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

July 7, 2009

U. S. Environmental Protection Agency
Eurika Durr, Clerk of the Board
Environmental Appeals Board
Colorado Building
1341 G Street, N.W., Suite 600
Washington, D.C. 20005

RE: José López-Roig, President, Estancias de Siervas de Maria, Inc.; EPA Docket No. CWA-02-2006-3415

Dear Ms. Durr:

Pursuant to my conversation with an individual in your office on Wednesday, July 1, 2007, I have attached a corrected Default Order and Initial Decision in the referenced matter. I am requesting that the attached order supersede the Default Order and Initial Decision which I issued in this matter on June 17, 2009, and which was served on the Environmental Appeals Board, as well as the parties and the Assistant Administrator for the Office of Enforcement and Compliance Assurance, on June 18, 2009.

Unfortunately, there was a typographical error which was repeated four times throughout the original decision, wherein "309(a) of the Clean Water Act, 33 U.S.C. § 1319(a)" rather than the correct statutory section, "309(g) of the Clean Water Act, 33 U.S.C. § 1319(g)," was cited. This error appeared in the Caption on page 1, the beginning of the first full paragraph on page 2, paragraph 33 on page 8, and paragraph 1 of the *Conclusions of Law* on page 10.

As the attached decision is intended to supersede the original version, I understand that the forty-five day period during which the decision may be appealed, set aside or reviewed by the Board before becoming final pursuant to 40 CFR § 22.27(c) will begin to run upon service of the revised decision upon the parties.

I apologize for any inconvenience or confusion these errors have caused. Please contact the undersigned with any comments or questions.

Thank you for your assistance in this matter.

Very truly yours,

Helen S Ferrara

Helen S. Ferrara
Presiding Officer

cc: Assistant Administrator, Office of Enforcement and Compliance Assurance, USEPA

José López-Roig, President, Estancias de Siervas de Maria, Inc.

Eduardo J. Gonzalez, Esq., Office of Regional Counsel, USEPA, Region 2

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 Broadway
New York, NY 10007

IN THE MATTER OF: **José López-Roig, President** **Estancias de Siervas de Maria, Inc.** **MSC 1006, HC-04 Box 44374** **Bo. San Salvador** **Caguas, PR 00725** Respondent.	Docket No. **CWA-02-2006-3415** Proceeding Pursuant to Section 309(g) of the Clean Water Act, 33 U.S.C. §1319(g)

DEFAULT ORDER AND INITIAL DECISION

By Motion for Entry of Default and Initial Decision of the Presiding Officer ("Motion for Default"), the Complainant, the Director of the Division of Enforcement and Compliance Assistance ("DECA") of Region 2 of the United States Environmental Protection Agency ("EPA"), has moved for a Default Order and Initial Decision finding the Respondent, José López-Roig, President, Estancias de Siervas de Maria, Inc., liable for the violation of Sections 301 and 402 of the Clean Water Act ("CWA" or the "Act"), 33 U.S.C. §§ 1311 and 1342. The Complainant requests assessment of a civil penalty in the amount of Ninety Seven Thousand Dollars ($97,000), as proposed in the Complaint.

Pursuant to the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties ("Consolidated Rules"), 40 CFR Part 22, and based upon the record in this matter and the following Findings of Fact, Conclusions of Law, and Determination of Penalty,

Complainant's Motion for Default is hereby GRANTED. The Respondent is hereby found in default and a civil penalty is assessed against it in the amount of $97,000.

BACKGROUND

This is a proceeding under Section 309(g) of the Clean Water Act, 33 U.S.C. § 1319(g), governed by the Consolidated Rules. Complainant initiated this proceeding by issuing a Complaint, Findings of Violation, Notice of Proposed Assessment of a Civil Penalty, and Notice of Opportunity to Request a Hearing ("Complaint") on August 3, 2006 against Respondent. In its Complaint, the Complainant alleged that Respondent discharged industrial storm water associated with construction activities into the Rio Grande de Loiza River without a National Discharge Elimination Permit ("NPDES") in violation of Sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311 and 1342.

The Complaint explicitly states on page 5, in the section entitled *Filing an Answer*, that

> 1. If Respondent wishes to avoid being found in default, Respondent must file a written Answer to this Complaint with the Regional Hearing Clerk no later than thirty (30) days from the date of receipt of this Complaint. EPA may make a motion pursuant to § 22.17 of the CROP seeking a default order thirty (30) days after Respondent's receipt of the Complaint unless Respondent files an Answer within that time. If a default order in entered, the proposed penalty, in its entirety, may be assessed without further proceedings....
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> 3. Failures of Respondent to admit, deny, or explain any material factual allegations in this Complaint shall constitute admission of the allegation.

Service of the Complaint by certified mail return receipt requested was completed on August 11, 2006. On November 7, 2006, the Complainant forwarded the Complaint a second time to Respondent. Service of the Complaint by certified mail return receipt requested was

completed for the second time on November 14, 2006. To date, an Answer has not been filed by the Respondent.

On December 20, 2007, Complainant issued a Motion for Default. It was served on Respondent by certified mail return receipt requested. To date, the Respondent has not filed a response to the Motion for Default.

STATUTORY AND REGULATORY AUTHORITY

1. Section 301(a) of the CWA, 33.U.S.C. § 1311(a), prohibits the discharge of pollutants by any person into navigable waters except in compliance with, among other things, a National Pollutant Discharge Elimination System ("NPDES") permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.
2. "Discharge of a pollutant" means any addition of any pollutant to navigable waters from any point source, pursuant to Section 502(12) of the Act, 33 U.S.C. § 1362(12).
3. "Person" includes an individual, corporation, partnership or association, pursuant to Section 502(5) of the Act, 33 U.S.C. § 1362(5).
4. "Pollutant" includes solid waste, dredged spoil, rock, sand, cellar dirt, sewage, sewage sludge, and industrial, municipal and agricultural waste discharged into water, pursuant to Section 502(6) of the Act, 33 U.S.C. § 1362(6).
5. "Navigable waters" include the waters of the United States pursuant to Section 502(7) of the Act, 33 U.S.C. §1362(7). "Waters of the United States" include, but are not limited to, waters which are currently used or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide. This

term also encompasses wetlands, rivers, streams (including intermittent streams). See 40 CFR § 122.2.

6. "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, pursuant to Section 502 (14) of the Act, 33 U.S.C. § 1362(14).

7. Section 402(a) of the CWA, 33 U.S.C. § 1342(a) provides the Administrator of the EPA ("Administrator") with authority to issue a NPDES permit that authorizes the discharge of pollutants into waters of the United States, provided that all discharges meet the applicable requirements of Section 301 of the CWA, 33 U.S.C. § 1311, or such other conditions as the Administrator determines are necessary to carry out the provisions of the CWA.

8. Section 402(p) of the Act, 33 U.S.C. § 1342(p), requires a permit with respect to stormwater discharges associated with industrial activity.

9. Under Section 402 of the CWA, 33 U.S.C. § 1342, on November 15, 1990, the Administrator promulgated regulations at 40 CFR § 122.26 relating to the control of storm water discharges.

10. Under 40 CFR § 122.26 (a)(1)(ii) and (c)(1), dischargers of storm water associated with industrial activity are required to apply for an individual permit or seek coverage under a promulgated storm water general permit.

11. 40 CFR § 122.26(b)(14)(x) defines "storm water discharge associated with industrial activity" to include construction activity including clearing, grading and excavating activities, that result in the disturbance of more than five acres of land.

12. EPA issued the "NPDES General Permit for Discharges from Large and Small Construction Activities" (Permit No. PRR100000) ("CGP") on July 1, 2003. This permit was published in the Federal Register (68 FR 39087). It became effective on July 1, 2003. Prior to the issuance of the 2003 CGP, the 1998 CGP, published in the Federal Register on February 17, 1998 was effective.

FINDINGS OF FACT

Based on a review of the record in this proceeding and pursuant to 40 CFR § 22.27(a), the Undersigned makes the following findings of fact:

13. José López-Roig is the President of Estancias Siervas de María, Inc, a corporation doing business in the Commonwealth of Puerto Rico.

14. From August 1, 2001 through July 25, 2006, Respondent owned a construction site ("the Site") of approximately 19.5 acres which was located at PR State Road 931, Km. 4.3, Navarro Ward, Gurabo, Puerto Rico.

15. At the Site, Respondent operated and engaged in the construction activity consisting of a residential housing development known as "Estancias de Siervas de María".

16. The Respondent's construction activity referenced in paragraph 15 above involved earth clearing, grading and excavation activities which resulted in the disturbance of more than five acres of total land area.

17. On March 17, 2005, EPA conducted a Compliance Evaluation Inspection ("CEI") at the Site and found that the Respondent was engaged in the construction activity described in paragraphs 15 and 16, above, and that the Respondent did not have a NPDES permit for its stormwater discharges associated with industrial activity.[1]

18. The Site is adjacent to an unnamed stream which discharges into the Rio Grande de Loiza River, which then discharges into the Atlantic Ocean, a navigable water of the United States.

19. From August 1, 2001 through July 25, 2006, at all relevant times, Respondent did not apply for or obtain a NPDES permit for the construction activity at the Site, as indicated by the print out of EPA's NPDES database that indicates 'no results' for Respondent's application for a NPDES permit.[2]

20. Respondent is a "person" within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

21. Respondent's construction activity disturbed more than five acres of total land area at the Site, and therefore falls within the purview of 40 CFR § 122.26(b)(14)(x).

22. The construction activity at the Site created storm water discharges which constitute a "discharge of a pollutant" within the meaning of Section 502(12) of the Act, 33 U.S.C. § 1362(12).

23. Respondent's discharges are, and were at all relevant times, from a point source as defined in Section 502(14) of the CWA, 33 U.S.C § 1362(14).

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[1] See EPA's *Water Compliance Inspection Report*, Attachment 3 to Motion for Default.

[2] See EPA's *NOI Application Search Results,* Attachment 4 to Motion for Default

24. The Rio Grande de Loiza River, located in the Commonwealth of Puerto Rico, and which discharges into the Atlantic Ocean, is a navigable water of the United States within the meaning of Section 502(7) of the Act, 33 U.S.C. § 1362(7).

25. Respondent conducted an industrial activity at the Site without complying with Section 402(p) of the Act, 33 U.S.C. § 1342(p), which requires obtaining a NPDES permit for construction activity that disturbs more than five acres of total land area, as required by 40 CFR § 122.26 (b)(14)(x).

26. Respondent's discharge of stormwater associated with industrial activity without a NPDES permit constituted an unlawful discharge of pollutants in violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a).

27. Respondent's failure to obtain permit coverage for its storm water discharges and failure to operate pursuant to such permit violated 40 CFR § 122.26 and Sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311 and 1342.

28. On May 18, 2005, pursuant to Sections 308 and 309(a) of the CWA, 33. U.S.C. §§ 1318 and 1319(a), EPA issued an Administrative Compliance Order and Request for Information ("Administrative Order") [3], Docket No. CWA-02-2005-3216, to Respondent, requiring the following: submission of a Notice of Intent (NOI) to be covered under the CGP; development, submission and implementation of a storm water pollution prevention plan (SWPPP); and submission of additional information.

29. On September 8, 2005, EPA issued an Order to Show Cause[4], CWA-02-2005-3243,

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[3] Attachment 2 to *EPA's Penalty Memorandum*, Attachment 2 to Motion for Default.

[4] Attachment 4 to *EPA's Penalty Memorandum*, Attachment 2 to Motion for Default.

requiring Respondent to meet with EPA on October 12, 2005.

30. By letter dated October 18, 2005, Respondent enclosed a copy of the site's Sedimentation and Erosion Control Program.

31. By letter dated November 2, 2005, EPA informed Respondent that the Show Cause meeting was rescheduled to November 17, 2005, and that there were deficiencies with Respondent's submittals.

32. By letter dated November 16, 2005, Respondent informed EPA that he was unable to attend the scheduled Show Cause meeting due to illness. EPA did not receive any subsequent communications from Respondent.

33. As set forth above, Complainant found that Respondent has violated Sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311 and 1342. For these violations, Complainant filed a Complaint dated August 3, 2006 against Respondent, appended to the Motion for Default as Attachment 1, pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), seeking an administrative penalty of Ninety Seven Thousand Dollars ($97,000).

34. Respondent was served with a copy of the Complaint by certified mail return receipt requested.[5]

35. According to confirmation of delivery of the Complaint from the United States Postal Service ("USPS"), Respondent received the Complaint in Caguas, Puerto Rico on August 11, 2006.[6]

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[5] Motion for Default, Attachment 5, *Certificate of Service*, and Attachment 6, EPA's cover letter addressing the Complaint to the Respondent.

6 Motion for Default, Attachment 7, print out of the *Track & Confirm* system provided by the USPS.

36. Pursuant to 40 CFR §§ 22.7(c) and 22.15, Respondent had thirty (30) days from the date on which it received the Complaint to file its answer.

37. Pursuant to 40 CFR Part 22.15, Respondent was required to file its answer to the Complaint on or before September 11, 2006 (thirty days after August 11, 2006).

38. Respondent failed to respond to the Complaint within the thirty-day period provided by 40 CFR § 22.15.

39. On November 7, 2006, Complainant again forwarded the Complaint to Respondent, advising Respondent that: Respondent had the right to request a hearing to contest any allegations set forth in the Complaint or to contest the appropriateness of the proposed penalty; the Complaint included a section regarding the requirements for filing an Answer to the Complaint; Respondent had the right to be represented by an attorney, or to represent itself, at any stage of the proceedings; and that any hearing would be conducted in accordance with the Consolidated Rules, 40 CFR Part 22.

40. On November 14, 2006, the aforementioned letter, together with the Complaint, was delivered in Caguas, Puerto Rico.[7]

41. Complainant twice duly notified Respondent of its right to file an answer within thirty days after service of the Complaint. Complainant provided notice to Respondent through: the cover letter attached to the Complaint; the Complaint; and a copy of the Consolidated Rules, 40 CFR Part 22.

42. Respondent has failed to answer the Complaint.

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[7] Motion for Default, Attachment 9, USPS return-receipt which confirms delivery of the November 7, 2006 letter and copy of the print out of the *Track & Confirm* system provided by the USPS.

43. On December 20, 2007, Complainant issued a Motion for Default.[8] It was served on Respondent by certified mail return receipt requested.

44. To date, the Respondent has failed to respond to the Motion for Default.

CONCLUSIONS OF LAW

1. Jurisdiction is conferred by Section 309(g) of the CWA, 33 U.S.C. § 1319(g).

2. Section 309(g)(2)(B) of the Act, 33 U.S.C. § 1319(g)(2)(B), as amended by the Debt Collection Act of 1996, implemented by the Civil Monetary Penalty Inflation Adjustment Rule, 40 CFR Part 19, provides that any person who violates, or fails or refuses to comply with, the CWA shall be liable to the United States for a civil penalty up to, in the case of a class II penalty, $157,500.[9]

3. The Complaint in this action was served upon Respondent in accordance with 40 CFR § 22.5(b)(1).

4. Respondent's failure to file an Answer to the Complaint, or otherwise respond to the Complaint, constitutes a default by Respondent pursuant to 40 CFR § 22.17(a).

5. Respondent's default constitutes an admission of the allegations set forth in the

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[8] The undersigned notes that the caption on the Complaint reads "José López-Roig, President, Estancias de Seirvas de Maria, Respondent" and paragraph 2 of the Complaint requests an assessment of a penalty against "José López-Roig ('Respondent')". However, the Motion for Default's caption reads "José López-Roig, President, and Estancias de Siervas de Maria, Inc, Respondent" and paragraph 1 refers to Estancias de Seirvas de Maria, Inc and José López-Roig ("Respondents"). Of course, jurisdiction over the Respondent(s) must be established before a default order is issued and that proper service of the Complaint on the Respondent(s) named in the Complaint is necessary to obtain jurisdiction in a subsequent default proceeding. Based on the record, I determine that, in this proceeding, there is jurisdiction over one Respondent, identified as José López-Roig, President, Estancias de Seirvas de Maria, as stated in the Complaint.

[9] The Debt Collection Improvement Act of 1996 requires EPA to periodically adjust its civil monetary penalties for inflation. On December 31, 1996 and February 13, 2004, EPA adopted regulations entitled *Adjustment of Cavil Monetary Penalties for Inflation*, 40 CFR Part 19, which provide that the maximum class II penalty should be adjusted up to $137,500 for each violation that occurred on or after January 30, 1997, and up to $157,500 for violations which occurred on or after March 15, 2004.

Complaint and a waiver of the Respondent's right to a hearing on such factual allegations. 40 CFR §§ 22.17(a) and 22.15(d).

6. Pursuant to 40 CFR § 22.17(a), Respondent's failure to file a timely Answer or otherwise respond to the Complaint is grounds for the entry of a Default Order and Initial Decision against the Respondent assessing a civil penalty for the aforementioned violations.

7. As described in the penalty calculation below, I find that the Complainant's proposed civil penalty of $97,000 is properly based on the statutory requirements of Section 309(g)(3) of the CWA, 33 U.S.C. § 1319(g)(3).

DETERMINATION OF PENALTY

As set forth above, Section 309(g)(2)(B) of CWA, U.S.C. § 1319(g)(2)(B), as amended by the Debt Collection Act of 1996, provides that any person who violates, or fails or refuses to comply with the CWA, shall be liable to the United States for a civil penalty up to, in the case of a class II penalty, $157,500.

In both its Complaint and its Motion for Default, the Complainant seeks a civil penalty of $97,000, based upon the statutory factors set forth in Section 309(g)(3) of the Act, 33 U.S.C. § 1319(g)(3), and in accordance with the Agency's General Enforcement Policies (GM-21 and GM-22), as outlined in the Motion for Default and Attachment 2 thereto, a November 16, 2007 signed memorandum to the case file from Christy Arvizu, Environmental Scientist with EPA Region 2's Water Compliance Branch, entitled Administrative Penalty Assessment – Class II and setting forth the case name and docket number ("EPA's Penalty Memorandum"). The statutory factors under Section 309(g)(3) of the Act include: the nature, circumstances, extent and seriousness of the violation(s), and, with respect to the violator, the prior history of such

violation(s), the degree of culpability, the economic benefit obtained through non-compliance, the Respondent's ability to pay in light of the information available at the time of the issuance of the Complaint, and such other matters as justice may require.

In concluding that the proposed penalty is reasonable, the undersigned took the following findings into consideration:

Calculation of Gravity Component:

Nature: As established by the record, Respondent violated Sections 301 and 402 of the CWA.

Circumstances: The circumstances of the violations have been described in detail in the Findings of Fact section, above.

Extent: The period of violations used to calculate this penalty is from August 1, 2001 through July 25, 2006, for a total of 1819 days of violation.[10]

Seriousness of the Violation: Storm water can wash nutrients, metals, oils, and other substances associated with construction activities into surface waters. Requiring certain construction sites to apply for NPDES storm water permits provides a way for States and EPA Regions to monitor and manage these discharges, and reduce or ultimately eliminate the amount of pollutants present in them. EPA's requirement that certain industrial facilities obtain permits is designed to reduce or minimize the discharge of pollutants which impair or degrade the quality of receiving waters. On May 18, 2005, EPA issued Respondent an Administrative Order which required Respondent to submit a

[10] The Complaint in this case was issued on August 3, 2006, and the Complainant therefore chose July 2006 as the last month of violation to be asserted in the Complaint. Based on a five year statute of limitations, working backwards from July 2006, the first month of violation is August 2001. However, notwithstanding the statute of limitations, Complainant appears to have evidence that the Respondent has been operating the site since May of 2000 (Complaint, Attachment 1 to Motion for Default).

Notice of Intent to obtain coverage under the NPDES permit. On September 8, 2005, EPA issued Respondent an Order to Show Cause requiring Respondent to meet with EPA. Respondent failed to comply with the Administrative Order and Show Cause Order. Respondent's violations are serious and have an indirect effect on human health and direct effect on the environment. Respondent's failure to comply with the Administrative Order, Request for Information and Order to Show Cause impedes implementation of the NPDES program and negates the benefits of this program, such as protecting the water quality of the Rio Grande de Loiza, which is a public water supply. Respondent's recalcitrance also hinders EPA's ability to carry out its duties to protect the environment.

Proposed Gravity Component: Based on the considerations set forth above, the Complainant proposed a gravity penalty of $84,322.00 after considering the length of the violations, the harm to the receiving waters, the threats to human health, the importance of compliance and the serious of the violations, as well as Respondent's demonstrated recalcitrance. Further, the Complainant believes that a substantial penalty is necessary to deter Respondent and others from violating the Act.

Calculation of Economic Benefit: The Respondent has an obligation under the law to obtain a NDPES permit for storm water discharges which are considered a "discharge of a pollutant" within the meaning of Section 502(12) of the Act, 33 U.S.C. § 1362(12). The EPA's enforcement officer determined that Respondent incurred an economic benefit of Twelve Thousand Six Hundred and Seventy Eight Dollars ($12,678) as a result of its failure to obtain permit coverage for the site. The Complainant calculated the cost of

each project which the Respondent would have had to undertake to comply with the applicable statutes and implementing regulations. The calculation of the economic benefit realized by Respondent is broken down in a table entitled *Summary of Economic Benefit Calculations Data based on Information Provided by EPA's CEI Report dated 4/26/05*, found on page 5 of EPA's Penalty Memorandum (Attachment 2 to the Motion for Default). EPA explains that, because the Respondent did not provide cost information as required, the cost data was derived by best professional judgment, based on information at other construction sites.

Calculation of Penalty Adjustment Factors:

Prior History of Violation: Respondent has previously violated the CWA at the same construction Site. On January 30, 2003, Respondent and EPA executed an Order on Consent[11] which concerned the discharge of fill material into the unnamed stream adjacent to the Site. The EPA found the Respondent to be in violation of Section 301 of the Act for the discharge of pollutants consisting of earthen fill material into waters of the United States without a permit pursuant to Section 404 of the Act. EPA did not add an additional component for this prior violation, stating that it had factored the Respondent's prior history of violations into the gravity portion of its penalty calculation.

Degree of Culpability: Respondent should have been aware of the requirement to obtain a permit prior to the commencement of construction activities at the Site. Respondent was informed of the need to obtain coverage under the CGP and to develop a SWPPP during EPA's March 2005 inspection, in the Administrative Order issued to Respondent in May 2005, and in the Show Cause Order issued in September 2005.

[11] Attachment 9 to *EPA's Penalty Memorandum*, Attachment 2 to Motion for Default.

Furthermore, EPA contacted Respondent in September, October, and November, 2005, reiterating and reinforcing the requirement that Respondent obtain a permit and develop a SWPPP. Respondent has chosen to remain in non-compliance.

Ability to Pay: Presently, EPA states that it does not possess any information that is indicative of an inability of the Respondent to pay the assessed penalty.

Therefore, the final penalty proposed by the Complainant is $97,000, comprised of an economic benefit of $12,678 and a gravity factor of $84,322, which, in summary, is fully supported by the application of the statutory factors for determining a civil penalty in Section 309(g)(3) of the CWA, the Agency policies on civil penalties, and the record. Therefore, a penalty of $97,000 is hereby imposed against Respondent.

DEFAULT ORDER

Pursuant to the Consolidated Rules at 40 CFR Part 22, including 40 CFR § 22.17, a Default Order and Initial Decision is hereby ISSUED and Respondent is ordered to comply with all the terms of this Order:

(1) Respondent is assessed and ordered to pay a civil penalty in the amount of Ninety Seven Thousand Dollars ($97,000.00).

(2) Respondent shall pay the civil penalty by certified or cashier's check payable to the "Treasurer of the United States of America" within thirty (30) days after this default order has become a final order pursuant to 40 CFR § 22.27(c). The check shall be identified with a notation of the name and docket number of this case, set forth in the caption on the first page of this document. Such payment shall be remitted to:

US Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000

A copy of the payment shall be mailed to:

Regional Hearing Clerk
EPA Region 2
290 Broadway, 16th Floor
New York, New York 10007

(3) This Default Order constitutes an Initial Decision pursuant to 40 CFR § 22.17(c). Pursuant to 40 CFR § 22.27(c), this Initial Decision shall become a final order forty-five (45) days after its service upon the parties unless (1) a party moves to reopen the hearing, (2) a party appeals the initial decision to the Environmental Appeals Board, (3) a party moves to set aside the default order, or (4) the Environmental Appeals Board chooses to review the initial decision sua sponte.

IT IS SO ORDERED.

Dated: July 7, 2009

Helen S Ferrara

Helen S. Ferrara
Presiding Officer