R. §22.18(b)(2).
94. In accepting the Consent Agreement, Respondents waive any right to contest the allegations in the Complaint and waive any right to appeal the Final Order that is to accompany the Consent Agreement, per 40 C.F.R. § 22.18(b)(2).

95. In order to conclude the proceeding, a Final Order ratifying the parties' agreement to settle will be executed, per 40 CFR § 22.18(b)(3).
96. Entering into a settlement through the signing of such Consent Agreement and complying with the terms and conditions set forth in such Consent Agreement and Final Order terminates this administrative litigation and these civil proceedings against Respondents (note that a new enforcement action may be initiated based on continued non-compliance).
97. Entering into a settlement agreement does not extinguish, waive, satisfy or otherwise affect Respondents' 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

98. Instead of filing an Answer, Respondent may choose to pay the total amount of the proposed penalty (**\$58,765.00**) within 30 days after receipt of the Complaint, provided that Respondents file with the Regional Hearing Clerk, Region 2 (at the address noted above), a copy of the check or other instrument of payment, per 40 C.F.R. §22.18(a).
99. A copy of the check or other instrument of payment should be provided to the EPA attorney named in Section VIII, Paragraph 107, below.
100. 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 address:

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

101. Pursuant to 40 C.F.R. §22.18(a)(3), if Respondents elect 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 CFR §22.18(a)(3)
102. In accordance with 40 CFR §22.45(c)(3), no Final Order shall be issued until at least ten (10) days after the close of the comment period on this Complaint.

103. Issuance of a Final Order terminates this administrative litigation and the civil proceedings arising out of the allegations made in the Complaint (note that a new enforcement action may be initiated based on continued non-compliance).
104. Further, pursuant to 40 CFR §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 in Federal Court.
105. Such payment does not extinguish, waive, satisfy or otherwise affect Respondents' obligation and responsibility to comply with all applicable statutory and regulatory requirements, and to maintain such compliance.

VIII. FILING OF DOCUMENTS

106. 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

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

Carolina Jordan-Garcia, Esq.
Caribbean Team
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 2
1492 Ponce de Leon Avenue, Suite 417
San Juan, PR 00907
Telephone (787) 977-5834
Fax: (787) 729-7748
e-mail: Jordan-garcia.carolina@epa.gov.

IX. GENERAL PROVISIONS

108. Respondents have a right to be represented by an attorney at any stage of these proceedings.
109. This Complaint does not constitute a waiver, suspension or modification of the requirements of the Act, regulations promulgated thereunder, or any applicable permit.
110. Neither assessment nor payment of an administrative civil penalty pursuant to Section 309(g) of the Act will affect Respondents' 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 28 DAY OF SEPTEMBER, 2010



Carl-Axel P. Soderberg
Director
Caribbean Environmental Protection Division
U. S. Environmental Protection Agency, Region 2
Centro Europa Building, Suite 417
1492 Ponce de León Avenue
San Juan, Puerto Rico 00907

cc: Roberto Ayala, EQB (w/ Complaint)

IN THE MATTER OF

A.B.E.F. Development Corp.
PMB 363/200 Ave Rafael Cordero
Suite 140
Caguas, Puerto Rico 00725-3757

Herminio Cotto Construction, Inc.
P O Box 1600 Suite 1008
Cidra, Puerto Rico 00739

RESPONDENTS

Proceeding pursuant to Section
309(g)(2)(B) of the Clean Water Act,
33 U.S.C. §1319(g)

**PROCEEDING TO ASSESS A
CLASS II CIVIL PENALTY**

Docket Number CWA-02-2010-3465

CERTIFICATE OF SERVICE

I certify that the foregoing Administrative Complaint was sent to the following persons, in the manner specified, on the date below:

Original & Copy UPS

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

Copy by Certified Mail
Return Receipt

Juan Algarin
A B E F Development Corp
PMB 363/200 Ave Rafael Cordero, Suite 140
Caguas, Puerto Rico 00725-3757

&

Herminio Cotto
Herminio Cotto Construction, Inc
P O Box 1600 Suite 1008
Cidra, Puerto Rico 00739

Dated

1/11/11

Aileen Sanchez ORC-CT

Aileen Sanchez ORC-CT

ATTACHMENT 2

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2**

In the Matter of:

A.B.E.F. Development Corporation
PMB 363/200 Ave. Rafael Cordero, Suite 140
Caguas, Puerto Rico 00725-3757

Herminio Cotto Construction Corporation
P.O. Box 1600, Suite 1008
Cidra, Puerto Rico 00739

**DOCKET NUMBER
CWA-02-2010-3465**

Respondents

Proceeding pursuant to Section 309(g)(2)(A) of the
Clean Water Act, 33 U.S.C. § 1319(g)

**MOTION FOR ENTRY OF DEFAULT AGAINST RESPONDENT
HERMINIO COTTO CONSTRUCTION, CORP.**

Counsel for the Complainant, the United States Environmental Protection Agency ("EPA"), respectfully submits the following Motion for Entry of Default against Herminio Cotto Construction Corporation ("Respondent Cotto"):

PROCEDURAL BACKGROUND

1. On September 29, 2010, EPA filed an Administrative Complaint, Findings of Violation, Notice of Proposed Assessment of a Civil Penalty, and Notice of Opportunity to Request a Hearing ("Complaint") against Respondents Herminio Cotto Construction and A.B.E.F. Development Corp.¹ pursuant to the authority contained in Section 309(g) of the Clean Water Act (the "Act"), 33 U.S.C. § 1319(g).

¹ Respondent A.B.E.F. Development Corp. has been in communication with Complainant and sent a letter to EPA, as an answer to the Complaint, on December 2, 2010. In a recent conversation, A.B.E.F. Development's

2. The Complaint proposes that a penalty of fifty eight thousand seven hundred and sixty five dollars (\$58,765.00) be assessed against Respondents for the unlawful discharge of stormwater, in violation of Section 301(a) and 402 of the Act, 33 U.S.C. §§ 1311 and 1342.
3. According to the U.S. Postal Service Certificate of Service and Return Receipt, signed by Eng. Burgos (See, Exhibit A), Respondent Cotto received the Complaint on or before October 8, 2010.²
4. Respondent Cotto was required to file an Answer to the Complaint within thirty (30) days after service of the Complaint. Thus, they were required to file their Answer on or before November 7, 2010.
5. Respondent Cotto was duly notified of its right to file an Answer within thirty (30) days after service of the Complaint. Complainant provided notice to Respondent through:
 - (a) the cover letter attached to the Complaint;
 - (b) the Complaint; and
 - (c) a copy of 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 (2003).

GROUND FOR DEFAULT

6. Pursuant to 40 C.F.R. § 22.15(a), a respondent shall file an original and one copy of a written answer to the Complaint with the Regional Hearing Clerk and shall serve copies

representative stated that an Answer to the Complaint will be filed, following the procedures prescribed in the CROP and restated in the Complaint.

² The U.S. Postal Service Certificate of Service and Return Receipt was signed by Eng. Burgos, however the date field is blank. Since the Receipt was returned on October 8, 2010, to the Postal Service, it is necessary to conclude that the same was signed on or before that date.

of the answer on all other parties. Any such answer to the Complaint must be filed with the Regional Hearing Clerk within 30 days after service of the Complaint.

7. Five months and ten days have elapsed since the November 7, 2010 deadline, and Respondent Cotto has not yet filed an Answer to the Complaint, nor made any kind of approach in order to address the matter.
8. Pursuant to 40 C.F.R. § 22.17(a), a party may be found to be in default after motion, upon failure to file a timely answer to the Complaint.
9. No good cause exists why a default order should not be issued. Respondent Cotto is aware of its duty to file an Answer to the Complaint and has chosen to ignore it.
10. Respondent Cotto is or should be familiarized with the appropriate procedure in this situation, since it has had previous experience with administrative processes due to Clean Water Act violations, including the issuance of an Administrative Complaint against it.
11. Eng. Burgos, who signed the U.S. Postal Service Certificate of Service and Return Receipt for Respondent Cotto, was part of a meeting held between Respondent A.B.E.F. Development Corp. and Complainant, on January 20, 2011.
12. On said meeting, Complainant explained in detail Respondent Cotto's duty to answer the Complaint and EPA's willingness to meet with its representatives as soon as possible.
13. Respondent A.B.E.F. Development Corp.'s representatives present at the meeting (Eng. Burgos, Mr. Louis Rosado and Attorney Jorge Figueroa) expressed their intention to communicate Complainant's message to Respondent Cotto's representatives.
14. Respondent Cotto has been given notice of this Complaint and more than enough time to file an Answer. Respondent Cotto's decision to disregard the Complaint shall constitute grounds for deeming its factual allegations as admitted.

RELIEF REQUESTED

15. A default order should be issued against Respondent Cotto for its failure to file the Answer to the Complaint within thirty (30) days after service of the same. The Complaint was served on Respondent on or before October 8, 2010; therefore, Respondent's Answer was due on November 7, 2010.

16. As stated in Section 22.17(a) of the CROP, CFR §22.17(a), a default order resolves all of the instant proceedings because Respondent's failure to file an answer to the Complaint constitutes an admission of all the facts alleged in the Complaint:

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.

17. However, since this case involves other respondent, and the matter of an appropriate penalty has not yet been resolved, EPA requests that the default order does not constitute an Initial Decision under 40 C.F.R. § 22.17(c) of the CROP. The issue of an appropriate penalty shall be subject to subsequent actions.

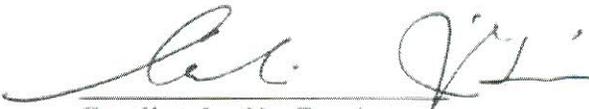
18. Therefore, EPA seeks a default order as to liability against Herminio Cotto Construction, Inc. A default order under the Rules does not require the assessment of a penalty. Section 22.17(c) of the CROP prescribes that a default order may be issued "as to any or all parts of the proceeding."

PRAYER

19. Complainant submits this Motion for Entry of Default against Respondent Cotto and respectfully requests the Presiding Officer to:

- i. Find Respondent Cotto in default; and
- ii. Issue a default Order against Respondent Cotto, pursuant to 40 C.F.R. § 22.17(a).

I hereby certify that a true copy of this Motion for Entry of Default was served to: Herminio Cotto Construction, Inc., P.O. Box 1600, Suite 1008, Cidra, Puerto Rico, 00739; and Louis Rosado-Viana, Centro Internacional de Mercadeo, Tower II, 90 Road 165, Guaynabo, PR 00968. Respectfully submitted, in San Juan, Puerto Rico, this 18th day of April, 2010.



Carolina Jordán García
Assistant Regional Counsel
U.S. EPA, Region 2
1492 Ponce de Leon Ave. 417
San Juan, PR 00901-4127
Tel. (787) 977-5834
Fax (787) 729-7748

Exhibit A:

- U.S. Postal Service Certificate of Service and Return Receipt addressed to Herminio Cotto Construction Corp., signed by Eng. Burgos.
- U.S. Postal Service Certificate of Service and Return Receipt addressed to A.B.E.F. Development Corp., signed by Víctor Hernández.

UNITED STATES POSTAL SERVICE PR 0010

09 OCT 2010 PM 3 L

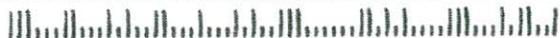


• Sender: Please print your name, address, and ZIP+4 in this box •

Hector Velez
Assistant Regional Counsel
U.S. Environmental Protection Agency
1492 Ponce de Leon Avenue
Centro Europa Building, Suite 417
San Juan, PR 00907-4127

RE: Complaint ABEF Development Corp. Germinio Cotto
Construction, Inc. CWA-02-2010-3465

REG. COUNSEL
OCT 13 AM 7:11
CWA REGION 5



SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Herminio Cotto
Herminio Cotto Construction, Inc.
P.O. Box 1600, Suite 1008
Cidra, Puerto Rico 00739

COMPLETE THIS SECTION ON DELIVERY

A. Signature Agent
 Addressee

B. Received by (Printed Name) C. Date of Delivery
Ang. O. B. Lugo

D. Is delivery address different from item 1? Yes
If YES, enter delivery address below: No

3. Service Type
 Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee) Yes

2. Article Number (Transfer from service label) 7003 2260 0005 7115 7837

UNITED STATES POSTAL SERVICE SAN JUAN PR 009

01 OCT 2010 PM 2

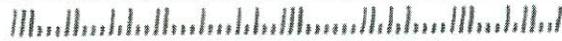


• Sender: Please print your name, address, and ZIP+4 in this box •

Hector Velez
Assistant Regional Counsel
U.S. Environmental Protection Agency
1492 Ponce de Leon Avenue
Centro Europa Building, Suite 417
San Juan, PR 00907-4127

RE: ABEF Herminio Cotto Complaint CWA-02-2010-3465

RECEIVED
OCT 15 2010
U.S. ENVIRONMENTAL PROTECTION AGENCY
SAN JUAN, PR 00907



SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
<ul style="list-style-type: none"> Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. Print your name and address on the reverse so that we can return the card to you. Attach this card to the back of the mailpiece, or on the front if space permits. 	<p>A. Signature <input checked="" type="checkbox"/> Agent <input checked="" type="checkbox"/> Addressee</p> <p>B. Received By (Printed Name) <input type="checkbox"/> Agent <input checked="" type="checkbox"/> Addressee</p> <p>C. Date of Delivery</p>
<p>1. Article Addressed to:</p> <p>Juan Algarin A.B.E.F. Development Corp. PMB 363/200 Ave. Rafael Cordero, Suite 140 Caguas, Puerto Rico 00725-3757</p>	<p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If YES, enter delivery address below:</p> <p>3. Service Type <input type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p> <p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>
<p>2. Article Number (Transfer from service label)</p>	<p>7003 2260 0005 7115 7844</p>

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

In the Matter of:

A.B.E.F. Development Corporation
PMB 363/200 Ave. Rafael Cordero, Suite 140
Caguas, Puerto Rico 00725-3757

Herminio Cotto Construction Corporation
P.O. Box 1600, Suite 1008
Cidra, Puerto Rico 00739

DOCKET NUMBER
CWA-02-2010-3465

Respondents

Proceeding pursuant to Section 309(g)(2)(A) of the
Clean Water Act, 33 U.S.C. § 1319(g)

CERTIFICATE OF SERVICE

I certify that, on the date noted below, I caused to be mailed the foregoing "MOTION FOR ENTRY OF DEFAULT AGAINST RESPONDENT HERMINIO COTTO CONSTRUCTION, Corp." to the following persons, at the addresses listed below and in the following manner:

Original by **Overnight and Fax** to:

Helen S. Ferrara
Regional Judicial Officer
U.S. EPA, Region 2
290 Broadway - Room 1626
New York, NY 10007-1866
Ph: 212-637-3233; Fax: 212-637-3199

Original and copy by **Overnight** to:

Karen Maples
Regional Hearing Clerk
U.S. EPA, Region 2
290 Broadway, 16th Floor
New York, NY 10007-1866

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

Herminio Cotto Construction Corporation
P.O. Box 1600, Suite 1008
Cidra, Puerto Rico 00739

Louis Rosado-Viana
Centro Internacional de Mercadeo, Tower II
90 Road 165
Guaynabo, PR 00968

Date: 4/18/2011


San Juan, Puerto Rico
Office of Regional Counsel - CT

ATTACHMENT 3



December 2, 2010

Ms. Carolina Jordan Garcia, Esq
Caribbean Team
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 2
1492 Ponce de Leon Avenue, Suite 417
San Juan, P.R. 00907

**SUBJECT: RESPONSE TO FINDINGS AND NOTICE OF OPPORTUNITY TO
REQUEST AN INFORMAL CONFERENCE - DOCKET NUMBER CWA-02-2010-3465**

Dear Ms. Jordan-Garcia, Esq

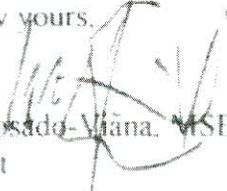
On October 6, 2010 ABEF Development Corp, herein respondent, received an Administrative Complaint, Findings of Violation, Notice of Proposed Assessment of an Administrative Penalty, and Notice of Opportunity to Request a Hearing by EPA under docket number CWA-02-2010-3465, herein the Complaint. As per 40 C.F.R. § 22.15(a) respondent must file a written answer to the Complaint within a thirty (30) days period after the service of the Complaint to the EPA Regional Hearing Clerk at Region 2. On November 3, 2010 a request for a time extension to respond was requested and verbally approved by your behave.

Pursuant to the Environmental Protection Agency (EPA) Region 2 findings of violation, append please find the response of ABEF Development Corp. ABEF Development has always been a responsible contractor seeking compliance with all environmental laws and regulations. It is our intention to attest this fact by responsibly responding to EPA complaint and by implementing all comments to the project in a timely and efficient manner.

ABEF request an informal conference to discuss the findings herein responded. Please be advised that it should not be construed that by ABEF requesting an informal conference it's waiving the right to request a formal Hearing.

I also kindly request that you forward this petition to the Regional Hearing Clerk of EPA, Region 2 to advise of our solicitation. If you would have any questions or concerns please contact the subscriber at 787-503-6939 or by e-mail at.

Cordially yours,


Louis Rosado-Viñana, MSEM
President

CC: Jorge Figueroa, Esq. - ABEF
Guillermo Burgos, PE - AB



RESPONSE TO FINDINGS

1. CLAIM 1 – Failure to Apply for an NPDES Permit for the Project

Respondents violated Section 301(a) and 402(p) of the CWA, 33 U.S.C. §§1311(a) and 1342(p), by failing to submit an NPDES permit application to discharge storm water associated with industrial activities from construction activities at the Project into Quebrada Ceiba.

ABEF Response to CLAIM 1:

On December 16, 2008 EPA Region 2 received the Notice of Intent (NOI) pursuant to Section 308(a) and § 402(p)(2)(B) of the Clean Water Act (CWA) and the National Pollutant Discharge Elimination System (NPDES) storm water regulation at 40 CFR § 122.26 by requesting coverage under the NPDES permit program (see evidence of certified mail receipt in Attachment # 1).

ABEF, at the time required Cotto Construction to requested coverage for construction project Praderas de Ceiba Norte under the NPDES permitting program by submitting the NOI prior to pursuing construction activities. ABEF, understood that by Cotto Construction submitting the NOI to the New York EPA office Region 2 it was in compliance with Section 308 and 402 of the Act, 33 U.S.C. §1318 and 33 U.S.C. §1342 and therefore had NPDES coverage pursuant to the applicable law and regulation stated above. ABEF lacked knowledge that an additional request was required to obtain NPDES permit from there behave. As soon as ABEF was aware, they submitted the NOI for the Praderas de Ceiba Norte project to obtain the proper coverage (please see Permit Coverage for ABEF Attachment # 2)

2. CLAIM 2 – Illegal discharges of pollutants into waters of the United States without NPDES permit coverage

Respondents 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)

ABEF Response to CLAIM 2:

As explain in response to Claim = 1, ABEF understood that by Cotto Construction submitting their NOI for the Praderas de Ceiba Norte the project was completely covered under the NPDES permit.

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
<p>1. The recipient's name and address must be clearly indicated.</p> <p>2. The recipient's name and address must be written in full, including street, city, state, and zip code.</p> <p>3. The recipient's name and address must be written in the front of the package.</p> <p>4. The recipient's name and address must be written in the front of the package.</p> <p>5. The recipient's name and address must be written in the front of the package.</p> <p>6. The recipient's name and address must be written in the front of the package.</p> <p>7. The recipient's name and address must be written in the front of the package.</p> <p>8. The recipient's name and address must be written in the front of the package.</p> <p>9. The recipient's name and address must be written in the front of the package.</p> <p>10. The recipient's name and address must be written in the front of the package.</p> <p>11. The recipient's name and address must be written in the front of the package.</p> <p>12. The recipient's name and address must be written in the front of the package.</p> <p>13. The recipient's name and address must be written in the front of the package.</p> <p>14. The recipient's name and address must be written in the front of the package.</p> <p>15. The recipient's name and address must be written in the front of the package.</p> <p>16. The recipient's name and address must be written in the front of the package.</p> <p>17. The recipient's name and address must be written in the front of the package.</p> <p>18. The recipient's name and address must be written in the front of the package.</p> <p>19. The recipient's name and address must be written in the front of the package.</p> <p>20. The recipient's name and address must be written in the front of the package.</p>	<p>1. The recipient's name and address must be written in full, including street, city, state, and zip code.</p> <p>2. The recipient's name and address must be written in the front of the package.</p> <p>3. The recipient's name and address must be written in the front of the package.</p> <p>4. The recipient's name and address must be written in the front of the package.</p> <p>5. The recipient's name and address must be written in the front of the package.</p> <p>6. The recipient's name and address must be written in the front of the package.</p> <p>7. The recipient's name and address must be written in the front of the package.</p> <p>8. The recipient's name and address must be written in the front of the package.</p> <p>9. The recipient's name and address must be written in the front of the package.</p> <p>10. The recipient's name and address must be written in the front of the package.</p> <p>11. The recipient's name and address must be written in the front of the package.</p> <p>12. The recipient's name and address must be written in the front of the package.</p> <p>13. The recipient's name and address must be written in the front of the package.</p> <p>14. The recipient's name and address must be written in the front of the package.</p> <p>15. The recipient's name and address must be written in the front of the package.</p> <p>16. The recipient's name and address must be written in the front of the package.</p> <p>17. The recipient's name and address must be written in the front of the package.</p> <p>18. The recipient's name and address must be written in the front of the package.</p> <p>19. The recipient's name and address must be written in the front of the package.</p> <p>20. The recipient's name and address must be written in the front of the package.</p>

XP
 Anderson
 215 05

078 08 00 7.40 0885

Electronic Notice of Intent Online Application

- HOME
- HELP
- PROFILE
- LOGOUT

Construction General Permit Notice of Intent to Discharge

Construction General Permit Confirmation

Please confirm that all of the information on your NOI is correct. If the information is correct, please print this page for your records until you receive the approved NOI from EPA. Then click the "Send to Certifying Official" button to go forward.

<input type="checkbox"/> Home <input type="checkbox"/> Help <input type="checkbox"/> Profile <input type="checkbox"/> Logout	Date: <input type="text"/>
<input type="checkbox"/> Project Located on Indian Land?	<input type="text"/>
<input type="checkbox"/> Is this industrial facility a Federal facility?	<input type="text"/>
<input type="checkbox"/> What Permit Number are you seeking coverage under?	<input type="text"/>
<input type="checkbox"/> Permit Tracking Number:	<input type="text"/>
<input type="button" value="Go Back"/> <input type="button" value="Next"/>	
<input type="checkbox"/> Applicant Company Name:	<input type="text"/>
<input type="checkbox"/> EIN:	<input type="text"/>
<input type="checkbox"/> Street:	<input type="text"/>
<input type="checkbox"/> City/State/ZIP:	<input type="text"/>
<input type="checkbox"/> Phone:	<input type="text"/>
<input type="checkbox"/> Fax:	<input type="text"/>
<input type="checkbox"/> Email:	<input type="text"/>
<input type="button" value="Go Back"/> <input type="button" value="Next"/>	
<input type="checkbox"/> Facility Name:	<input type="text"/>
<input type="checkbox"/> Facility Address:	<input type="text"/>
<input type="checkbox"/> County:	<input type="text"/>
<input type="checkbox"/> City/State/ZIP:	<input type="text"/>
<input type="button" value="Go Back"/> <input type="button" value="Next"/>	
<input type="checkbox"/> Longitude (Degrees, Minutes, Seconds): (Latitude)	<input type="text"/>
<input type="checkbox"/> Longitude (Degrees, Minutes, Seconds): (Longitude)	<input type="text"/>
<input type="checkbox"/> Longitude Longitude Method	<input type="text"/>
<input type="checkbox"/> Longitude Longitude Scale	<input type="text"/>
<input type="button" value="Go Back"/> <input type="button" value="Next"/>	
<input type="checkbox"/> Estimated Project Start Date:	<input type="text"/>
<input type="checkbox"/> Estimated Project Completion Date:	<input type="text"/>
<input type="checkbox"/> Estimated Area to be Constructed:	<input type="text"/>
<input type="button" value="Go Back"/> <input type="button" value="Next"/>	
<input type="checkbox"/> WPPP Contact Name:	<input type="text"/>
<input type="checkbox"/> How do you know the WPPP? (Contact the Facility?)	<input type="text"/>
<input type="checkbox"/> WPPP Number:	<input type="text"/>
<input type="checkbox"/> WPPP Title:	<input type="text"/>
<input type="checkbox"/> Address of location for creating the WPPP:	<input type="text"/>
<input type="checkbox"/> Street Address:	<input type="text"/>
<input type="checkbox"/> City/State/ZIP:	<input type="text"/>

ATTACHMENT 4



información solicitada

Carolina Jordan-Garcia to Louis Rosado-Viana

02/10/2011 09:39 AM

Hola:

Adjunto encontrará los documentos solicitados. Excuse la tardanza, recién hoy, mientras borraba mensajes viejos, me di cuenta de que este mensaje había sido devuelto por un error en la dirección. Le agradeceré me conteste confirmando que lo recibió.

Gracias,

Carolina Jordán-García, Esq.
Office of Regional Counsel - Caribbean team
U.S. Environmental Protection Agency - Region 2
Centro Europa Bldg., Suite 207
1492 Ponce de León Ave.
San Juan, PR 00907-4127
(tel.)787-977-5834
(fax)787-729-7748

Guidance for Penalty:

Section 309(g)(3), 33 U.S.C.A. 309(g)(3), states that the agency shall take into account the nature, circumstances, extent, and gravity of the violation, or violations, and, with respect to the violator, ability to pay, any prior history of such violations, the degree of culpability, economic benefit or savings (if any) resulting from the violation and such other matters as justice may require.

In addition, EPAs General Enforcement policies #GM21 and #GM22, (<http://www.epa.gov/compliance/resources/policies/civil/penalty/epapolicy-civilpenalties021684.pdf>) provide guidance to the user on how to develop a medium specific penalt .

Docs required for inability to pay argument (this is a guide and not necessarily exhaustive):



Inability to Pay Document Request (Attachment 1).pdf

*In addition, EPA's General Enforcement policies #GM21 and #GM22, (
<http://www.epa.gov/compliance/resources/policies/civil/penalty/epapolicy-civilpenalties021684.pdf>) provide guidance to the user on how to develop a medium specific penalt .*

Docs required for inability to pay argument (this is a guide and not necessarily exhaustive):



Inability to Pay Document Request (Attachment 1).pdf



Fw: información solicitada

Carolina Jordan-García to L.Rosado.Viana

04/04/2011 03:41 PM

Hola:

Según acordado en nuestra conversación telefónica del día de hoy, le reenvío la siguiente información, la cual -según le orientáramos en nuestra reunión- se encuentra disponible en nuestra página electrónica, y a la cual se hace referencia en el Complaint. Aún así, como acordé enviarle el link, aquí va de nuevo.

Esperamos una respuesta de su cliente a la brevedad posible, para resolver este asunto con la premura que se merece, en el mejor interés de todas las partes.

Carolina Jordán-García, Esq.
Office of Regional Counsel - Caribbean team
U.S. Environmental Protection Agency - Region 2
Centro Europa Bldg., Suite 207
1492 Ponce de León Ave.
San Juan, PR 00907-4127
(tel.)787-977-5834
(fax)787-729-7748

----- Forwarded by Carolina Jordan-Garcia/R2/USEPA/US on 04/04/2011 03:35 PM -----

From: Carolina Jordan-Garcia/R2/USEPA/US
To: "Louis Rosado-Viana" <L.Rosado.Viana@LRVINC.com>
Date: 02/10/2011 09:39 AM
Subject: información solicitada

Hola:

Adjunto encontrará los documentos solicitados. Excuse la tardanza, recién hoy, mientras borraba mensajes viejos, me di cuenta de que este mensaje había sido devuelto por un error en la dirección. Le agradeceré me conteste confirmando que lo recibió.

Gracias.

Carolina Jordán-García, Esq.
Office of Regional Counsel - Caribbean team
U.S. Environmental Protection Agency - Region 2
Centro Europa Bldg., Suite 207
1492 Ponce de León Ave.
San Juan, PR 00907-4127
(tel.)787-977-5834
(fax)787-729-7748

Guidance for Penalty:

Section 309(g)(3), 33 U.S.C.A. 309(g)(3), states that the agency shall take into account the nature, circumstances, extent, and gravity of the violation, or violations, and, with respect to the violator, ability to pay, any prior history of such violations, the degree of culpability, economic benefit or savings (if any) resulting from the violation and such other matters as justice may require.

*In addition, EPA's General Enforcement policies #GM21 and #GM22, (
<http://www.epa.gov/compliance/resources/policies/civil/penalty/epapolicy-civilpenalties021684.pdf>) provide guidance to the user on how to develop a medium specific penalt .*

Docs required for inability to pay argument (this is a guide and not necessarily exhaustive):



Inability to Pay Document Request (Attachment 1).pdf

ATTACHMENT 5



Praderas de Ceiba Norte

Carolina Jordan-Garcia to L.Rosado.Viana
Bcc: Yolianne Maclay

05/16/2011 02:25 PM

From: Carolina Jordan-Garcia/R2/USEPA/US
To: L.Rosado.Viana@LRVINC.Com.
Re: Yolianne Maclay/R2/USEPA U.S./EPA

Saludos. Como recordará, hace unos días lo llamé para corroborar su dirección postal. Esto, debido a que le enviamos un documento a la dirección que aparece en la carta que usted nos enviara unos meses atrás, y nos fue devuelto. En dicha conversación, usted me confirmó que la dirección de la carta era la correcta. Yo procedí a leer la dirección que tenía y usted afirmó que a esa dirección le llegaría el correo.

Volvimos a enviar el documento, y el mismo ha sido devuelto nuevamente. Por favor, envíe por escrito una dirección a la que le podamos enviar correo.

Recuerde también que acordamos que se enviaría una Contestación a la Demanda, según las instrucciones vertidas en la Demanda.

Gracias,

Carolina Jordán-García, Esq.
Office of Regional Counsel - Caribbean team
U.S. Environmental Protection Agency - Region 2
Centro Europa Bldg., Suite 207
1492 Ponce de León Ave
San Juan, PR 00907-4127
(tel.)787-977-5834
(fax)787-729-7748

ATTACHMENT 7



Praderas de Ceiba Norte

Carolina Jordan-Garcia to L.Rosado.Viana

05/19/2011 10:36 AM

From: Carolina Jordan-Garcia/R2/USEPA/US
To: L.Rosado.Viana@LRVINC.Com.

Buen día:

Saludos. Como recordará, hace unos días lo llamé para corroborar su dirección postal. Esto, debido a que le enviamos un documento a la dirección que aparece en la carta que usted nos enviara unos meses atrás, y nos fue devuelto. En dicha conversación, usted me confirmó que la dirección de la carta era la correcta. Yo procedí a leer la dirección que tenía y usted afirmó que a esa dirección le llegaría el correo.

Volvimos a enviar el documento, y el mismo ha sido devuelto nuevamente. Por favor, envíe por escrito una dirección a la que le podamos enviar correo.

Recuerde también que acordamos hace un tiempo ya que se enviaría una Contestación a la Demanda, según las instrucciones vertidas en la Demanda.

Gracias,
Carolina Jordán-García, Esq.
Office of Regional Counsel - Caribbean team
U.S. Environmental Protection Agency - Region 2
Centro Europa Bldg., Suite 207
1492 Ponce de León Ave.
San Juan, PR 00907-4127
(tel.)787-977-5834
(fax)787-729-7748

ATTACHMENT 6

Jordan-garcia, Carolina

From: Jordan-garcia, Carolina
Sent: Wednesday, March 09, 2016 3:20 PM
To: 'l.rosado.viana@lrvinc.com'
Subject: cwa-02-2010-3465

He tratado de comunicarse via telefónica sin éxito aun, necesito saber si esta aun es su direccion electrónica ya que necesitamos comunicarnos a la brevedad posible. Déjeme saber si hay otra persona con quien deba comunicarme sobre este asunto. Puede contestar este mensaje o llamar al número abajo.

Muchas gracias.

Carolina Jordán García
Office of Regional Counsel-CT
Environmental Protection Agency
City View Plaza II, Suite 7000
48 Road 165, Km. 1.2
Guaynabo, PR 00968-8069
(787) 977-5834

Jordan-garcia, Carolina

From: Jordan-garcia, Carolina
Sent: Wednesday, August 19, 2015 8:47 AM
To: l.rosado.viana@lrvinc.com
Subject: RE: FW: cwa-02-2010-3465

Buenos dias:

Le agradezco mucho su respuesta. Hoy estare en una vista pero manana estoy disponible para conversar con usted. Prefiero entre 10:00am y 11:00am pero puede ser en otro momento si usted lo prefiere. Espero su respuesta.

Att,
Carolina

From: Louis R.Viana [mailto:l.rosado.viana@lrvinc.com]
Sent: Tuesday, August 18, 2015 10:03 PM
To: Jordan-garcia, Carolina
Cc: louis rosado-viana
Subject: Re: FW: cwa-02-2010-3465

Estimada Sra. Garcia:

Este es mi correo electronico. Favor de indicar el mejor momento para llamarla.

Gracias!

Louis R. Viana
President & CEO
LRV
Tel 787-503-6939
Fax 787-287-1487

Confidentiality Notice: The text and documents accompanying this Electronic mail contain information intended only for the use of the individual or entities addressed on the message. If you are not one of the intended recipients, you are hereby notified that any disclosure, copying, distribution or the taking of any action in reliance on the contents of this electronic message is strictly prohibited. If you have received this electronic mail in error, please immediately notify LRV by reply electronic mail or telephone that this message has been inadvertently transmitted to you and delete this message from your system. Although LRV has taken the reasonable measures to avoid the presence of viruses in this message, LRV is not assuming liability for any damages or losses resulting from the use of this mail or any attached documents. Thank you.

--- Jordan-Garcia.Carolina@epa.gov wrote:

From: "Jordan-garcia, Carolina" <Jordan-Garcia.Carolina@epa.gov>
To: "L.Rosado Viana@LRVINC.com" <L.Rosado.Viana@LRVINC.com>
Subject: FW: cwa-02-2010-3465
Date: Mon, 17 Aug 2015 17:29:17 +0000

Buenos dias

He tratado de comunicarse via telefónica sin éxito aun, necesito saber si esta aun es su direccion electrónica ya que necesitamos comunicarnos a la brevedad posible. Puede contestar este mensaje o llamar al número abajo.

Muchas gracias.

Carolina Jordán García

Office of Regional Counsel-CT

Environmental Protection Agency

City View Plaza II, Suite 7000

48 Road 165, Km. 1.2

Guaynabo, PR 00968-8069

(787) 977-5834

Jordan-garcia, Carolina

From: Jordan-garcia, Carolina
Sent: Monday, August 17, 2015 1:29 PM
To: L.Rosado.Viana@LRVINC.com
Subject: FW: cwa-02-2010-3465

Importance: High

Buenos días:

He tratado de comunicarse via telefónica sin éxito aun, necesito saber si esta aun es su direccion electrónica ya que necesitamos comunicarnos a la brevedad posible. Puede contestar este mensaje o llamar al número abajo.

Muchas gracias.

Carolina Jordán García
Office of Regional Counsel-CT
Environmental Protection Agency
City View Plaza II, Suite 7000
48 Road 165, Km. 1.2
Guaynabo, PR 00968-8069
(787) 977-5834

Jordan-garcia, Carolina

From: Jordan-garcia, Carolina
Sent: Monday, March 30, 2015 10:11 AM
To: 'L.Rosado.Viana@LRVINC.com'
Subject: FW: cwa-02-2010-3465
Importance: High

Buenos días:

He tratado de comunicarse via telefónica sin éxito aun, necesito saber si esta aun es su direccion electrónica ya que necesitamos comunicarnos a la brevedad posible. Puede contestar este mensaje o llamar al número abajo.

Muchas gracias.

Carolina Jordán García
Office of Regional Counsel-CT
Environmental Protection Agency
City View Plaza II, Suite 7000
48 Road 165, Km. 1.2
Guaynabo, PR 00968-8069
(787) 977-5834

Jordan-garcia, Carolina

From: Jordan-garcia, Carolina
Sent: Tuesday, March 24, 2015 9:45 AM
To: 'L.Rosado.Viana@LRVINC.com'
Subject: FW: cwa-02-2010-3465

Importance: High

Buenos días:

He tratado de comunicarse via telefónica sin éxito aun, necesito saber si esta aun es su direccion electrónica ya que necesitamos comunicarnos a la brevedad posible. Puede contestar este mensaje o llamar al número abajo.

Muchas gracias.

Carolina Jordán García
Office of Regional Counsel-CT
Environmental Protection Agency
City View Plaza II, Suite 7000
48 Road 165. Km. 1.2
Guaynabo, PR 00968-8069
(787) 977-5834

Jordan-garcia, Carolina

From: Jordan-garcia, Carolina
Sent: Wednesday, March 18, 2015 10:26 AM
To: L.Rosado.Viana@LRVINC.com
Subject: cwa-02-2010-3465

Importance: High

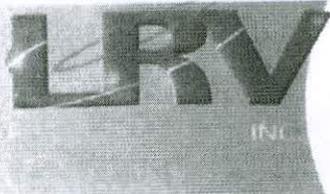
Buenos días:

He tratado de comunicarse via telefónica sin éxito aun, necesito saber si esta aun es su direccion electrónica ya que necesitamos comunicarnos a la brevedad posible. Puede contestar este mensaje o llamar al número abajo.

Muchas gracias.

Carolina Jordán García
Office of Regional Counsel-CT
Environmental Protection Agency
City View Plaza II, Suite 7000
48 Road 165, Km. 1.2
Guaynabo, PR 00968-8069
(787) 977-5834

ATTACHMENT 8



October 5, 2015

Ms. Karen Maples
Regional Hearing Clerk
EPA Region 2
290 Broadway, 16th Floor
New York, NY 10007-1866

Certified Mail: 7012 1010 0000 7693 8694

SUBJECT: REQUEST FOR EXTENSION TO RESPOND TO ORDER REQUIRING RESPONDENT ABEF DEVELOPMENT CORPORATION AND HERMINIO COTTO CONSTRUCTION, INC. TO FILE ANSWER AND REQUIRING COMPLAINANT TO FILE MOTIOND FOR DEFAULT - Docket No. CWA-02-2010-3465

Dear Ms. Maples:

Most recently ABEF Development Corp. and Herminio Cotto Construction, Inc. herein the respondents, received an order requiring respondents to file answers to complaint of Docket No. CWA-02-2010-3465.

The respondents have retained LRV to respond to the reference matter. Nevertheless, the complete file of this case and pass correspondence was submitted to LRV last week. Therefore, for LRV to submit and answer in an informed manner respectfully request a fifteen (15) days extension period. This request has also been discussed with Ms. Carolina Jordan-Garcia and she is in agreement.

If you would have any questions please do not hesitate to contact me by mail at: L.Rosado.Viana@LRVINC.Com or you can also reach me at 787-503-6939.

Respectfully yours,

Louis Rosado-Viana
President

CC: Carolina Jordan-Garcia - EPA Caribbean Office - Via email
Jorge Figueroa - ABEF
Guillermo Burgos - AB
Herminio Cotto Construction

