

October 11, 2022 @ 7:00am

USEPA – Region II

Regional Hearing Clerk



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2

CARIBBEAN ENVIRONMENTAL PROTECTION DIVISION

CITY VIEW PLAZA II BUILDING, 7TH FLOOR

ROUTE 165 GUAYNABO, PUERTO RICO 00968

September 30, 2022

Certified Mail – Return Receipt Requested

7015 0920 0000 8689 4384

Mr. Efraín González Caro
President
Hacienda Miramar, Inc.
P.O. Box 781
Hormigueros, Puerto Rico 00660

**Re: Notice of Proposed Assessment of a Civil Penalty
In the Matter of Hacienda Miramar, Inc. and Karimar Construction, Inc.
Mirador del Sol Residential Development
Docket Number CWA-02-2022-3451**

Dear Mr. González Caro:

Enclosed is a Complaint which the United States Environmental Protection Agency (“EPA” or “Agency”) is issuing to Hacienda Miramar, Inc. (“Respondent HMI”) and Karimar Construction, Inc. (“Respondent Karimar”)(jointly referred to as “Respondents”), as a result of EPA’s determination that Respondents violated Sections 301(a) and 402(p) of the Clean Water Act (the “Act”), 33 U.S.C. §§ 1311 and 1342, for their failure to apply for and obtain National Pollutant Discharge Elimination System (“NPDES”) permit coverage for its discharges of pollutants from the “Mirador del Sol Residential Development” located in Cabo Rojo, Puerto Rico, and for their discharges of pollutants from the Mirador del Sol Residential Development into a water of the United States without NPDES permit coverage. This Complaint is filed pursuant to the authority contained in Section 309(g) of the Act, 33 U.S.C. § 1319(g). The Complaint proposes that a penalty of **\$108,139.00** be assessed against Respondents for the violations.

Respondent HMI has the right to a hearing to contest the factual allegations in the Complaint. If Respondent HMI admits the allegations, or they are found to be true after there has been an opportunity for a hearing on them, Respondent HMI has the right to contest the penalty proposed in the Complaint. Enclosed please find a copy of the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits” (“CROP”), 40 C.F.R. Part 22, which the Agency follows in cases of this kind.

Please note the requirements for an Answer to the Complaint at Section 22.15 of the CROP. Due to the COVID-19 pandemic, EPA has instituted procedures for electronic filing and service of documents in administrative proceedings governed by the procedural rules set forth in the CROP. A copy of the “Standing Order: Authorization of EPA Region 2 Electronic Filing System for Filing and Serving Documents Electronically in Proceedings Governed by 40 C.F.R. Part 22” (the “Standing Order”) is enclosed.

If Respondent HMI wishes to contest the allegations in the Complaint or the penalty proposed in the Complaint, Respondent HMI must file a written Answer, according to the Standing Order, within thirty (30) calendar days of Respondent HMI’s receipt of the enclosed Complaint. If Respondent HMI does not file an Answer within thirty (30) calendar days of receipt of this Complaint, Respondent HMI may be judged to have defaulted, as provided for in Section 22.17 of the CROP. If a default order is entered, the entire proposed penalty may be assessed without further proceedings.

Whether or not Respondent HMI requests a formal hearing, Respondent HMI may informally confer with EPA concerning the alleged violations and the amount of the proposed penalty. EPA encourages all parties against whom it files a Complaint to pursue the possibility of settlement as a result of such informal conference with the Agency. Respondent HMI may represent itself or be represented by an attorney at any stage of the proceedings, including any informal discussions, whether in person, by telephone or video conference. An attorney from EPA Region 2’s Office of Regional Counsel will normally be present at any informal conference. Please note that a request for an informal conference does not substitute for a written Answer or effect what Respondent HMI may choose to say in an Answer, nor does it extend the thirty (30) calendar days by which Respondent HMI must file an Answer requesting a hearing. Any hearing held in this matter will be conducted in accordance with the CROP.

If you have any questions or wish to discuss a settlement of this matter with the EPA by an informal conference, please immediately contact:

Suzette M. Meléndez-Colón, Esq.
Assistant Regional Counsel
Office of Regional Counsel – Caribbean Team
U.S. Environmental Protection Agency, Region 2
City View Plaza II Suite 7000
#48, Rd. 165, Km. 1.2
Guaynabo, PR 00968-8069
(787) 977-5822
Email: melendez-colon.suzette@epa.gov.

We urge your prompt attention to this matter.

Sincerely,

CARMEN

GUERRERO PEREZ

Digitally signed by
CARMEN GUERRERO PEREZ
Date: 2022.09.30 14:31:28
-04'00'

Carmen R. Guerrero Pérez

Director

Caribbean Environmental Protection Division

Enclosures

cc: Ángel Meléndez, PRDNER (by email with enclosure)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

October 11, 2022 @ 7:00am
USEPA – Region II
Regional Hearing Clerk

IN THE MATTER OF:

HACIENDA MIRAMAR, INC.
P. O. Box 781
Hormigueros, Puerto Rico 00676

AND

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

Construction Project
MIRADOR DE SOL RESIDENTIAL DEVELOPMENT
PR-102 Road, Km. 16.5
Cabo Rojo, Puerto Rico

RESPONDENTS

DOCKET NUMBER
CWA-02-2022-3451

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).
2. 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”).

In the Matter of:
Hacienda Miramar, Inc. and Karimar Construction, Inc.
Mirador del Sol Residential Development
Administrative Complaint
Docket Number CWA-02-2022-3451
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3. 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 Hacienda Miramar, Inc. and Karimar Construction, Inc. (collectively, “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 timely apply for and obtain National Pollutant Discharge Elimination System permit coverage for its discharges of stormwater runoff containing pollutants from the Mirador del Sol Residential Development located in Cabo Rojo, Puerto Rico into a water of the United States; and for the discharge of stormwater runoff containing pollutants from the Project into a water of the United States without NPDES permit coverage.
4. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), provides in part that “[e]xcept as in compliance with [CWA § 402], the discharge of any pollutant by any person shall be unlawful.”
5. Section 402 of the CWA, 33 U.S.C. § 1342, defines the National Pollutant Discharge Elimination System (“NPDES”) as the national program for, among other things, issuing and enforcing permits.
6. Section 402(a)(1) of the CWA, 33 U.S.C. § 1342(a)(1), provides that “the Administrator may, after opportunity for public hearing, issue a permit for the discharge of any pollutant.... upon condition that such discharge will meet.... such requirements as the Administrator determines are necessary to carry out the provisions of the [CWA].”
7. Section 402 of the CWA, 33 U.S.C. § 1342, authorizes the Administrator to promulgate regulations for the implementation of the NPDES requirements.
8. Section 402(p)(2)(B) of the CWA, 33 U.S.C. § 1342(p)(2)(B), requires a permit with respect to a storm water discharge associated with industrial activity.
9. Pursuant to Section 402(p)(3)(A) of the CWA, 33 U.S.C. § 1342(p)(3)(A), permits for discharges associated with industrial activity shall meet all applicable provisions of Sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311 and 1342.
10. Pursuant to the CWA, EPA promulgated regulations known as “EPA Administered Permit Programs: the National Pollutant Discharge Elimination System,” which was codified at 40 C.F.R. Parts 122 and 450, as amended.
11. 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.

12. 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.
13. Pursuant to 40 C.F.R. § 122.21(b), when a facility or activity is owned by one person but is operated by another person, it is the operator's duty to obtain a permit.
14. Pursuant to 40 C.F.R. § 122.21(c)(1), facilities described under 40 C.F.R. § 122.26(b)(14)(x) shall submit applications at least ninety (90) days before the date on which construction is to commence.
15. Pursuant to 40 C.F.R. § 122.26(c)(1)(ii), an operator of an existing or new stormwater discharge that is associated with industrial activity solely under 40 C.F.R. § 122.26(b)(14)(x) or is associated with small construction activity solely under 40 C.F.R. § 122.26(b)(15), is exempt from the requirements of 40 C.F.R. § 122.21(g) and 40 C.F.R. § (c)(1)(i). Such operator shall submit the narrative description required to be provided under 40 C.F.R. § 122.26(c)(1)(ii).
16. Pursuant to 40 C.F.R. § 122.26(b)(14)(x), operators are required to obtain a NPDES permit for stormwater discharges associated with construction activity.
17. Pursuant to 40 C.F.R. § 122.26(b)(14)(x), construction activity, including clearing, grading and excavation, are considered a category engaging in industrial activity.
18. Pursuant to the CWA, EPA promulgated regulations known as the "Construction and Development Point Source Category" under 40 C.F.R. § 450. These regulations apply to all construction sites that are subject to NPDES permit requirements.
19. The CWA and applicable implementing regulations contain the following relevant definitions and requirements implementing NPDES regulations:
 - a. "construction activity" including clearing, grading and excavation, except operations that result in the disturbance of less than five acres of total land area. Construction activity also includes the disturbance of less than five acres of total land area that is a part of a larger common plan of development or sale if the larger common plan will ultimately disturb five acres or more. 40 C.F.R. § 122.26(b)(14)(x).
 - 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); and
- m. “waters of the United States” means the territorial seas, waters which are currently used, were used or may be susceptible to use in interstate or foreign commerce, including waters which are subject to the ebb and flow of the tide, tributaries, lakes,

ponds, impoundments of jurisdictional waters and wetlands. 40 C.F.R. §§ 120.2 and 122.

20. EPA is the agency within the Commonwealth of Puerto Rico with authority to administer the NPDES program, including issuance of permits under Section 402 of the CWA, 33 U.S.C. § 1342.
21. On January 11, 2017, EPA Region 2 re-issued the “NPDES General Permit for Discharges from Construction Activities” (the “2017 CGP”). 82 Fed. Reg. 6534 (Jan. 19, 2017).
22. The 2017 CGP became effective on February 16, 2017. The 2017 CGP was modified, and the modification became effective on June 27, 2019. The 2017 CGP expired on February 16, 2022.
23. Part 1.4 of the 2017 CGP required all operators associated with a construction site seeking 2017 CGP coverage, who meet the eligibility requirements in Part 1.1 of the 2017 CGP, to submit a complete and accurate electronic Notice of Intent (“NOI”) prior to commencing construction activities.
24. The 2017 CGP defined the term “operator” as any party associated with a construction project that meets either of the following two criteria:
 - a. the party has operational control over construction plans and specifications, including the ability to make modifications to those plans and specifications; or
 - b. the party has day-to-day operational control of those activities at a project that are necessary to ensure compliance with the permit conditions.
25. The 2017 CGP defined the term “existing site” as a site where construction activities commenced prior to February 16, 2017.
26. Parts 1.4.1 and 7 of the 2017 CGP require operators associated with a construction site to develop a Stormwater Pollution Prevention Plan (“SWPPP”) before submitting an NOI for coverage under the 2017 CGP.
27. Part 1.4.3 and Table 1 of the 2017 CGP requires operators of an existing site to submit an electronic Notice of Intent (“eNOI”) form for 2017 CGP coverage at least fourteen (14) calendar days before commencing construction activities.
28. Part 1.4.5 of the 2017 CGP (Your Official End Date of Permit Coverage) indicates that once covered under this permit, your coverage will last until the date that:
 - a. You terminate permit coverage consistent with Part 8; or

- b. You receive permit coverage under a different NPDES permit or a reissued or replacement version of this permit after expiring on February 16, 2022; or
 - c. You fail to submit an NOI for coverage under a revised or replacement version of this permit before the deadline for existing construction sites where construction activities continue after this permit has expired.
29. Appendix I, Part I.2 of the 2017 CGP indicates that if you [the permittee] wish to continue an activity regulated by this permit after the expiration date of this permit, you must apply for and obtain authorization as required by the new permit once EPA issues it.
30. On January 18, 2022, EPA re-issued the NPDES Construction General Permit for Stormwater Discharges from Construction Activities (“2022 CGP”). 87 Fed. Reg. 3522 (January 24, 2022). The 2022 CGP became effective on February 17, 2022, replacing the 2017 CGP.¹ The 2022 CGP will expire on February 16, 2027.
31. 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....”
32. 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.
33. EPA is the agency within the Commonwealth of Puerto Rico with the enforcement authority for violations of the CWA and its implementing regulations under Section 309 of the Act, 33 U.S.C. § 1319.

II. JURISDICTIONAL STATEMENTS

34. In or about 2006, a company named “Desarrollo Ciento Dos, Inc.” began the construction of “Mirador del Sol Residential Development” located at PR-102 Road, Km. 16.5, Cabo Rojo, Puerto Rico (the “Site”).
35. The Site is approximately 50.50 acres of land.
36. The construction activities at the Site includes, among others, earth movement activities (i.e., grubbing, clearing, grading and excavation), and construction of single-unit

¹ See <https://www.epa.gov/npdes/2022-construction-general-permit-cgp> for more information about the 2022 CGP.

residential houses.

37. The Mirador del Sol Residential Development has been conducted in phases.
38. In or about 2013, Hacienda Miramar, Inc. (“Respondent Hacienda Miramar” or “HMI”) acquired 33.7 acres of the Site.
39. Respondent Hacienda Miramar is a corporation organized under the laws of the Commonwealth of Puerto Rico, under registration number 152683.
40. Respondent Hacienda Miramar is a “person” pursuant to Section 502(5) of the CWA, 33 U.S.C. § 1362(5).
41. Respondent Hacienda Miramar’s construction activities within the acquired 33.7 acres of the Site include among others, earth movement activities (i.e., grubbing, clearing, grading and excavation), construction of single-unit residential houses, and civil works (the “Project”).
42. The Project is a “point source” pursuant to Section 502(14) of the CWA, 33 U.S.C. § 1362(14).
43. The Project is an “existing site”, as defined in Appendix A of the 2017 CGP.
44. At relevant times alleged in this Complaint, Respondent Hacienda Miramar was and is the “owner” of the Project.
45. At all relevant times alleged in this Complaint, Respondent Hacienda Miramar had and has operational control over construction plans and specifications, including the ability to make modifications to those plans and specifications over the construction activities being conducted at the Project, per Appendix A of the 2017 CGP.
46. At all relevant times alleged in this Complaint, Respondent Hacienda Miramar was and is an “operator” of the Project, as defined in 40 C.F.R. § 122.2 and Appendix A of the 2017 CGP.
47. Respondent Hacienda Miramar contracted Karimar Construction, Inc. (“Respondent Karimar”) to perform construction activities at the Project, including earth movement activities at the Project.
48. Respondent Karimar is a corporation organized under the laws of the Commonwealth of Puerto Rico, under registration number 104891.

49. Respondent Karimar is a “person” pursuant to Section 502(5) of the CWA, 33 U.S.C. § 1362(5).
50. At all relevant times alleged in this Complaint, Respondent Karimar had and has operational control over construction plans and specifications, including the ability to make modifications to those plans and specifications over the construction activities being conducted at the Project, per Appendix A of the 2017 CGP.
51. At all relevant times alleged in this Complaint, Respondent Karimar was and is an “operator” of the Project, as defined in 40 C.F.R. § 122.2, and Appendix A of the 2017 CGP and 2022 CGP.
52. Respondents discharged storm water runoff containing “pollutants” from the Project into an unnamed creek, which in turn discharges into the Caribbean Sea. Also, Respondents discharged storm water runoff containing “pollutants” from the Project into an unnamed creek, which in turn discharges into Cienaga de Cueva.
53. 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.
54. The Cienaga de Cueva and the 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.
55. The Caribbean Sea is a “navigable water” and a “territorial sea” of the United States pursuant to Section 502(7) of the CWA, 33 U.S.C. § 1362(7), and 40 C.F.R. §§ 120.2 and 122.
56. 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.
57. Respondents were required to apply for and obtain NPDES permit coverage for the Project’s discharges of pollutants (storm water runoff from construction activity) 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

58. Complainant re-alleges Paragraphs 1 – 57, above.
59. By letter dated February 22, 2021, EPA issued a request for information pursuant to Section 308(a) of the CWA, 33 U.S.C. § 1318(a), to Respondent Hacienda Miramar to submit information (the “Hacienda Miramar RFI”) concerning the Mirador del Sol Residential Development. The purpose of the Hacienda Miramar RFI was to determine Respondent

Hacienda Miramar's compliance with Sections 301(a) and 402(p) of the CWA, the NPDES stormwater permit application regulations codified in 40 C.F.R. §§ 122.26, and the 2017 CGP.

60. By letter dated April 21, 2021, Respondent Hacienda Miramar sent EPA its response to the Hacienda Miramar RFI (the "Hacienda Miramar Response").
61. In its answer, Respondent Hacienda Miramar stated, among other things, that:
 - a. it acquired the property in 2013;
 - b. in or about February 2014, Respondent Hacienda Miramar began construction activities at the 33.7 acres of the Site;
 - c. Respondent Karimar is the Project's general contractor responsible for earth movement (e.g., clearing, grading, excavation) and house construction activities since 2014;
 - d. runoff generated at the Site eventually discharges into the Caribbean Sea; and
 - e. Respondents prepared, signed, and certified a SWPPP for the Project on November 15, 2018.
62. By letter dated May 27, 2021, EPA requested Respondent Karimar to submit information (the "Karimar RFI") concerning the Mirador del Sol Residential Development and other two construction projects pursuant to Section 308(a) of the CWA, 33 U.S.C. § 1318(a). The purpose of the Karimar RFI was to determine Respondent Karimar's compliance with Sections 301(a) and 402(p) of the CWA, the NPDES stormwater permit application regulations codified in 40 C.F.R. §§ 122.26, and the 2017 CGP.
63. By letter dated August 11, 2021, Respondent Karimar sent EPA its response to the Karimar RFI (the "Karimar Response").
64. In its response, Respondent Karimar stated, among other things, that it:
 - a. began earth movement activities at the Project in or about February 2014;
 - b. had performed earth movement activities at the Project by phases in February 2014 (Phase I), January 2015 (Phase II), January 2017 (Phase III), April 2018 (Phase IV), September 2019 and May 202 (Phase V), and February 2021 (Phase VI);
 - c. had ceased earth movement activities at the Project between February 2014 and January 2015 (Phase I), October 15 and January 2017 (Phase II), August 2017 and

April 2018 (Phase III), August 2019 and September 2019 (Phase IV), March 2020 and May 2020 (Phase V), December 2020 and February 2021 (Phase V), and February and August 11, 2021 (Phase IV);

- d. had disturbed approximately 16.80 acres at the Project; and
 - e. that the expected date for completing construction activities at the Project was February 2022.
65. On August 5, 2021, and July 28, 2022, EPA officials performed reviews of the EPA database known as “Central Data Exchange / NeT” and other NPDES permitting records, to determine Respondents’ NPDES permitting status for the Project (the “Permitting Review”).
66. The Permitting Review revealed the following for Respondent Hacienda Miramar:
- a. It had not submitted to EPA an NPDES individual permit application for the Project.
 - b. On November 23, 2018, it had submitted an NOI for the Project for coverage under the 2017 CGP (the “HMI 1st eNOI”). EPA issued NPDES ID number PRR10005J for the HMI 1st eNOI”.
 - c. On November 26, 2018, EPA denied Respondent Hacienda Miramar’s coverage under the 2017 CGP because the HMI 1st eNOI was inaccurate. On the same date, EPA notified Respondent Hacienda Miramar of this denial.
 - d. On May 1, 2019, Respondent Hacienda Miramar submitted another eNOI for the Project for coverage under the 2017 CGP (the “HMI 2nd eNOI”). EPA issued NPDES ID number PRR10005J for the HMI 2nd eNOI”.
 - e. On May 15, 2019, EPA granted Respondent Hacienda Miramar’s coverage under the 2017 CGP for the Project.
 - f. The HMI 2nd eNOI indicates that the Project discharges through Outfall 001 into an unnamed creek that discharges into the [Caribbean] Sea and through Outfall 002 into an unnamed creek that discharges into Cienaga de Cueva.
 - g. On May 12, 2022, Respondent Hacienda Miramar submitted an eNOI for the Project for coverage under the 2022 CGP (the “HMI 3rd eNOI”). EPA issued NPDES ID number PRR10005J for the HMI 3rd eNOI.

- h. On May 26, 2022, EPA granted Respondent Hacienda Miramar's coverage under the 2022 CGP for the Project.
67. The NeT review revealed the following for Respondent Karimar:
- a. Respondent Karimar had not submitted to EPA an NPDES individual permit application for the Project.
 - b. On December 19, 2018, Respondent Karimar submitted an eNOI for the Project seeking coverage under the 2017 CGP (the "Karimar 1st eNOI"). EPA assigned NPDES ID Number PRR1000ST for the Karimar 1st eNOI.
 - c. On December 19, 2018, EPA denied Respondent Karimar's coverage under the 2017 CGP because the Karimar 1st eNOI was inaccurate. On same date, EPA notified Respondent Karimar of this denial.
 - d. On December 27, 2018, Respondent Karimar submitted another eNOI for the Project for coverage under the 2017 CGP (the "Karimar 2nd eNOI"). EPA issued NPDES ID number PRR10007B for the Karimar 2nd eNOI².
 - e. On January 10, 2019, EPA granted Respondent Karimar's coverage under the 2017 CGP for the Project.
 - f. The Karimar 2nd eNOI indicates that the Project discharges through Outfall 001 into an unnamed creek that discharges into the [Caribbean] Sea and through Outfall 002 into an unnamed creek that discharges into Cienaga de Cueva.
 - g. On January 16, 2019, Respondent Karimar submitted a modification to the Karimar 2nd eNOI.
68. On August 5, 2021, and July 28, 2022, EPA officials reviewed rain precipitation data from the U.S. National Oceanographic and Atmospheric Administration's National Centers for Environmental Information ("NCEI") online climate data (the "NCEI Review") for the Lajas Substation (the "Lajas Substation") located in Lajas, Puerto Rico. The purpose of the NCEI review was to learn about rain events that had occurred at or near the Site.
69. The NCEI review revealed that forty (40) storm events of 0.50 inches or more were recorded at the Lajas Substation for the period between October 2017 and April 2018.²
70. Based on the findings on Paragraphs 58 to 69 above, Respondents are liable for violating Sections 301(a) and 402(p) of the CWA, 33 U.S.C. §§ 1311(a) and 1342(p), as specified

²https://www.ncdc.noaa.gov/IPS/coop/coop.html?_page=2&state=PR&foreign=false&stationID=665097&_target3=Next+%3E; and <https://www.ncdc.noaa.gov/cdo-web/datasets/GHCND/stations/GHCND:RQC00665097/detail>.

below:

- a. **Claim 1 – Respondents failed to timely apply for and obtain NPDES permit coverage for its discharges of pollutants (storm water runoff from construction activity) from the Project into a water of the United States**
 - 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 2017 CGP.
 - 2) For Respondent Hacienda Miramar, the period of violation for this claim is between October 1, 2017, and April 30, 2019 (day before when HMI 2nd eNOI was submitted to EPA to obtain coverage under the 2017 CGP for the Project), which are **576 days**.
 - 3) For Respondent Karimar, the period of violation for this claim is between October 1, 2017, and December 26, 2018 (day before when the Karimar 2nd eNOI was submitted to EPA to obtain coverage under the 2017 CGP for the Project), which are **451 days**.
 - b. **Claim 2 – Respondents illegally discharged pollutants (storm water runoff from construction activity) from the Project into a water of the United States without NPDES permit coverage**
 - 1) Storm events of 0.50 inches or greater occurred on forty (40) instances during the period between October 1, 2017, and April 30, 2019.
 - 2) The number of days that Respondent Hacienda Miramar discharged pollutants from the Project into a water of the United States without NPDES permit coverage was **forty (40)**.
 - 3) Storm events of 0.50 inches or greater occurred on thirty-six (36) instances during the period between October 1, 2017, and December 27, 2018.
 - 4) The number of days that Respondent Karimar discharged pollutants from the Project into a water of the United States without NPDES permit coverage was **thirty-six (36)**.
71. The EPA will notify the Puerto Rico Department of Natural and Environmental Resources regarding this proposed action including a copy of this Administrative Complaint, Findings of Violation and Notice of Proposed Assessment of an Administrative Penalty and Notice of Opportunity to Request a Hearing.

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 **\$108,139**. 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 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, 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 construction activities for the Project, as required by the NPDES permit application regulations 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 2017 CGP, and the risks to human health and the environment posed by the uncontrolled discharges of storm water runoff from the Project into Cienaga de Cuevas 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 2017 CGP requirements, 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 2017 CGP and the CWA.

Respondent Karimar has prior history of violations under the CWA and its implementing NPDES regulations. Two companies sharing Respondent Hacienda Miramar’s president and corporate agent had been subject to administrative civil penalties in 2020 and 2021, for the CWA violations (i.e., failure to timely apply, discharges without a permit) alleged herein.

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.

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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, 16th floor
New York, New York 10007-1866.
Email: 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).

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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 Respondent 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 Respondent 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 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 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 Respondent, 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 EPA, 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 EPA'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.

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EPA 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 EPA 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' request for a formal hearing do not prevent Respondents 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. EPA 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 waive 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 their compliance 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

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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-02-2022-3451**

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 - 16th Floor
New York, New York 10007-1866
Email: 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
U.S. Environmental Protection Agency, Region 2
City View Plaza II, Suite 7000
Guaynabo, Puerto Rico 00968
Email: melendez-colon.suzette@epa.gov

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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 30 DAY OF September, 2022.

**CARMEN
GUERRERO
PEREZ**

Digitally signed by
CARMEN GUERRERO
PEREZ
Date: 2022.09.30 14:26:37
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CARMEN R. GUERRERO PÉREZ

Director

Caribbean Environmental Protection Division

United States Environmental Protection Agency, Region 2

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

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

IN THE MATTER OF:

HACIENDA MIRAMAR, INC.
P. O. Box 781
Hormigueros, Puerto Rico 00676

AND

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

Construction Project
MIRADOR DE SOL RESIDENTIAL DEVELOPMENT
PR-102 Road, Km. 16.5
Cabo Rojo, Puerto Rico

RESPONDENTS

DOCKET NUMBER
CWA-02-2022-3451

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

CERTIFICATE OF SERVICE

I certify that on this date, I served by certified mail with return receipt requested and by electronic mail, a copy of the foregoing "ADMINISTRATIVE COMPLAINT" and a copy of the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits," 40 C.F.R. Part 22, to the following persons at the addressed listed below:

Mr. Efraín González Caro
Hacienda Miramar Inc.
P. O. Box 781
Hormigueros, Puerto Rico 00660
oficina@empresashqj.com
miradordelsol@yahoo.com

and

Mr. Wilson Valentín
President
Karimar Construction, Inc.
P. O. Box 8000
Aguada, Puerto Rico 00602
karimarinc@yahoo.com

Also, I certify that I served by certified mail with return receipt requested and by electronic mail, original and a copy of the foregoing ADMINISTRATIVE COMPLAINT for filing, to:

Ms. Karen Maples
Regional Hearing Clerk
U.S. Environmental Protection Agency, R 2
290 Broadway, 16th Floor
New York, NY 10007-1866.
maples.karen@epa.gov

Date:

10/3/2022



Aileen Sánchez
Administrative Assistant
Multimedia Permits and Compliance Branch
Caribbean Environmental Protection Division
U.S. Environmental Protection Agency, Region 2

