

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2

Filed October 05, 2020 @ 12:38pm  
USEPA – Region II  
Regional Hearing Clerk

IN THE MATTER OF:

**ALFAYA ESTATE, LLC**  
P. O. Box 1580  
Moca, Puerto Rico 00676

and

**KARIMAR CONSTRUCTION, INC.**  
P. O. Box 8000  
Aguada, Puerto Rico 00602

**DESARROLLO DE 9 VILLAS  
RESIDENTIAL PROJECT**  
Road PR-413, Km. 1.02  
Intersection with Black Eagle Road  
Rincón, Puerto Rico 00677

**RESPONDENTS**

**DOCKET NUMBER  
CWA-02-2020-3452**

Proceeding pursuant to  
Section 309(g)(2)(B) of the  
Clean Water Act, 33 U.S.C. §  
1319(g)(2)(B), to assess a  
Class II Civil Penalty

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

**I. STATUTORY AND REGULATORY AUTHORITIES**

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 United States 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 of the Caribbean Environmental Protection Division of EPA, Region 2 (“Complainant”).
2. Pursuant to Section 309(g)(2)(B) of the CWA, 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 Code of Federal

Regulations (“C.F.R.”) Part 22, a copy of which is attached, Complainant hereby requests that the Regional Administrator assess a civil penalty against **Alfaya Estate, LLC** and **Karimar Construction, Inc.** (collectively, the “Respondents”), as a result of Complainant’s determination that Respondents violated Sections 301(a) and 402(p) of the CWA, 33 U.S.C. §§ 1311(a) and 1342(p), for their failure to apply for and obtain National Pollutant Discharge Elimination System permit coverage for its discharges of pollutants from the Desarrollo de 9 Villas Residential Project located in Rincón, Puerto Rico, and for their discharges of pollutants from such project into a water of the United States without NPDES permit coverage.

3. Section 301(a) of the CWA provides in part that “[e]xcept as in compliance with this Section and Sections ...402, and 404 of the CWA, the discharge of any pollutant by any person shall be unlawful.”
4. Section 402 of the CWA defines the National Pollutant Discharge Elimination System (“NPDES”) as the national program for, among other things, issuing and enforcing permits.
5. Section 402 of the CWA authorizes the Administrator to issue a 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. Section 402 of the CWA authorizes the Administrator to promulgate regulations for the implementation of the NPDES requirements.
7. Section 402(p)(2)(B) of the CWA requires a permit with respect to a storm water discharge associated with industrial activity.
8. Pursuant to the CWA, on April 1, 1983, EPA promulgated regulations known as “EPA Administered Permit Programs: the National Pollutant Discharge Elimination System,” which was codified at 40 C.F.R. Part 122, as amended.
9. Pursuant to 40 C.F.R. § 122.1(b)(1), the NPDES program requires permits for the discharge of pollutants from any point source into waters of the United States.
10. Pursuant to 40 C.F.R. § 122.21(a)(1), any person who discharges or proposes to discharge pollutants, and who does not have an effective permit, must submit a complete NPDES permit application to EPA. Facilities described under 40 C.F.R. § 122.26(b)(15) shall submit applications at least ninety (90) days before the date on which construction is to commence.
11. Pursuant to 40 C.F.R. § 122.26(b)(15), operators of small construction activities are required to obtain a NPDES permit for storm water discharges associated with small construction activity.

12. The CWA and its NPDES implementing regulations contain the following definitions:
- a. “Best Management Practices” or “BMPs” mean schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of “waters of the United States.” BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage. 40 C.F.R. § 122.2;
  - b. “discharge of a pollutant” means any addition of any pollutant to navigable waters and/or waters of the United States from any point source. Section 502(12) of the CWA, 33 U.S.C. § 1362(12), and 40 C.F.R. § 122.2;
  - c. “facility” or “activity” means 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. 40 C.F.R. § 122.2;
  - d. “navigable waters” means the waters of the United States, including the territorial seas. Section 502(7) of the CWA, 33 U.S.C. § 1362(7);
  - e. “owner” or “operator” means the owner or operator of any “facility” or “activity” subject to regulation under the NPDES program. 40 C.F.R. § 122.2;
  - f. “permit” means an authorization, license, or equivalent control document issued by EPA or an “approved State” to implement the requirements of 40 C.F.R. Parts 122, 123 and 124. 40 C.F.R. § 122.2;
  - g. “person” means an individual, corporation, partnership, association, State, municipality, commission, or political subdivision of a State, or any interstate body. Section 502(5) of the CWA, 33 U.S.C. § 1362(5), and 40 C.F.R. § 122.2;
  - h. “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. Section 502(14) of the CWA, 33 U.S.C. § 1362(14), and 40 C.F.R. § 122.2;
  - i. “pollutant” includes solid waste, dredged spoil, rock, sand, cellar dirt, sewage, sewage sludge and industrial, municipal and agricultural waste discharged into water. Section 502(6) of the CWA, 33 U.S.C. § 1362(6), and 40 C.F.R. § 122.2;

- j. “site” means the land or water area where any “facility” or “activity” is physically located or conducted, including adjacent land used in connection with the facility or activity. 40 C.F.R. § 122.2;
  - k. “stormwater” or “storm water” means storm water runoff, snow melt runoff, and surface runoff and drainage. 40 C.F.R. § 122.26(b)(13);
  - l. “storm water discharge associated with small construction activity” means the discharge of storm water from construction activities including clearing, grading, and excavating that result in land disturbance of equal to or greater than one acre and less than five acres. Small construction activity also includes the disturbance of less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater than one and less than five acres. 40 C.F.R. § 122.26(b)(15);
  - m. “territorial seas” means the belt of the seas measured from the line of ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters, and extending seaward a distance of three miles. Section 502(8) of the CWA, 33 U.S.C. § 1362(8); and
  - n. “waters of the United States” means all waters such as lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, territorial seas, among others, and their tributaries. 40 C.F.R. § 122.2.
13. Pursuant to Section 402 of the CWA, on February 16, 2012, EPA Region 2 re-issued the NPDES General Permit for Discharges from Construction Activities (“2012 CGP”). The 2012 CGP became effective on February 16, 2012 and expired on February 16, 2017. 77 Fed. Reg. 12,286 (February 29, 2012).
  14. Pursuant to Section 402 of the CWA, on January 11, 2017, EPA Region 2 re-issued the NPDES General Permit for Discharges from Construction Activities (“2017 CGP”). 82 Fed. Reg. 6,534 (January 19, 2017).
  15. The 2017 CGP became effective on February 16, 2017 and expires on February 16, 2022.
  16. On May 14, 2019, EPA Region 2 modified the 2017 CGP, which became effective on June 27, 2019. The 2017 CGP expiration date remains as February 16, 2022. 84 Fed. Reg. 24,503 (May 28, 2019).
  17. The 2012 CGP and the 2017 CGP established requirements, such as, eligibility, technology-based effluent limitations, water quality-based effluent limitations, site inspection, corrective action, staff training, Storm Water Pollution Prevention Plan (“SWPPP”) development/implementation, and other special and general

conditions.

18. Part 1 of the 2012 CGP and the 2017 CGP established the requirements for an operator to seek coverage under either permit. The operator of a new site or new project is required to submit to EPA a complete and accurate electronic Notice of Intent (“eNOI”) prior to commencing construction activities.
19. Table 1 in the 2012 CGP and the 2017 CGP established the deadlines for submitting the eNOI. The deadline for submitting an eNOI to obtain coverage is at least fourteen (14) days prior to commencing earth disturbing activities.
20. Under the 2012 CGP and 2017 CGP, an operator is considered covered fourteen (14) calendar days after EPA has acknowledged receipt of the operator’s eNOI on the EPA’s website, unless EPA notifies the operator that the authorization has been delayed or denied.
21. Part 7 of the 2012 CGP and the 2017 CGP established the requirements for operators to develop a SWPPP prior to submitting to EPA the eNOI for coverage.
22. Part 8 of the 2017 CGP established the conditions for an operator to terminate coverage by submitting to EPA a complete and accurate Notice of Termination (“eNOT”), which certifies that the operator has met the requirements for terminating coverage.
23. Appendix A of the 2012 CGP contains the following definitions:
  - a. “commencement of earth-disturbing activities” means the initial disturbance of soils (or ‘breaking ground’) associated with clearing, grading, or excavating activities or other construction-related activities (e.g., stockpiling of fill material);
  - b. “construction activities” means earth-disturbing activities, such as the clearing, grading, and excavation of land;
  - c. “construction site” means the land or water area where construction activities will occur and where stormwater controls will be installed and maintained. The construction site includes construction support activities, which may be located at a different part of the property from where the primary construction activity will take place, or on a different piece of property altogether. The construction site is often a smaller subset of the lot or parcel within the project is taking place;
  - d. “discharge point” means the location where the collected and concentrated stormwater flows are discharged from the construction site;

- e. “discharge-related activity” means activities that cause, contribute to, or result in stormwater and allowable non-stormwater point source discharges, and measures such as the siting, construction, and operation of stormwater controls to control, reduce, or prevent pollutants from being discharged;
  - f. “earth-disturbing activity” means actions taken to alter the existing vegetation and/or underlying soil of a site, such as clearing, grading, site preparation (e.g., excavating, cutting, and filling), soil compaction, and movement and stockpiling of topsoil;
  - g. “new project” means a construction project that commences construction activities on or after February 15, 2012;
  - h. “operator” means any party associated with a construction project that meets either of the following two criteria:
    - 1) the party has operational control over construction plans and specifications, including the ability to make modifications to those plans and specifications; or
    - 2) the party has day-to-day operational control of those activities at a project that are necessary to ensure compliance with the permit conditions;
  - i. “storm sewer system” means a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains) designed or used for collecting or conveying stormwater;
  - j. “stormwater inlet” means a structure placed below grade to conduct water used to collect stormwater runoff for conveyance purposes;
  - k. “storm event” means a precipitation event that results in a measurable amount of precipitation; and
  - l. “storm sewer” means a system of pipes that carries stormwater runoff from buildings and land surface.
24. Appendix A of the 2017 CGP contains the following definitions:
- a. “commencement of construction activities” means the initial disturbance of soils (or ‘breaking ground’) associated with clearing, grading, or excavating activities or other construction-related activities (e.g., stockpiling of fill material; placement of raw materials at the site).

- b. “common plan of development or sale” means a contiguous area where multiple separate and distinct construction activities may be taking place at different times on different schedules under one common plan. The “common plan” of development or sale is broadly defined as any announcement or piece of documentation (including a sign, public notice or hearing, sales pitch, advertisement, drawing, permit application, zoning request, computer design, etc.) or physical demarcation (including boundary signs, lot stakes, surveyor markings, etc.) indicating construction activities may occur on a specific plot.
- c. “construction activities” mean earth-disturbing activities, such as the clearing, grading, and excavation of land, and other construction-related activities (e.g., stockpiling of fill material; placement of raw materials at the site) that could lead to the generation of pollutants. Some of the types of pollutants that are typically found at construction sites are: sediment; nutrients; heavy metals; pesticides and herbicides; oil and grease; bacteria and viruses; trash, debris, and solids; treatment polymers; and any other toxic chemicals;
- d. “construction site” or “site” means the land or water area where construction activities will occur and where stormwater controls will be installed and maintained. The construction site includes construction support activities, which may be located at a different part of the property from where the primary construction activity will take place, or on a different piece of property altogether;
- e. “discharge point” means the location where the collected and concentrated stormwater flows are discharged from the construction site;
- f. “discharge-related activity” means activities that cause, contribute to, or result in stormwater and allowable non-stormwater point source discharges, and measures such as the siting, construction, and operation of stormwater controls to control, reduce, or prevent pollutants from being discharged;
- g. “earth-disturbing activity” means actions taken to alter the existing vegetation and/or underlying soil of a site, such as clearing, grading, site preparation (e.g., excavating, cutting, and filling), soil compaction, and movement and stockpiling of topsoil;
- h. “exposed soils” are soils that as a result of earth disturbing activities are left open to the elements.
- i. “new site” means a site where construction activities commenced on or after February 16, 2017;

- j. “operator” means any party associated with a construction project that meets either of the following two criteria:
    - 3) the party has operational control over construction plans and specifications, including the ability to make modifications to those plans and specifications; or
    - 4) the party has day-to-day operational control of those activities at a project that are necessary to ensure compliance with the permit conditions;
  - k. “stabilization” means the use of vegetative and/or non-vegetative cover to prevent erosion and sediment loss in areas exposed through the construction process.
  - l. “storm sewer system” means a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains) designed or used for collecting or conveying stormwater;
  - m. “stormwater” means stormwater runoff, snowmelt runoff, and surface runoff and drainage;
  - n. “stormwater inlet” or “catch basin” means a structure placed below grade to conduct water used to collect stormwater runoff for conveyance purposes;
  - o. “storm event” means a precipitation event that results in a measurable amount of precipitation;
  - p. “storm sewer” means a system of pipes (separate from sanitary sewers) that carries stormwater runoff from buildings and land surfaces; and
  - q. “turbidity” means a condition of water quality characterized by the presence of suspended solids and/or organic material.
25. Section 309(a)(3) of the CWA provides that “[w]henver on the basis of any information available . . . the Administrator finds that any person is in violation of [CWA Sections 301 and 308], or is in violation of any permit condition or limitation implementing any of such sections in a permit issued under [Section 402 of the CWA, the Administrator] shall issue an order requiring such person to comply with such section....”
26. Section 309(g)(1)(B) of the CWA, 33 U.S.C. § 1319(g)(1)(B), authorizes the Administrator, upon a finding that any person has violated, among other things, Section 301(a) of the CWA, or has violated any permit condition or limitation

implementing such section in a permit issued under Section 402 of the CWA, to assess a civil penalty.

## **II. JURISDICTIONAL STATEMENTS**

27. Alfaya Estate, LLC (“Respondent Alfaya”) is a limited liability corporation organized under the laws of the Commonwealth of Puerto Rico for the development of lands and general construction.
28. Respondent Alfaya is a “person” pursuant to Section 502(5) of the CWA, 33 U.S.C. § 1362(5) and 40 C.F.R. § 122.2.
29. Respondent Alfaya is the owner of a residential development project known as “Desarrollo de 9 Villas Residential Project” located in PR-413 Road, Km. 1.02, Intersection with Black Eagle Road, Rincón, Puerto Rico (the “Project”).
30. Respondent Alfaya is an “owner”, as defined in 40 C.F.R. § 122.2.
31. The Project is a “facility”, as defined in 40 C.F.R. § 122.2.
32. Karimar Construction Inc. (“Respondent Karimar”) is a corporation organized under the laws of the Commonwealth of Puerto Rico since 1999.
33. Respondent Karimar is a “person” pursuant to Section 502(5) of the CWA, 33 U.S.C. § 1362(5) and 40 C.F.R. § 122.2.
34. Respondent Alfaya hired Respondent Karimar to perform construction activities at the Project.
35. Respondents commenced construction activities at the Project on or about January 20, 2017.
36. On October 12, 2018, Respondents filed eNOIs under 2017 CGP seeking NPDES permit coverage for the Project.
37. Respondents performed construction activities at the Project that consisted of earth-disturbing activities including clearing, grubbing and earthworks, in two existing adjacent lots comprising approximately 2.75 acres (2.87 “cuerdas”).
38. The Project is a “point source” pursuant to Section 502(14) of the CWA, 33 U.S.C. § 1362(14) and 40 C.F.R. § 122.2.
39. At all relevant times alleged in this Complaint, Respondent Alfaya had control over the Project’s construction plans and specifications, including the ability to make modifications to those plans and specifications.

40. At all relevant times alleged in this Complaint, Respondents had day-to-day operational control over the construction activities being conducted at the Project.
41. At all relevant times alleged in this Complaint, Respondents had control over the design, installation and maintenance of storm water controls to minimize the discharge of pollutants in stormwater from the Project's construction site, including the development and implementation of a SWPPP at the Project.
42. At all relevant times alleged in this Complaint, Respondents were "operators" of the Project, as defined in 40 C.F.R. § 122.2 and Appendix A of the 2012 CGP and 2017 CGP.
43. Respondents discharged turbid storm water containing "pollutants" from the Project into an unnamed creek, which flows into the Caribbean Sea.
44. The unnamed creek and Caribbean Sea are "waters" of the United States pursuant to Section 502(7) of the CWA, 33 U.S.C. § 1362(7), and 40 C.F.R. § 122.2.
45. The Caribbean Sea is a "territorial sea" pursuant to Section 502(8) of the CWA, 33 U.S.C. § 1362(8).
46. Respondents are subject to the provisions of the CWA, 33 U.S.C. § 1251, et seq., and the applicable NPDES permit application regulations found at 40 C.F.R. § 122.
47. Respondents were required to apply for and obtain NPDES permit coverage for the Project's discharges of pollutants into waters of the United States pursuant to Sections 402(a)(1) and 402(p) of the CWA, 33 U.S.C. §§ 1342(a)(1) and 1342(p), and the applicable NPDES permit application regulations found at 40 C.F.R. § 122.

### **III. FINDINGS OF VIOLATIONS**

48. Complainant re-alleges paragraphs 1 – 47, above.
49. On October 4, 2018, an EPA official performed a NPDES Stormwater Reconnaissance Inspection (the "Inspection") of the Project.
50. During the Inspection, the EPA official observed and documented, among other things, the following:
  - a. construction machinery conducting earth movement activities at the Project;
  - b. the entrance of the Project did not have erosion and sediment controls to address off-site tracking of sediments into Road PR-413;
  - c. a stormwater inlet without any sediment control measure;
  - d. an accumulation of sediments and gravel at the entrance of the Project;

- e. turbid stormwater runoff containing sediments flowing from the Project into the culvert at PR-413 Road; and
  - f. turbid stormwater runoff containing sediments reaching a nearby unnamed creek and the Caribbean Sea.
51. On October 8, 2020, an EPA official conducted a review of the EPA eNOI database. EPA found that Respondents had not applied for 2012 CGP nor had they filed an eNOI to seek coverage under the 2017 CGP for their stormwater discharges associated with small construction activities from the Project into waters of the United States.
52. The findings of the Inspection were included in an Inspection Report, dated October 10, 2018. EPA hand-delivered to Respondents a copy of the Inspection Report by a letter dated October 10, 2018.
53. In a letter dated October 23, 2018, Respondent Alfaya submitted to EPA a document titled "Response for Findings and Plan of Action" ("POA"). The POA included a copy of the eNOIs that Respondent Alfaya and Respondent Karimar filed on October 17, 2018. EPA assigned NPDES tracking number PRR000057 for the eNOI that Respondent Alfaya submitted. EPA assigned the NPDES tracking number PRR000058 for the eNOI that Respondent Karimar submitted.
54. Pursuant to Section 309(a)(3), and based on the EPA official's observations and further investigations, EPA issued an Administrative Compliance Order ("ACO"), Docket Number CWA-02-2019-3100, on November 16, 2018, against Respondents to address the violations described in paragraphs 48 and 49, above.
55. The ACO incorporated findings of violations, and required Respondents to, among other things:
- a. not discharge stormwater runoff from the construction activities at the Project into waters of the United States, unless they filed for and obtained coverage and authorization for such discharges under the provisions of the 2017 CGP or other NPDES permit;
  - b. while seeking for and obtaining coverage under an NPDES permit, implement: temporary and final stabilization; perimeter controls, erosion and sediment controls, and BMPs; storm water run-on management from flows coming from outside properties into the third phase of the Project; sediment track-out controls to address sediment discharges into PR-413 Road; pollution prevention controls and dust controls; and maintenance and replacement, where required, of the existing and future BMPs;
  - c. amend the October 5, 2018 SWPPP developed for the Project to address the comments and areas of concern described in Attachment 1 of the ACO;

- d. jointly perform site inspections at the Project and document the site inspections following the requirements in Part 4 of the 2017 CGP;
  - e. jointly submit Monthly Progress Reports; and
  - f. jointly submit information concerning the Project.
56. On May 7, 2019, Respondent Karimar filed an eNOI to seek coverage for the Project under the 2017 CGP.
57. On May 8, 2019, Respondent Alfaya filed an eNOI to seek coverage for the Project under the 2017 CGP.
58. On May 21, 2019, EPA granted Respondent Karimar coverage for the Project under the 2017 CGP with NPDES tracking number PRR10006K.
59. On May 22, 2019, EPA granted Respondent Alfaya coverage for the Project under the 2017 CGP with the NPDES tracking number PRR10006J.
60. On June 20, 2019, an EPA official reviewed rainfall data from the National Climatic Data Center (“NCDC”) of the National Oceanographic and Atmospheric Administration (“NOAA”) for the January 20, 2017 and October 12, 2018 period (the “EPA Review”).
61. The EPA Review revealed that fifty-eight (58) storm events of 0.25 inches or more were recorded at the NCDC’s Rincón Climatological Station (the “NCDC Station”) during the January 20, 2017 and October 12, 2018 period.
62. On October 21, 2019, Respondent Alfaya filed an electronic Notice of Termination (“eNOT”) to terminate its coverage for the Project under the 2017 CGP. EPA granted termination on October 21, 2019.
63. On October 21, 2019, Respondent Karimar filed an eNOT to terminate its coverage for the Project under the 2017 CGP. EPA granted termination on October 21, 2019.
64. Based on the findings on paragraphs 46 to 61 above, Respondents are liable for the violations of Sections 301(a) and 402(p) of the CWA, 33 U.S.C. §§ 1311(a) and 1342(p), as specified below:
- a. **Claim 1 – Respondents failed to apply for and obtain NPDES permit coverage for the Project**
    - 1) Respondents did not submit an individual NPDES permit application, as required by 40 C.F.R. § 122.21, nor did they file a timely, complete

and accurate eNOI seeking coverage under the 2012 CGP and 2017 CGP.

- 2) The period of violation for this claim is between January 12, 2017 [fourteen (14) days prior to NCDC Station's recorded storm event of 0.36 inches on January 26, 2017 that caused a storm water runoff discharge containing pollutants from the Project into the unnamed creek] and October 17, 2018 (date when Respondents submitted untimely, inaccurate and incomplete eNOIs to obtain coverage under the 2017 CGP for the Project).
- 3) The days that Respondents failed to file for NPDES permit coverage was **six hundred forty-three (643) days**.

b. **Claim 2 – Respondents illegally discharged pollutants (storm water associated with small construction activities) from the Project into waters of the United States without NPDES permit coverage.**

- 1) Storm events of 0.25 inches or greater occurred on fifty eight (58) instances during the period between January 26, 2017 (date when NCDC Station recorded a storm event of 0.36 inches during the month that Respondents initiated construction activities at the Project) and October 10, 2018 (last day in October 2018 that NCDC Station recorded a storm event of 0.25 inches or greater).
- 2) The days that Respondents discharged pollutants from the Project into a water of the United States without NPDES permit coverage was **fifty-eight (58) days**.

65. The EPA will notify the Puerto Rico Department of Natural and Environmental Resources regarding this proposed action by mailing a copy of this Complaint and Notice and offering an opportunity 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 CWA, 33 U.S.C. § 1319(g), EPA Region 2 hereby proposes to issue a Final Order Assessing Administrative Penalties ("Final Order") to Respondents assessing a penalty of **\$118,865**. The proposed penalty has been determined in accordance with the applicable factors under Section 309(g)(3) of the CWA, 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 Respondents' prior compliance history, degree of culpability, economic benefit or savings accruing to Respondents by virtue of the violations, and Respondents' ability to pay the proposed penalty. EPA has also taken in

consideration the Federal Civil Penalties Inflation Adjustment Act, as amended, which prescribes a formula for adjusting statutory civil penalties to reflect inflation, maintain the deterrent effect of statutory civil penalties, and promote compliance with the law.

Based on the Findings set forth above, Respondents have been found to have violated the CWA and its implementing NPDES regulations. Respondents failed to timely apply for NPDES permit coverage prior to commencing earth-disturbing activities for the Project, as required by the NPDES applications and the 2012 CGP and the 2017 CGP.

Respondents are culpable for the violations alleged in this Complaint. EPA carefully considered Respondents' history of violations under the CWA, their knowledge of the NPDES regulations, the 2012 CGP and the 2017 CGP, and the risks to human health and the environment posed by the uncontrolled discharges of storm water runoff from the Project into the unnamed creek and the Caribbean Sea, which are waters of the United States.

The violations discussed in this Complaint are serious since Respondents' failure to design, implement/install, maintain and inspect controls to comply with the requirements of the 2012 CGP and the 2017 CGP, such as technology-based effluent limitations and water quality-based effluent limitations, lead to the discharges of pollutants into waters of the United States that caused significant amount of pollutants to reach surface water that resulted in direct and indirect negative effects on human health and the environment. Respondents knew of their obligations under the NPDES regulations, the 2012 CGP and 2017 CGP, and the CWA.

Respondent Alfaya does not have a prior history of violations under the CWA and it's implementing NPDES regulations. Respondent Karimar has prior history of violations under the CWA and it's implementing NPDES regulations.

EPA may issue a final Order Assessing Administrative Penalties thirty (30) days after Respondents' receipt of this Notice, unless Respondents, within that time files an answer to the Complaint and, request 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.

### **1. Answering the Complaint**

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. 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, 16<sup>th</sup> floor  
New York, New York 10007-1866  
Email: [maples.karen@epa.gov](mailto:maples.karen@epa.gov).

Respondents 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).

Respondents' Answer to the Complaint must clearly and directly admit, deny, or explain each of the factual allegations that are contained in the Complaint with regard to which Respondents have any knowledge. Where Respondents have no knowledge of a particular factual allegation and so state in their Answer, the allegation is deemed denied. The Answer shall also state: the circumstances or arguments which are alleged to constitute the grounds of any defense; the facts which Respondents dispute; the basis for opposing any proposed relief; and whether a hearing is requested. 40 C.F.R. § 22.15(b).

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

## **2. Opportunity to Request a Hearing**

If requested by Respondents 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, 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. 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 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 CWA, to be heard and to present evidence on the appropriateness of the penalty assessment. Should Respondents 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.

### **3. Failure to Answer**

If Respondents fail 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 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. 40 C.F.R. § 22.17(a). Default by Respondents constitutes, for purposes of the pending proceeding only, an admission of all facts alleged in the Complaint and a waiver of Respondents' right to contest such factual allegations. 40 C.F.R. § 22.17(a). 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).

Any penalty assessed in the default order shall become due and payable by Respondents 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 Respondents, and to collect the assessed penalty amount, in federal court.

## **VI. Informal Settlement Conference**

Whether or not Respondents request a formal hearing, EPA encourages settlement of this proceeding consistent with the provisions of the CWA and its applicable regulations. 40 C.F.R. § 22.18(b). At an informal conference with a representative(s) of Complainant, Respondents may comment on the charges made in this complaint, and Respondents may also provide whatever additional information that it believes is relevant to the disposition of this matter, including: (1) actions Respondents have 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 Respondents' ability to continue in business, and/or (4) any other special facts or circumstances Respondents wish to raise.

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.

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 VIII, Paragraph 2, below.

The parties may engage in settlement discussions irrespective of whether Respondents have requested a hearing. 40 C.F.R. § 22.18(b)(1). Respondents' requesting a formal hearing do not prevent him 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 Respondents' 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, Respondents waive their 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).

Respondents' 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. Respondents' entering into a settlement does 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, Respondents may choose to pay the total amount of the proposed penalty 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. 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:

United States Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P. O. Box 979077  
St. Louis, MO 63197-9000  
Docket Number: CWA-02-2019-3451

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 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 Respondents shall constitute a waiver of Respondents' 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 Respondents' 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 - 16<sup>th</sup> Floor  
New York, New York 10007-1866  
Email: [maples.karen@epa.gov](mailto:maples.karen@epa.gov).

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

Suzette M. Meléndez-Colón, Esq.  
Office of Regional Counsel, Caribbean Team  
U.S. Environmental Protection Agency, Region 2  
City View Plaza II, Suite 7000  
Guaynabo, Puerto Rico 00968  
Email: [melendez-colon.suzette@epa.gov](mailto:melendez-colon.suzette@epa.gov)  
Telephone Number: (787) 977-5822.

**IX. General Provisions**

1. Respondents 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 CWA, regulations promulgated thereunder, or any applicable permit.
3. Neither assessment nor payment of an administrative civil penalty pursuant to Section 309(g) of the CWA will affect Respondents' continuing obligation to comply with the CWA, and with any separate compliance order issued under Section 309(a) of the CWA, 33 U.S.C. § 1319(a), for the violations alleged herein.

ISSUED THIS 30th DAY OF SEPTEMBER, 2020.

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**CARMEN R. GUERRERO PÉREZ**

Director

Caribbean Environmental Protection Division

United States Environmental Protection Agency, Region 2

cc: Puerto Rico Department of Natural and Environmental Resources  
P. O. Box 366147  
San Juan, Puerto Rico 00930