

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 ASSESS  
A CLASS II CIVIL PENALTY**

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

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REG. II  
2010 SEP 30 P 12:22  
REGIONAL HEARING  
CLERK

**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](http://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,<sup>1</sup> 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 Rio Gurabo, and the Rio 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.

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<sup>1</sup> 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**

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

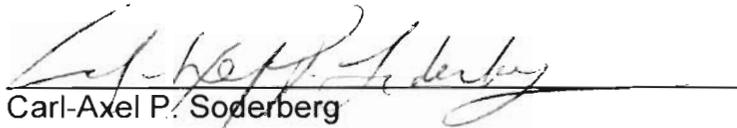
107. A copy of the Answer, any Hearing Request and all subsequent documents filed in this action shall be sent to:

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-16<sup>th</sup> Floor  
New York, NY 10007-1866

Copy by Certified Mail  
Return Receipt

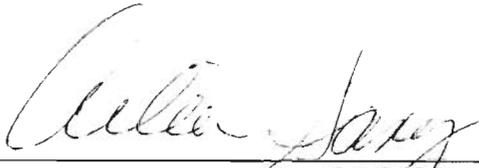
Juan Algarín  
A.B.E.F. Development Corp.  
PMB 363/200 Ave. Rafael Cordero, Suite 140  
Caguas, Puerto Rico 00725-3757



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

Dated: 9/29/2016

  
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Aileen Sanchez ORC-CT

