## UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION 2 290 BROADWAY NEW YORK, NY 10007-1866

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In the Matter of	: *
A.B.E.F. Development Corp. and	*** ***
Herminio Cotto Construction, Inc.	: :
	: Docket No. CWA-02-2010-3465
Respondents	
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## ORDER IN RESPONSE TO RESPONDENTS' REQUEST FOR EXTENSION OF TIME TO RESPOND

The Undersigned issued an *Order Requiring Respondent A.B.E.F. Development Corporation to File Answer and Requiring Complainant to File Motions for Default*, dated August 31, 2015. This Order directed Respondent A.B.E.F. Development Corporation (ABEF) to file an answer no later than September 18, 2015. If such Answer was not filed, Complainant was directed to file a Motion for Default as to Liability and Penalty against ABEF no later than October 23, 2015. Complainant was also directed to file a Motion for Default as to Penalty against Respondent Herminio Cotto Construction, Inc. (Cotto) no later than October 23, 2015.

By Request for Extension to Respond to Order Requiring Respondent A.B.E.F. Development Corporation and Herminio Cotto Construction, Inc. to File Answer and Requiring Complainant to File Motions for Default, dated October 5, 2015, Respondents' representative requested, with the concurrence of Complainant's Attorney, a fifteen day extension for Respondents to file an Answer in this matter.

Despite the fact that this Complaint was filed in 2010, the Undersigned notes that the Respondents have not answered and that the Complainant has filed a motion for default against just one of the Respondents, Cotto, and that motion for default addressed liability only. The Undersigned also emphasizes that over the years,

Respondents have been very unresponsive and inconsistent in their efforts to cooperate with Complainant's attorney and the Undersigned. Finally, the Undersigned must point out that a *Default Order as to Liability* dated February 15, 2012 has been issued against Respondent Cotto, and that this Order would have to be vacated in order for Respondents' representative to answer on behalf of Respondent Cotto.

In light of the above, the Undersigned issues the following Order.

## **ORDER**

The date by which Respondent ABEF must answer the Complaint is hereby extended through November 9, 2015. If Respondents' representative intends to file an Answer on behalf of Respondent Cotto, a motion to vacate the standing *Order on Default as to Liability* against Cotto, together with an Answer on Cotto's behalf, must be filed by November 9, 2015

If Respondent ABEF does not file an Answer by that date, it is further ordered that the Complainant file a Motion for Default as to Liability and Penalty against Respondent ABEF no later than November 30, 2015. Failure to file such a motion may result in the Complaint being dismissed against ABEF with prejudice. 40 C.F.R. § 22.17(a).

Regardless of whether ABEF files an Answer, if a motion to vacate the *Default Order as to Liability* against Respondent Cotto, together with an Answer on Cotto's behalf, is not filed by November 9, 2015, it is further ORDERED that Complainant file a Motion for Default as to Penalty against Respondent Cotto no later than November 30, 2015. Failure to file such a Motion for Default as to Penalty may result in the Complaint being dismissed against Cotto with prejudice. 40 C.F.R. § 22.17(a).

The Respondents shall file its response to the motion(s) for default, if any, within fifteen (15) days of service of the Complainant's motion(s).

This Order is effective as of October 22, 2015.

Date: October 26, 2015

Presiding Officer

## **CERTIFICATE OF SERVICE**

I hereby certify that the Order In Response To Respondent's Request For Extension Of Time to Respond by Regional Judicial Officer Helen Ferrara in the matter of A.B.E.F. Development Corp. And Herminio Cotto Construction, Inc., Docket No. CWA-02-2010-3465, was served on the parties as indicated below:

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Karen Maples

Regional Hearing Clerk

USEPA - Region II

Dated: October 30, 2015