

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2**

IN THE MATTER OF:

INMOBILIARIA UNIBÓN, INC.
P.O. Box 9065983, San Juan,
Puerto Rico 00906

RESPONDENT

DOCKET NUMBER CWA-02-2008-3457

NPDES PERMIT PRU202005

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

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

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II

2008 MAY 15 PM 1:52

REGIONAL HEARING
CLERK

I. Statutory Authority

1. This Administrative Complaint, Findings of Violation, Notice of Proposed Assessment of a Civil Penalty, and Notice of Opportunity to Request a Hearing (Complaint) is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency (EPA) by Section 309(g)(2)(B) of the Clean Water Act ("CWA" or "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 (2005), a copy of which is attached, Complainant hereby requests that Regional Administrator assess a civil penalty against Inmobiliaria Unibón, Inc. (Respondent), for its failure to apply for coverage under the "National Pollutant Discharge Eliminations System (NPDES) Permit, Section 402 of the Act, 33 U.S.C. § 1342 (the "NPDES Permit"), and for the unlawful discharges of pollutant from its facility known as Riberas de Unibón Residential Development (the "Project") into the Unibón River, a water of the United States, without an NPDES Permit in violation of Section 301(a) of the Act, 33 U.S.C. § 1311.

II. Statutory and Regulatory Background

1. Section 301(a) of the Act, 33 U.S.C. § 1311(a), provides in part that "[e]xcept as in compliance with this Section and Sections ...402, and 404 of the Act, the discharge of any pollutant by any person shall be unlawful."
2. Section 308(a)(A) of the Act, 33 U.S.C. § 1318(a)(A), establishes that whenever required to carry out the objective of the Act, the Administrator shall require the owner or operator of any point source to:
 - a. establish and maintain such records;
 - b. make such reports;
 - c. install, use and maintain such monitoring equipment or methods;
 - d. sample such effluents; and
 - e. provide such other information as may be required.
3. Section 502 of the Act, 33 U.S.C. § 1362, and its implementing regulations, contain the following definitions:
 - a. Section 502(5) defines "person" as an individual, corporation, partnership or association;
 - b. Section 502(7) defines "navigable waters" as the waters of the United States, including the territorial seas;
 - c. Section 502(6) defines "pollutant" as including, among others, solid waste, dredged spoil, rock, sand, cellar dirt, sewage, sewage sludge and industrial, municipal and agricultural waste discharged into water;
 - d. Section 502(14), defines "point source" as any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged;
 - e. Section 502(12) defines in part "discharge of a pollutant" as any addition of any pollutant to navigable waters from any point source.
4. Section 402 of the Act, 33 U.S.C. § 1342, defines the National Pollutant Discharge Elimination System as the national program for, among other things, issuing and enforcing permits.

5. Section 402 of the Act authorizes the Administrator to promulgate regulations for the implementation of the NPDES requirements.
6. Pursuant to the Act, on April 1, 1983, EPA promulgated regulations to implement the NPDES program, under EPA Administered Permit Programs: the NPDES, at 40 C.F.R. Part 122, as amended.
7. Pursuant to the NPDES regulations at 40 C.F.R. § 122.5(b), the NPDES program requires permits for the discharge of any pollutant from any point source into waters of the United States.
8. The NPDES regulations under 40 C.F.R. § 122.2 define such terms:
 - a. "Pollutant" in part, as dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, chemical wastes, rock, sand and others.
 - b. "Facility", as any NPDES point source or any other facility or activity (including land or appurtenances thereto) that is subject to the regulations of the NPDES program.
 - c. An "owner" or "operator" as the owner or operator of any facility or activity subject to regulation under the NPDES program.
 - d. "Point Source" as any discernible, confined and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, from which pollutants are or may be discharged.
 - e. "Discharge" as the discharge of a pollutant or combination of pollutants into waters of the United States from any point source.
 - f. "Waters of the United States" means all waters such as lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, among others, and their tributaries.
 - g. "NPDES" means National Pollutant Discharge Elimination System under Section 402 of the Act, 33 U.S.C. § 1342. National Pollutant Discharge Elimination System means the national program for, among other things, issuing and enforcing permits.
9. The NPDES regulations, under 40 C.F.R. § 122.26, Storm water discharges, defines "small construction activity" as construction activities including clearing, grading and excavating that result in land disturbance of equal to or greater than 1 acre and less than 5 acres. 40 C.F.R. § 122.26(b)(15)(i).

10. For the purposes of the NPDES storm water general permit for construction activities and in the context of storm water associated with construction activity (57 FR 41190 and 63 FR 7859), the term "Operator" means any party associated with a construction project that meets either of the following two (2) 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 the project, which are necessary to ensure compliance with a storm water pollution prevention plan for the site or other permit conditions.
11. For the purposes of the NPDES storm water general permit for construction activities and in the context of storm water associated with construction activity (68 FR 39087 - Appendix A) the term "commencement of construction activities" means the initial disturbance of soils associated with clearing, grading, excavation activities or other construction-related activities.

III. Findings of Violation

A. Findings of Fact

12. Respondent is a corporation organized and authorized to do business under the laws of the Commonwealth of Puerto Rico.
13. The Respondent is a "person" within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5).
14. Respondent is the owner/operator, as defined in 40 C.F.R. § 122.2, of a housing construction project known as "Riberas de Unibón Residential Development."
15. Respondent's Project is located at State Road 159, Km. 5.8, Unibón Ward, Morovis, Puerto Rico.
16. The Project is a residential development, which consists of the construction of one hundred and twenty three (123) single family houses units.
17. The construction activities at the Project are best described by the Standard Industrial Classification code 1521 (single-family housing construction).
18. The construction activities at the Project involve, among others, land disturbance, site preparation, utilities installation, and construction of houses and recreational areas.

19. Earth movement activities at the Project involve clearing, grading and excavation on approximately 16.67 acres of land.
20. Respondent began clearing activities at the Project on or about April 30, 2004.
21. Respondent's Project is a "construction activity" as defined in 40 C.F.R. § 122.26(b)(14)(x).
22. The Project is a "point source" within the meaning of Section 502(14) of the Act, 33 U.S.C. § 1362(14), and 40 C.F.R. § 122.2.
23. The Respondent discharges storm water containing "pollutants" from the Project into the Unibón River.
24. The Unibón River is water of the United States, pursuant to Section 502(7) of the Act, 33 U.S.C. § 1362(7), and 40 C.F.R. § 122.2.
25. Owners or operators of construction activities are required to apply and obtain NPDES permit coverage for storm water discharges associated with construction activities. 40 C.F.R. § 122.26(b)(14)(x).
26. Respondent's Project is covered by the NPDES permit application regulations for construction activities. 40 C.F.R. § 122.26(b)(14)(x).
27. An owner or operator of a construction site is required to submit an individual permit application no later than ninety (90) days, before the date on which construction is to commence, unless the owner or operator obtains authorization under an NPDES storm water general permit for construction activities. 40 C.F.R. § 122.21.
28. Respondent is the owner/operator of the Project, as defined in 40 C.F.R. § 122.2. Respondent is subject to the provisions of the Act, 33 U.S.C. § 1251, et seq., and the applicable NPDES permit application regulations found at 40 C.F.R. Part 122. Respondent was required to apply for and obtain NPDES permit coverage for the storm water discharges from the Project into the Unibón River pursuant to 40 C.F.R. § 122.26(b)(14)(x).
29. On July 1, 2003, EPA issued the "NPDES General Permit for Discharges from Large and Small Construction Activities" (the "Construction Permit").
30. The Construction Permit was published in the Federal Register on July 1, 2003 (68 FR 39087). The Construction Permit became effective on July 1, 2003, and shall expire at midnight, July 1, 2008.

31. Section 2.3.A of the Construction Permit establishes application deadlines for owners or operators of new projects. Such owners or operators were required to file a complete and accurate Notice of Intent (NOI) form prior to commencement of construction activities.
32. Section 3.1.A of the Construction Permit requires Respondent to prepare a Storm Water Pollution Prevention Plan (SWPPP) prior to submission of the NOI form.
33. Section 3.1.D of the Construction Permit requires Respondent to implement the SWPPP as written from commencement of construction activity until final stabilization is complete.
34. On July 18, 2005, and January 20, 2006, a duly authorized EPA enforcement officer performed inspections ("1st Inspection" and "2nd Inspection," respectively) at the Project to determine Respondent's compliance with the Act and the applicable NPDES regulations.
35. The findings of the 1st and 2nd inspections were included in the NPDES Water Compliance Inspection Report, dated May 26, 2006. The findings of the inspections revealed that:
 - a. Respondent did not submit an individual NPDES permit application at least ninety (90) days before the date on which construction activities commenced as required by 40 C.F.R. § 122.21, nor did they file a complete and accurate NOI form prior to commencement of construction activities as required by Part 2 of the Construction Permit;
 - b. Respondent did not have a SWPPP;
 - c. Respondent did not implement adequate storm water pollution prevention measures at the Project as required under Part 3 of the Construction Permit;
 - d. uncontrolled storm water runoffs from the Project were being discharged into the Unibón River in violation of Part 3 of the Construction Permit;
 - e. Respondent did not adequately install and maintain the erosion and sediment control measures and other protective measures (i.e., geo-textile blankets, silt fences, etc.) at the Project as required under Part 3 of the Construction Permit;
 - f. large off-site accumulations of sediment that had escaped from the Project were observed impacting the adjacent land and the Unibón River. Such sediment accumulations were not removed at a frequency sufficient to minimize off-site impacts as required by Section 3.13.B of the Construction Permit;

- g. waste materials (i.e. trash, construction debris, wastewater resulting from concrete washout activities, among others) were not collected and stored as required by Section 3.13.C of the Construction Permit and were exposed to storm water reaching the Unibón River;
 - h. off site storm waters were flowing through disturbed areas of the Project;
 - i. unstable slopes were observed throughout the Project; and
 - j. Respondent did not post a sign or other notice at the Project concerning the NOI form and the location of the SWPPP as required by Section 3.12.B of the Construction Permit; among others.
36. Based on the observations made by EPA during the 1st and 2nd Inspections, EPA issued the Administrative Order CWA-02-2006-3054 ("Compliance Order" or "Order"), dated June 1, 2006, against Respondent to address the violations mentioned above. The Compliance Order incorporated findings of violations, and ordered Respondent to:
- a. cease and desist all clearing, grading and/or excavation activities at the Project;
 - b. provide temporary stabilization to areas where clearing, grading and excavation activities had been temporarily ceased;
 - c. provide final stabilization to areas where clearing, grading and excavation activities will no longer be performed;
 - d. construct and/or install erosion and storm water management controls;
 - e. provide maintenance to the erosion and storm water management controls;
 - f. install and maintain sediment and erosion controls as required by the Construction Permit and notify EPA in writing within 5 calendar days of commencement of such activity; and
 - g. prepare and file a NOI form for coverage under the Construction Permit, among other requirements.
37. On August 10, 2006, Respondent submitted to EPA a SWPPP for the Project. EPA reviewed the SWPPP and determined that it was incomplete. It did not provide for the following as required under Part 3 of the Construction Permit:
- a. combination of sediment and erosion control measures to achieve maximum pollutant removal;

- b. placement of velocity dissipation devices to provide a non-erosive flow velocity; among other storm water pollution prevention measures;
 - c. a legible site map that indicated: (1) direction(s) of storm water flow and approximate slopes anticipated after major grading activities; (2) areas of soil disturbance and areas that will not be disturbed; (3) locations of major structural and nonstructural BMPs identified in the SWPPP; (4) locations where stabilization practices are expected to occur; (5) locations of off-site material, waste, borrow or equipment storage areas; (6) locations where storm water discharges in to a surface water; and (7) areas where final stabilization has been accomplished and no further construction-phase permit requirements apply; and
 - d. description of measures to prevent the discharge of solid materials into waters of the United States; among others.
38. On October 10, 2006, and as part of its response to the Compliance Order, Respondent submitted to EPA another version of the SWPPP. EPA reviewed the SWPPP and determined that it complied with the requirements of Part 3 of the Construction Permit.
39. On March 9, 2007, and November 7, 2007, a duly authorized EPA enforcement officer performed inspections at the Project (“3rd Inspection” and “4th Inspection,” respectively) to determine Respondent’s compliance with the Act, the applicable NPDES regulations, and the Compliance Order.
40. The findings of the 3rd and 4th inspections revealed that Respondent continued to be in violation of the Act, the applicable NPDES regulations, and the Compliance Order by:
- a. failing to submit an NOI form as required by the Construction Permit;
 - b. failing to implement adequate storm water pollution prevention measures at the Project;
 - c. discharging uncontrolled storm water runoffs from the Project into the Unibón River without an NPDES permit;
 - d. failing to adequately install and maintain the erosion and sediment control measures and other protective measures (i.e., geo-textile blankets, silt fences, etc.) at the Project;
 - e. large off-site accumulations of sediment that had escaped from the Project were observed impacting the adjacent land and the Unibón River which were not removed at a frequency sufficient to minimize off-site;

- f. wastes materials (i.e. trash, construction debris, wastewater resulting from concrete washout activities, among others) were not collected and stored as required by Section 3.13.C of the Construction Permit and were exposed to storm water reaching the Unibón River;
 - g. off site storm waters were flowing through disturbed areas of the Project;
 - h. unstable slopes were observed throughout the Project; and
 - i. Respondent did not post a sign or other notice at the Project concerning the NOI form and the location of the SWPPP as required by Section 3.12.B of the Construction Permit; among others.
41. On December 28, 2007, EPA sent a letter to Respondent notifying that the Order was still active and requiring compliance with Ordered Provisions 3, 4 and 5 (which included EPA's demand for Respondent to submit a complete NOI form). Respondent did not respond to the letter.
42. On March 18, 2008, an EPA official conducted a review of the EPA National Storm Water Processing Center database¹ and the EPA files and it revealed that as of such date Respondent had not filed an NOI form as required by the Construction Permit. Respondent had failed to obtain permit coverage for its construction activities at the Project, therefore, it did not have an NPDES permit for the discharges of pollutant (storm water) from its Project into the Unibón River, a water of the United States.

B. Conclusions of Law

43. As set forth above, Respondent is liable for the violations of Sections 301(a) of the Act, 33 U.S.C. § 1311(a), as specified below:
- a. **Claim 1 – Failure to apply for coverage under the NPDES permit.**
Respondent did not submit an individual NPDES permit application as required by 40 C.F.R. § 122.21, nor did it file a complete and accurate NOI form prior to commencement of construction activities as required by Part 2 of the Construction Permit.
 - b. **Claim 2 – Illegal discharges of pollutant (storm water) into waters of the United States without NPDES permit coverage.**
Respondent discharged pollutants from the Project into waters of the United States without NPDES permit coverage, in violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a). The period of violations is from April 30, 2004 (date when clearing activities began at the Project) to November 7, 2007 (date when EPA performed the latest inspection at the Project).

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

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

IV. Notice of Proposed Order Assessing a Civil Penalty

Based on the foregoing Findings of Violation, and pursuant to the authority of Section 309(g) of the Act, 33 U.S.C. § 1319(g), EPA, Region 2 hereby proposes to issue a Final Order Assessing Administrative Penalties ("Final Order") to Respondent assessing a penalty of \$157,500. The proposed penalty has been determined in accordance with the applicable factors under Section 309(g)(3) of the Act, 33 U.S.C. § 1319(g)(3). EPA is required to take in consideration the nature, circumstances, extent and gravity of the violation (or violations), and Respondent's prior compliance history, degree of culpability, economic benefit or savings accruing to Respondent by virtue of the violations, and Respondent's ability to pay the proposed penalty. EPA has also taken in consideration the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, which requires EPA to adjust penalties for inflation on a periodic basis.

Based on the Findings set forth above, Respondent has been found violating in numerous occasions the NPDES regulations and the Act. Respondent failed to file a complete NOI form to obtain coverage for its construction activities at the Project and it unlawfully discharged pollutants into the Unibón River without NPDES coverage. Respondent also failed to perform inspections, prepare and implement a storm water pollution prevention plan, as required by the Construction Permit. Respondent is culpable for the violations. EPA took into account Respondent's knowledge of the NPDES regulations, the Construction Permit, and the risks to human health and the environment posed by the uncontrolled discharges of storm water runoff from the Project into the Unibón River, a water of the United States.

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

V. Procedures Governing This Administrative Litigation

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

A. Answering the Complaint

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

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

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

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

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

B. Opportunity to Request a Hearing

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

hold a hearing if the Answer raises issues appropriate for adjudication. 40 C.F.R. § 22.15(c).

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

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

C. Failure to Answer

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

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

VI. Informal Settlement Conference

Whether or not Respondent requests a formal hearing, EPA encourages settlement of this proceeding consistent with the provisions of the Act and its applicable regulations. 40 C.F.R. § 22.18(b). At an informal conference with a representative(s) of Complainant, Respondent may comment on the charges made in this complaint, and Respondent may also provide whatever additional information that it believes is relevant

to the disposition of this matter, including: (1) actions Respondent has taken to correct any or all of the violations herein alleged, (2) any information relevant to Complainant's calculation of the proposed penalty, (3) the effect the proposed penalty would have on Respondent's ability to continue in business, and/or (4) any other special facts or circumstances Respondent wish to raise.

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

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

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

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

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

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

comply with all applicable statutory and regulatory requirements, and to maintain such compliance.

VII. Resolution of this Proceeding Without Hearing or Conference

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

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

Pursuant to 40 C.F.R. § 22.18(a)(3), if Respondent elects to pay the full amount of the penalty proposed in the Complaint within thirty (30) days of receiving the Complaint, then, upon EPA's receipt of such payment, the Regional Administrator of EPA, Region 2 (or, if designated, the Regional Judicial Officer), shall issue a Final Order in accordance with 40 C.F.R. § 22.18(a)(3). In accordance with 40 C.F.R. § 22.45(c)(3), no Final Order shall issue until at least ten (10) days after the close of the comment period on this Complaint. Issuance of a Final Order terminates this administrative litigation and the civil proceedings arising out of the allegations made in the Complaint. Further, pursuant to 40 C.F.R. § 22.18(a)(3), the making of such payment by Respondent shall constitute a waiver of Respondent's right both to contest the allegations made in the Complaint and to appeal said Final Order to federal court. Such payment does not extinguish, waive, satisfy or otherwise affect Respondent's obligation and responsibility to comply with all applicable statutory and regulatory requirements, and to maintain such compliance.

VIII. Filing of Documents

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

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

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

**Héctor L. Vélez Cruz, Esq.
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 2
1492 Ponce de León Ave., Suite 417
San Juan, Puerto Rico 00907-4127
Telephone: (787) 977-5850
Fax: (787) 729-7748.**

IX. General Provisions

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

ISSUED THIS 12th DAY OF May, 2008.


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