

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REGION 2  
SEP 21 PM 4:11  
REGIONAL HEARING  
CLERK

In the Matter of:

**Quality Engineers and Contractors Corporation**

Suite 201, 206 Eleanor Roosevelt  
Hato Rey, Puerto Rico 00918

and

**Cidra Excavation, Inc.**

P.O. Box 11218  
Caparra Heights Station  
San Juan, P.R. 00922

**Serena Housing Development**

**Respondents.**

NPDES PERMIT No. PRR10B942

**DOCKET NO. CWA-02-2007-3411**

Proceedings Pursuant to Section 309(g) of  
the Clean Water Act, 33 U.S.C. § 1319(g),  
to Assess Class II Civil Penalty

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

Quality Engineers and Contractors Corporation (“Quality” or “Respondent”), through the undersigned attorneys, presents its Answer to the Administrative Complaint, Findings of Violation, Notice of Proposed Assessment of an Administrative Penalty, and Notice of Opportunity to Request a Hearing (“Complaint”) issued by the Environmental Protection Agency (“EPA”) on June 7th, 2007, and respectfully states, alleges and prays as follows:

**I. Statutory Authority**

1. The first sentence of Paragraph 1 of the Complaint, is a statement of law that requires no admission, denial or explanation and, in the alternative, is denied. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations of the second sentence of Paragraph 1 of the Complaint.

2. Paragraph 2 of the Complaint is a statement of law and procedure, or of the application of law and procedure to facts, which requires no admission, denial or explanation and, in the alternative, is denied.

**II. Statutory and Regulatory Background**

3. Paragraphs 1 through 11 contain statements of law, of law and procedure or of the application of law and procedure to facts which, in general terms, describe the contents of the statutory and regulatory enactments therein cited, and that require no admission, denial or explanation and, in the alternative, are denied.

**III. Findings of Violation**

**A. Findings of Fact**

4. Quality admits the allegations of Paragraph 12 of the Complaint, insofar as these refer to Quality,

5. Paragraph 13 of the Complaint states conclusions of law that require no admission, denial or explanation and, in the alternative, are denied.

6. Paragraph 14 of the Complaint states conclusions of law that require no admission, denial or explanation and, in the alternative, are denied.

7. Respondent admits the allegations of Paragraph 15.

8. Respondent admits the allegations of Paragraph 16.

9. Respondent admits the allegations of Paragraph 17.

10. Respondent admits that activities at a construction project may, at different times, entail those described in Paragraph 18, but absent a specific averment as to time in the captioned

matter, lacks knowledge or information sufficient to form a belief as to the truth of the averments in Paragraph 18 and, therefore, denies the same.

11. Respondent, upon information and belief, admits the allegations of Paragraph 19.

12. Respondent, upon information and belief, admits the allegations of Paragraph 20.

13. Paragraph 21 of the Complaint states a conclusion of law that requires no admission, denial or explanation and, in the alternative, is denied.

14. Paragraph 22 of the Complaint states a conclusion of law that requires no admission, denial or explanation and, in the alternative, is denied.

15. Paragraph 23 of the Complaint states conclusions of law, or of the application of law to facts, that require no admission, denial or explanation and, in the alternative, are denied.

16. Paragraph 24 of the Complaint states a conclusion of law that requires no admission, denial or explanation and, in the alternative, is denied.

17. Paragraph 25 of the Complaint states a conclusion of law that requires no admission, denial or explanation and, in the alternative, is denied.

18. Paragraph 26 of the Complaint states a conclusion of law that requires no admission, denial or explanation and, in the alternative, is denied.

19. Paragraph 27 of the Complaint describes, in general terms, regulatory requirements appearing in 40 C.F.R. § 122.21, as to time to apply requirements, applicable to facilities described under 40 C.F.R. §122.26(b)(14)(x), but denies its applicability to this case.

20. Paragraph 28 of the Complaint states a conclusion of law that requires no admission, denial or explanation and, in the alternative, is denied.

21. Respondent concurs that Paragraphs 29 and 30 describe, in general terms, the issuance and notification in the Federal Register, effectiveness and duration of the permit therein described, but denies its applicability to this case.

22. Respondent concurs that Paragraph 31 of the Complaint describes, in general terms, requirements contained in Section 2.3 A of the "NPDES General Permit for Storm Water Discharges", but denies its applicability to this case.

23. Respondent admits the allegations of Paragraph 32 with the exception of that averment stating that "a NOI form" was "submitted" by "Respondents" which is denied, and avers, to the contrary, that "a NOI form" was "submitted" by Quality.

24. Respondent, upon information and belief, admits the allegations of Paragraph 33, with the exception of the averment that "Respondents obtained coverage", which is denied, and avers, to the contrary, that Quality obtained coverage.

25. Respondent concurs that Paragraph 34 of the Complaint describes, in general terms, a requirement contained in Section 3.1.A of the "NPDES General Permit for Storm Water Discharges", but denies its applicability to this case.

26. Respondent concurs that Paragraph 35 of the Complaint describes the content of Section 3.1.D of "NPDES General Permit for Storm Water Discharges", but denies its applicability to this case.

27. Respondent concurs that Paragraph 36 of the Complaint partially describes the content of Section 3.2.A of "NPDES General Permit for Storm Water Discharges", but denies its applicability to this case.

28. Respondent concurs that Paragraph 37 of the Complaint describes the content of Section 3.2.B of “NPDES General Permit for Storm Water Discharges”, but denies its applicability to this case.

29. Respondent concurs that Paragraph 38 of the Complaint describes the content of Section 3.3.A of “NPDES General Permit for Storm Water Discharges”, but denies its applicability to this case.

30. Respondent concurs that Paragraph 39 of the Complaint partially describes the content of Section 3.3.B of “NPDES General Permit for Storm Water Discharges”, but denies its applicability to this case.

31. Respondent concurs that Paragraph 40 of the Complaint partially describes the content of Section 3.3.C of “NPDES General Permit for Storm Water Discharges”, but denies its applicability to this case.

32. Respondent does not concur with the characterization of Section 3.4 of the “NPDES General Permit for Storm Water Discharges”, appearing in Paragraph 41 of the Complaint but, in any event, denies its applicability to this case.

33. Respondent concurs that Paragraph 42 of the Complaint partially describes the content of Section 3.6 of “NPDES General Permit for Storm Water Discharges”, but denies its applicability to this case.

34. Respondent concurs that Paragraph 43 of the Complaint describes the content of Section 3.3.C of “NPDES General Permit for Storm Water Discharges”, but denies its applicability to this case.

35. Respondent concurs that Paragraph 44 of the Complaint partially describes the content of Section 3.10.A of “NPDES General Permit for Storm Water Discharges”, but denies its applicability to this case.

36. Respondent concurs that Paragraph 45 of the Complaint partially describes the content of Section 3.10.D and G of “NPDES General Permit for Storm Water Discharges”, but denies its applicability to this case.

37. Respondent concurs that Paragraph 46 of the Complaint partially describes the content of Section 3.10.E of “NPDES General Permit for Storm Water Discharges”, but denies its applicability to this case.

38. Respondent concurs that Paragraph 47 of the Complaint partially describes the content of Section 3.12.B of “NPDES General Permit for Storm Water Discharges”, but denies its applicability to this case.

39. Respondent concurs that Paragraph 48 of the Complaint partially describes the content of Section 3.13.A of “NPDES General Permit for Storm Water Discharges”, but denies its applicability to this case.

40. Respondent concurs that Paragraph 49 of the Complaint describes the content of Section 3.13.B of “NPDES General Permit for Storm Water Discharges”, but denies its applicability to this case.

41. Respondent concurs that Paragraph 50 of the Complaint partially describes the content of Section 3.13.D of “NPDES General Permit for Storm Water Discharges”, but denies its applicability to this case.

42. Respondent concurs that Paragraph 51 of the Complaint partially describes the content of Section 3.13.C of “NPDES General Permit for Storm Water Discharges”, but denies its applicability to this case.

43. Respondent concurs that Paragraph 52 of the Complaint partially describes the content of Section 3.13.F of “NPDES General Permit for Storm Water Discharges”, but denies its applicability to this case.

44. Respondent, upon information and belief admits, as stated in Paragraph 53, that inspections were performed by an EPA officer and avers that an EPA Water Compliance Inspection Report, dated December 20, 2006, establishes the date of the inspection in 2006 as June 23, 2006 and not October 26, 2006. Respondent admits that an inspection was performed on or about February 2, 2007. Respondent lacks knowledge or information sufficient to form a belief as to whether or not the person that performed the inspection was, as alleged, an “enforcement officer” and, likewise, as to whether or not the purpose of the inspector was “to determine Respondent’s compliance with the Act, its NPDES permit, and the applicable NPDES regulations” and, therefore, denies the same.

45. In response to the allegations of Paragraph 54, Respondent admits that a NPDES Water Compliance Inspection Report, dated December 20, 2006 exists, but lacks knowledge or information sufficient to form a belief as to the existence and contents of a report dated February 22, 2007. Respondent furthermore answers that the reports speak for themselves.

46. Paragraph 54 a. of the Complaint, states a conclusion of law, or of the application of law to facts, that requires no admission, denial or explanation and, in the alternative, is denied.

47. Paragraph 54 b-i of the Complaint state conclusions of law, or of the application of law to facts that require no admission, denial or explanation and, in the alternative, is denied.

48. Respondent admits that EPA issued Administrative Order CWA-02-2007-3011, dated January 11, 2007, to Quality Engineers and Contractors Corporation, and furthermore answers that the Order speaks for it self.

49. Respondent denies Paragraph 56.

50. In response to Paragraph 57 of the Complaint, Respondent answers that that the Order speaks for it self.

**B. Conclusions of Law**

51. Paragraph 58 a-b of the Complaint states conclusions of law, or of the application of law to facts, that require no admission, denial or explanation and, in the alternative, is denied.

52. Respondent lacks knowledge or information sufficient to form a belief as to the truth of the averments in Paragraph 59 and, therefore, denies the same.

**IV. Notice of Proposed Order Assessing a Civil Penalty**

In response to this section, Respondent alleges that the proposed final order assessing administrative penalties in the amount of \$80,683.00, has no basis in law or in fact. Moreover, EPA has no authority to assess a penalty under 33 U.S.C §1319(g) because, as admitted in Paragraph 59 of the Complaint, it has failed to consult with the Commonwealth of Puerto Rico before proposing to assess such amount against Respondent. Therefore, EPA's proposed penalty assessment should be dismissed.



In addition, the proposed penalty assessment is excessive, unwarranted, burdensome, and fails to take into account the factors identified in Section 309(g)(3) of the Clean Water Act, 33 U.S.C. §§ 1251 et seq., §1319(g)(3).

Except as specifically admitted all factual allegations contained in Part IV of the Complaint are denied.

**V. Procedures Governing This Administrative Litigation**

No response to the allegations of Part V is requested and, thus, none is proffered.

**VI. Informal Settlement Conference**

No response to the allegations of Part VI is requested and, thus, none is proffered.

Respondent requests celebration of a hearing upon the issues raised by the Complaint and Answer.

**VII. Resolution of this Proceeding Without Hearing or Conference**

No response to the allegations of Part VII is requested and, thus, none is proffered.

**VIII. Filing of Documents**

No response to the allegations of Part VIII is requested and, thus, none is proffered.

**IX. General Provisions**

No response to the allegations of Part IX is requested and, thus, none is proffered.

**AFFIRMATIVE DEFENSES**

1. The Complaint fails to state a claim upon which relief can be granted against Respondent.

2. As recognized by EPA in the October 26, 2006, Serena Development Inspection Report (Section 1 C), in the January 11, 2007, Administrative Compliance Order (Findings paragraph 6), and in the Complaint (paragraph 20) construction activities commenced on August 8, 2006 and not on January 9, 2007 as averred in Claim 1 and Part IV of the Complaint for Penalty Calculation purposes.

3. Between August 8, 2006 and January 9, 2007, Respondent conducted at least ten (10) stormwater related inspections as reflected by corresponding reports.

4. Respondent activities have not resulted in the discharge of pollutants to “waters of the United States”.

5. The intermittent creek that receives stormwaters from the site and La Escarcha Creek are not “waters of the United States” and, thus, EPA lacks jurisdiction over Respondent activities at the site.

6. In response to the EPA Administrative Compliance Order of January 11, 2007, Respondent notified EPA, thru the subscribing attorney, a “Request for Summary Dismissal” to which no response was received.

7. Upon information and belief, the Complaint in the captioned matter does not pursue a legitimate regulatory purpose and has been notified solely in retaliation for Respondent’s exercise of its legitimate right to assistance of counsel in responding to the above described Administrative Compliance Order.

8. To the extent that Respondent’s acts or omissions may, without either so admitting or denying, be in non compliance with Sections 301(a) and 402(p) of the Clean Water Act, 33 U.S.C. §§ 1311(a) and 1342(p), those failures are de minimis in nature, have created no

danger to health and public safety or human welfare, or a danger to the environment.

9. Any and all actions or omissions concerning compliance with "Clean Water Act" Sections 301(a) and 402(b), 33 U.S.C. §§1311(a), 1342(b), have not resulted in any economic benefit to Respondent.

10. Respondent has at all times acted in good faith.

11. Respondent reserves the right to amend these pleadings and to add such further affirmative defenses as discovery and development of the case should disclose.

**WHEREFORE**, it is respectfully requested that the Complaint in the instant case be dismissed.

**CERTIFICATE OF SERVICE:** This Answer to Administrative Complaint has been notified by certified mail, return receipt requested, to: Regional Hearing Clerk, U.S. EPA, Region II, 290 Broadway - 17th Floor, New York, New York 10007; and copy was notified to Ms. Silvia Carreño-Coll, Assistant Regional Counsel, U.S. Environmental Protection Agency - Region 2, 1492 Ponce de León Ave., Suite 417, San Juan, Puerto Rico 00907-1866.

In San Juan, Puerto Rico this    day of September, 2007.

Respectfully submitted.

**MARTINEZ-LORENZO LAW OFFICES**

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