

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REG. II  
2007 DEC 12 PM 3:14  
REGIONAL HEARING  
CLERK

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 2

IN THE MATTER OF

Herminio Cotto Construction  
Caguax DEV E-11  
Ave. Luis Muñoz Marín  
Caguas, PR 00725  
Respondent

PROCEEDING TO ASSESS A  
CLASS 1 ADMINISTRATIVE  
PENALTY DOCKET NO. CWA-02-  
2007-3404

Proceeding pursuant to Section 309(g)  
Of The Clean Water Act, 33 USC 319(g)

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**ANSWER TO THE COMPLAINT**

TO THE HONORABLE AGENCY:

COME NOW, respondent Herminio Cotto Construction, through the undersigned attorney, and very respectfully states and prays:

1. The allegations included in section I- titled Statutory Authority and Jurisdiction- do not require an answer from the respondent due to the purely legal content of these allegations.
2. For allegation II, 13, we admit what it states.
3. We *admit* allegation II, 14.
4. Of the allegation II, 15, we deny only the statement that the site is a commercial development construction project because currently there is no construction activity on this site.

5. We admit the allegation II, 16.
6. We admit the allegation II, 17.
7. We deny the allegation II, 18.
8. We deny all the allegations contained in Claim I, numbers 19, 20, 21 and 22.
9. We deny all the allegations included in Claim II, numbers 23, 24, 25, 26, 27, 28 and 29.

#### **AFFIRMATIVE DEFENSES**

1. The Complaint does not contain allegations for which relief may be granted against the respondent.
2. Acquiescence.
3. The respondent has submitted the documents and information requested by the US Environmental Protection Agency.
4. If any violation of law occurred, which we deny, as stated in this answer to the complaint, is due to the lack of action of the owner of the site and the professionals recruited by the said owner to obtain all the permits and authorizations required by federal law and administrative rules.
5. There is no ongoing construction activity on the site.
6. The relief requested in the complaint is not the adequate and appropriate remedy at law against the respondent.

7. The penalty proposed in the complaint is excessive, unreasonable and unfair given the circumstances and facts described in the complaint and existent on the construction site.
  
8. The respondent reserves the right to supplement its affirmative defenses as it may be necessary during the course of the discovery.

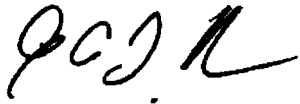
WHEREFORE, it is respectfully requested that the complaint be denied against the respondent, that an informal conference be conducted to settle this complaint before any formal hearing is conducted, which we also request. The financial situation of the respondent and the circumstances in which this complaint is issued provides reasonable grounds for a fair settlement of this complaint. The respondent has both the will and interest in reaching a settlement which solves this complaint without a formal process and its necessary burdens for both the respondent and the complainant.

We request a formal hearing to consider this complaint if the efforts to settle this complaint do not solve this case.

I HEREBY CERTIFY that, on this same date I filed the foregoing by certified mail and e-mail to the Regional Hearing Clerk, US Environmental Protection Agency, Region 2, 290 Broadway, 16<sup>th</sup> floor, New York, New York, 10007-1866.

Respectfully submitted.

In San Juan, Puerto Rico, this 9th<sup>h</sup> day of December, 2007.

A handwritten signature in black ink, appearing to read 'JAF' followed by a stylized flourish.

José Alberto Feliciano Ramos

Attorney for respondent

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