

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

Filed September 1, 2020 @ 12:31pm

USEPA – Region II
Regional Hearing Clerk

IN THE MATTER OF:

**SQR ARCHITECTS & ENGINEERS CONSULTING,
P.S.C.**

Calle Bolivar #67
San Juan, Puerto Rico 00917

Maritime Transportation Terminal
Dock 2, Forestal Drive
Former Roosevelt Roads Naval Base
Ceiba, Puerto Rico 00735

RESPONDENT

**DOCKET NUMBER
CWA-02-2020-3451**

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 **SQR Architects and Engineers Consulting, P.S.C.** (“Respondent” or “SQR”), as a result of Complainant’s determination that Respondent violated Sections 301(a)

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- and 402(p) of the CWA, 33 U.S.C. §§ 1311(a) and 1342(p), for its failure to apply for and obtain National Pollutant Discharge Elimination System permit coverage for its discharges of pollutants from the New Maritime Transportation Terminal construction project located in Ceiba, Puerto Rico, and for its 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 an NPDES permit for the discharge of any pollutant, or combination of pollutants, subject to certain requirements of the Act and such conditions as the Administrator determines are necessary.
 6. 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, et seq., 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.
 11. Pursuant to 40 C.F.R. § 122.26(b)(14)(x), an operator of a construction activity is required to obtain an NPDES permit for storm water discharges associated with 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 or association. 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 associated with industrial activity" means the discharge from any conveyance which is used for collecting and conveying storm water and which is directly related to manufacturing, processing or raw materials storage areas at an industrial plant. 40 C.F.R. §§ 122.2 and 122.26(b)(14);
 - m. "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 January 11, 2017, EPA Region 2 re-issued the NPDES General Permit for Discharges from Construction Activities ("2017 CGP"). 82 Fed. Reg. 6534 (Jan. 19, 2017).
 14. The 2017 CGP became effective on February 16, 2017 and expires on February 16, 2022.
 15. 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. 24503 (May 28, 2019).
 16. 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.
 17. Part 1 of the 2017 CGP established the requirements for an operator to seek coverage by submitting to EPA a complete and accurate Notice of Intent ("eNOI") prior to commencing construction activities.
 18. Table 1 in 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.
 19. Under the 2017 CGP, an operator is considered covered fourteen (14) calendar days after EPA has acknowledged receipt of the operator's eNOI from EPA's NPDES eReporting Tool ("NeT"), unless EPA notifies the operator that the authorization has been delayed or denied.
 20. Part 7 of the 2017 CGP established the requirements for operators to develop a SWPPP prior to submitting to EPA the eNOI for coverage.
 21. 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. “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;
- c. “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;
- d. “construction support activity” means a construction-related activity that specifically supports the construction activity and involves earth disturbance or pollutant-generating activities of its own, and can include activities associated with concrete or asphalt batch plants, equipment staging yards, materials storage areas, excavated material disposal areas, and borrow areas;
- n. “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 topsoils;
- g. “new site” means a site where construction activities commenced on or after February 16, 2017;

- 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” means stormwater runoff, snowmelt runoff, and surface runoff and drainage;
 - k. “stormwater inlet” or “catch basin” means a structure placed below grade to conduct water used to collect stormwater runoff for conveyance purposes;
 - l. “storm event” means a precipitation event that results in a measurable amount of precipitation; and
 - m. “storm sewer” means a system of pipes (separate from sanitary sewers) that carries stormwater runoff from buildings and land surfaces.
22. 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....”
23. Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(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

- 24. Respondent is a corporation organized under the laws of the Commonwealth of Puerto Rico.
- 25. Respondent is a “person” pursuant to Section 502(5) of the CWA, 33 U.S.C. §

1362(5), and 40 C.F.R. § 122.2.

26. Between September 3, 2018 and December 31, 2018, Respondent performed construction activities at the maritime transportation terminal located at Dock 2 of the Former Roosevelt Roads Naval Base, Forestal Drive, Ceiba, Puerto Rico (the “Terminal” or “Project”).
27. Respondent performed clearing, grubbing, excavation and grading at the Project.
28. Respondent’s clearing, grubbing, excavation and grading at the Project resulted in the disturbance greater than five (5) acres of land.
29. The Project is a “new site”, as defined in the 2017 CGP.
30. The Project is a “facility”, as defined in 40 C.F.R. § 122.2.
31. 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.
32. At all relevant times alleged in this Complaint, Respondent was an “operator” of the Project, as defined in 40 C.F.R. § 122.2 and Appendix A of the 2017 CGP.
33. Respondent discharged storm water associated with construction activity, as defined in 40 C.F.R. § 122.26(b)(14)(x), containing “pollutants” from the Project into Ensenada Honda Bay¹.
34. The Ensenada Honda Bay is a “water” 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.
35. Respondent was 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. Part 122.
36. Respondent was 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. Part 122.

III. FINDINGS OF VIOLATIONS

37. Complainant re-alleges Paragraphs 1 – 36, above.

¹ Ensenada Honda Bay is part of the Caribbean Sea.

38. On September 17, 2018, an EPA official conducted a review of the EPA eNOI database. EPA found that Respondent had not filed an eNOI to seek coverage under the 2017 CGP for the Project.
39. On September 17-18, 2018, EPA performed an NPDES Stormwater Inspection (the "September 2018 Inspection") of the Project.
40. The findings of the September 2018 Inspection were included in an Inspection Report, dated October 9, 2018.
41. During the September 2018 Inspection, EPA observed and found, among other things, the following:
 - a. soil exposed to precipitation without stabilization;
 - b. boundaries of the Project without any perimeter controls, flow management controls, and erosion and sediment controls;
 - c. soil piles without any sediment control measures;
 - d. construction waste material without pollution prevention practices;
 - e. two (2) storm sewer inlets connected to two (2) storm water outfalls located at the dock area of the Terminal, which discharges into Ensenada Honda Bay; and
 - f. Respondent confirmed that it had not applied for coverage under 2017 CGP for its stormwater discharges associated with construction activities from the Project into Ensenada Honda Bay.
42. On November 6, 2018, EPA performed a second NPDES Stormwater Inspection (the "November 2018 Inspection") of the Project.
43. The findings of the November 2018 Inspection were included in an Inspection Report, dated November 28, 2018.
44. During the November 2018 Inspection, EPA observed and found, among other things, the following:
 - a. construction waste material without pollution prevention practices;
 - b. storm sewer inlets (catch basins) without adequate storm drain inlet protection;

- c. 55-gallon drums of petroleum products placed over the ground surface without secondary containment and exposed to stormwater;
 - d. Terminal's exit points without sediment track-out controls; and
 - e. Respondent confirmed that it had not applied for coverage under the 2017 CGP for the stormwater discharges associated with construction activities from the Project into Ensenada Honda Bay.
45. On November 13, 2018, an EPA official conducted a review of the EPA eNOI database. EPA found that Respondent had not filed an eNOI to seek coverage under the 2017 CGP for the Project.
46. On December 12, 2018, Respondent submitted to EPA an eNOI (the "SQR-eNOI") to obtain coverage under the 2017 CGP for its stormwater discharges, as operator, associated with construction activities from the Project into Ensenada Honda Bay.
47. EPA assigned the NPDES ID Number PRR10005P to the SQR-eNOI.
48. The SQR-eNOI indicated that the Project Start Date was September 3, 2018 and the Project End Date was December 31, 2018.
49. On December 13, 2018, EPA placed the SQR/eNOI on hold, and notified Respondent that the Project's site will not be considered authorized to discharge under the 2017 CGP until all concerns are resolved and the hold on the authorization is removed.
50. Pursuant to Section 309(a)(3) of the CWA, the observations and findings on the September 2018 Inspection and November 2018 Inspection, and further investigations, EPA issued an Administrative Compliance Order (the "ACO"), Docket Number CWA-02-2019-3103, on December 19, 2018.²
51. The ACO incorporated findings of violations, and required Respondent, among other things, to:
- a. not discharge stormwater runoff from the construction site into the Ensenada Honda Bay, except with authorization under the provisions of the 2017 CGP or other NPDES permit for which Respondent needed to apply for and obtain coverage;
 - b. that while 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 Project; sediment track-out controls;

² The ACO was issued to the Puerto Rico Maritime Transportation Authority and SQR.

- pollution prevention controls and dust controls; and maintenance and replacement, where required, of the existing and future BMPs;
- c. developed and submit to EPA for review, a SWPPP for the Project;
 - d. perform site inspections at the Project and document the site inspections following the requirements in Part 4 of the 2017 CGP; and
 - e. submit Monthly Progress Reports.
52. On February 19, 2019, EPA notified Respondent that coverage under the 2017 CGP was denied. The notification provided the basis for its denial.
53. On January 17 and 22, 2020, an EPA official reviewed rain precipitation data (the "EPA Data Review") from the National Oceanographic and Atmospheric Administration's National Climatic Data Center ("NCDC").
54. Based on the EPA Data Review, thirty-seven (37) storm events of 0.25 inches or more were recorded at the NCDC's Río Blanco Lower Climatological Station for the period between September 3, 2018 and December 31, 2018.
55. Based on the findings on Paragraphs 37 to 55, above, Respondent is 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 – Respondent failed to apply for and obtain NPDES permit coverage for the Project**
 - 1) Respondent did not submit an individual NPDES permit application, as required by 40 C.F.R. § 122.21, nor did Respondent file a timely, complete and accurate eNOI seeking coverage under the 2017 CGP.
 - 2) The period of violation for this claim is between August 20, 2018 (fourteen (14) days prior to the Project Start Date) and December 11, 2018 (date when Respondent submitted the eNOI seeking coverage under the 2017 CGP for the Project).
 - 3) The number of days that Respondent failed to file for NPDES permit coverage was **one hundred thirteen (113 days)**.
 - b. **Claim 2 – Illegal discharges of pollutant (storm water associated with 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 thirty-seven (37) instances during the period between September 3, 2018 (Project

Start Date) and December 11, 2018 (day before the date when Respondent submitted the eNOI seeking coverage under the 2017 CGP for the Project).

- 2) Therefore, the number of days on which Respondent discharged pollutants from the Project into a water of the United States without NPDES permit coverage was **thirty-seven (37) days**.

56. The EPA will notify the Puerto Rico Department of Natural and Environmental Resources regarding this proposed action by providing an electronic 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 Respondent assessing a penalty of **\$58,064.00**. 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 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, 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, Respondent has been found to have violated the CWA and its implementing NPDES regulations. Respondent failed to timely apply for NPDES permit coverage prior to commencing earth-disturbing activities for the Project, as required by the NPDES permit application regulations and the 2017 CGP.

Respondent is culpable for the violations alleged in this Complaint. EPA carefully considered Respondent’s history of violations under the CWA, its knowledge of the NPDES regulations, 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 Ensenada Honda Bay, which is a water of the United States.

The violations discussed in this Complaint are serious since Respondent’s failure to design, implement/install, maintain and inspect controls to comply with the 2017 CGP requirements, such as technology-based effluent limitations and water quality-based effluent limitations, lead to the discharges of pollutants into Ensenada Honda Bay that

caused significant amount of pollutants to reach surface water that resulted in direct and indirect negative effects on human health and the environment. Respondent knew of its obligations under the NPDES regulations, the 2017 CGP and the CWA.

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

EPA may issue a final Order Assessing Administrative Penalties thirty (30) calendar days after Respondent's receipt of this Notice, unless Respondent, 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 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) calendar 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 with regard to which Respondent has any knowledge. Where Respondent has 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 Respondent disputes; the basis for opposing any proposed relief; and whether a hearing is requested. 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.

2. 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 CWA, 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) calendar 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 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 constitutes, for purposes of the pending proceeding only, an admission of all facts alleged in the Complaint and a waiver of Respondent's right to contest such factual allegations. 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) calendar 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 CWA 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 wishes 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 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 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 his 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 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, Respondent may choose to pay the total amount of the proposed penalty within 30 days after receipt of the Complaint, provided that Respondent files 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 address:

**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 Respondent elects to pay the full amount of the penalty proposed in the Complaint within thirty (30) calendar 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

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subsequent documents filed in this action should be sent to:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
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:

Evelyn Rivera-Ocasio, Esq.
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 2
City View Plaza II, Suite 7000
Guaynabo, Puerto Rico 00968
Email: rivera-ocasio.evelyn@epa.gov
Telephone Number: (787) 977-5859.

IX. General Provisions

1. Respondent has 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 Respondent's 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 27 DAY OF August, 2020.

CARMEN R. GUERRERO-PÉREZ
Director
Caribbean Environmental Protection Division
United States Environmental Protection Agency, Region 2

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cc: Puerto Rico Department of Natural and Environmental Resources
P. O. Box 11488
San Juan, Puerto Rico 00910