

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

In the Matter of:

CIDRA EXCAVATION, S.E.

RESPONDENTS

Proceeding pursuant to Section 309(g) of the
Clean Water Act, 33 U.S.C. § 1319(g)

**PROCEEDING TO ASSESS A
CLASS II CIVIL PENALTY**

**DOCKET NUMBER
CWA-02-2009-3462**

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II
2009 DEC -2 A 11: 10
REGISTRATION HEARING
ALLEN

CONSENT AGREEMENT AND FINAL ORDER
(Cidra Excavation, S.E.)

Complainant, the United States Environmental Protection Agency (EPA), having issued the Complaint herein on September 29, 2009, against Desarrollos Altamira I, Inc. (DAI), and Cidra Excavation, S.E. (Cidra)

Complainant and Respondent Cidra (collectively, the Parties) having agreed that settlement of this matter is in the public interest, and that entry of this Consent Agreement and Final Order (CA/FO) without further litigation is the most appropriate means of resolving this matter;

NOW, THEREFORE, before the taking of any testimony, upon the pleadings, without adjudication of any issue of fact or law, and upon consent and agreement of the Parties, it is hereby agreed and ordered as follows:

I. PRELIMINARY STATEMENT

1. EPA initiated this proceeding for the assessment of a civil penalty, pursuant to Section 309(g)(2)(B) of the Clean Water Act (the Act), 33 U.S.C. § 1319(g)(2)(B).
2. On September 29, 2009, EPA issued a Complaint against Respondent alleging violations of Sections 301 and 402 of the Act, 33 U.S.C. §§ 1311 and 1342, for its failure to submit a Notice of Intent (NOI) requesting permit coverage under the National Pollutant Discharge Elimination System (NPDES) Construction General Permit (the Permit) and for the illegal discharges of pollutants from the Hacienda Altamira I Residential Development (the Altamira Project) into an Unnamed Creek and the Rio Canovas, both of which are waters of the United States.

3. The Complaint was based on Administrative Compliance Order (ACO), Docket Number CWA-02-2007-3070, which was issued on September 27, 2007, and required Respondent to among others: (a) cease the discharge of pollutants into waters of the United States; (b) cease and desist all clearing, grading, and/or excavation activities at the Altamira Project; (c) provide temporary stabilization to areas of the Altamira Project where clearing, grading and excavation have temporarily ceased; (d) construct and/or install erosion and storm water management controls; (e) provide maintenance to the erosion and storm water management controls; (f) prepare a complete and accurate SWPPP; (g) prepare and file a NOI for coverage under the Permit; and (h) prepare and submit a Compliance Plan to bring the Altamira Project into compliance with the Permit, the Act, and NPDES regulations.
4. On October 17, 2007, DAI submitted a NOI requesting coverage under the NPDES Construction General Permit.
5. On November 6, 2007, the ACO was closed.
6. EPA notified the Commonwealth of Puerto Rico regarding this action and offered an opportunity for the Commonwealth of Puerto Rico to confer with EPA on the proposed penalty assessment, pursuant to 40 C.F.R. Part 22.
7. The Complaint was public noticed. No public comment was received.

II. TERMS OF THE SETTLEMENT

8. This CA/FO shall apply to and be binding upon Respondent, its officers, directors, employees, successors and assigns, including, but not limited to, subsequent purchasers.
9. Respondent stipulates that EPA has jurisdiction over the subject matter alleged in the Complaint and that the Complaint states a claim upon which relief can be granted against Respondent.
10. Respondent waives any defenses it might have as to jurisdiction and venue, and, without admitting or denying the factual or legal allegations contained in the Complaint, consent to the terms of this Consent Agreement and Final Order.
11. Respondent hereby waives their right to a judicial or administrative hearing or appeal on any issue of law or fact set forth in the Complaint.

III. PAYMENT OF PENALTY

12. Pursuant to Section 309(g) of the Clean Water Act, 33 U.S.C. § 1319(g), based upon the nature of the violations and other relevant factors, EPA has determined that an appropriate civil penalty to settle this action is in the amount of FIFTY TWO THOUSAND FIVE HUNDRED DOLLARS (\$52,500.00).
13. Respondent agrees to pay the above stated amount in *three payments*, as follows:
 - a. an initial payment of SEVENTEEN THOUSAND FIVE HUNDRED DOLLARS (\$17,500.00) shall be made one hundred and twenty days (120) calendar days from the date that the attached Final Order is signed by the Regional Administrator of EPA Region 2;
 - b. a second payment of SEVENTEEN THOUSAND FIVE HUNDRED DOLLARS (\$17,500.00) shall be made two hundred and ten (210) calendar days from the date that the attached Final Order is signed by the Regional Administrator of EPA Region 2; and
 - c. a third payment final payment of SEVENTEEN THOUSAND FIVE HUNDRED DOLLARS (\$17,500.00) shall be made within three hundred (300) calendar days from the date that the attached Final Order is signed by the Regional Administrator of EPA Region 2.
14. For purposes of settlement, Respondent consents to the issuance of this CA/FO, to the payment of the civil penalty cited in the foregoing paragraph.

III. A. Penalty

15. Respondent shall pay the penalty, FIFTY TWO THOUSAND FIVE HUNDRED DOLLARS (\$52,500.00), by cashier's or certified check, payable to the "**Treasurer of the United States of America**", 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.

CHECK PAYMENTS:
US Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000.

**Consent Agreement and Final Order
In the Matter of Cidra Excavation S.E.
Docket Number CWA-02-2009-3462
Page 3 of 9**

WIRE TRANSFERS:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045.

Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency."

OVERNIGHT MAIL:

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
ATTN Box 979077
St. Louis, MO 63101
Contact: Natalie Pearson
Telephone Number: (314) 418-4087.

Respondent shall also send copies of this payment to each of the following:

Hector Ortiz
Environmental Engineer
Multimedia Permits and Compliance Branch
Caribbean Environmental Protection Agency
U.S. Environmental Protection Agency, Region 2
Centro Europa Building, Suite 417
1492 Ponce de León Ave.
San Juan, PR 00907-4127
Fax number: (787) 289-7104,

Roberto M. Durango, Esq.
Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 2
Centro Europa Building, Suite 417
1492 Ponce de León Ave.
San Juan, PR 00907-4127
Fax number: (787) 729-7748; and

Karen Maples
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th Floor
New York, New York 10007.

**Consent Agreement and Final Order
In the Matter of Cidra Excavation S.E.
Docket Number CWA-02-2009-3462
Page 4 of 9**

16. Payments must be received at the above address in accordance with the payment schedule established in paragraph 13. The date by which payment must be received shall hereafter be referred to as the "due date".
 - a. Failure to pay the penalty in full according to the above provisions will result in a referral of this matter to the United States Department of Justice or the United States Department of the Treasury for collection;
 - b. Further, if the payments are not received on or before the due date, interest will be assessed at the annual rate established by the Secretary of Treasury pursuant to the Debt Collection Act, 31 U.S.C. § 3717, on the overdue amount from the due date through the date of payment. In addition, a late payment handling charge of \$15.00 will be assessed for each 30-day period (or any portion thereof) following the due date in which the balance remains unpaid. A 6% per annum penalty also will be applied on any principal amount not paid within 90 days of the due date;
 - c. In addition, pursuant to Section 309(g)(9) of the Act, 33 U.S.C. § 1319(g)(9), if payments are not received by the due date, a quarterly nonpayment penalty will be imposed for each calendar quarter during which such nonpayment persists. The quarterly nonpayment penalty is 20% of the aggregate amount of penalties and quarterly nonpayment penalties which are unpaid as of the beginning of such quarter;
 - d. Respondent may also be required to pay attorneys fees and costs for collection proceedings in connection with nonpayment.
17. The penalty to be paid is a civil penalty assessed by the EPA and shall not be deductible from the Respondent's federal or state taxes.

IV. GENERAL PROVISIONS

18. This CA/FO is being voluntarily entered into by the parties in full and final settlement of Respondent's liability for federal civil penalties for the violations and facts alleged in the Complaint and this CA/FO.
19. Respondent has read the Consent Agreement, understands its terms, finds it to be reasonable and consents to its issuance and its terms. Respondent consents to the issuance of the accompanying Final Order. Respondent agrees that all terms of settlement are set forth herein.
20. Respondent explicitly and knowingly consents to the assessment of the civil penalty as set forth in this Consent Agreement and agrees to pay the penalty in accordance with the terms of this Consent Agreement.

21. In computing any period of time under this Consent Agreement, where the last day would fall on a Saturday, Sunday, federal or Commonwealth holiday, the period shall run until the close of business of the next working day.
22. The provisions of this Consent Agreement shall be binding upon Respondent, its officials, authorized representatives and successors or assigns, including but not limited to, subsequent purchasers.
23. Respondent knowingly and explicitly waives its right under Section 309(g)(2), (8) of the Act, 33 U.S.C. § 1319(g)(2), (8), to request or to seek any hearing on or judicial review of any of the allegations herein asserted, on this Consent Agreement or the Findings of Fact and Conclusions of Law herein, or on the accompanying Final Order.
24. Respondent waives any right it may have pursuant to 40 C.F.R. § 22.8 to be present during discussions with or to be served with and to reply to any memorandum or communication addressed to the Regional Administrator of EPA, or the Director of CEPD where the purpose of such discussion, memorandum, or communication is to discuss a proposed settlement of this matter or to recommend that such official accept this Consent Agreement and issue the accompanying Final Order.
25. Issuance of the CA/FO does not constitute a waiver by EPA of its right to enforce the substantive legal requirements underlying this penalty assessment, either administratively or judicially pursuant to Section 309(a)–(c) of the Act, 33 U.S.C. §§ 1319(a)–(c) for violations that occur subsequent to the date of this Final Order. Pursuant to Section 309(g)(7) of the Act, 33 U.S.C. § 1319(g)(7), issuance or compliance with this CA/FO does not waive, extinguish or otherwise affect Respondent's obligation to comply with all applicable requirements of the Act, of regulations promulgated thereunder, and of any legal order or permit issued thereunder.
26. Each undersigned signatory to this Consent Agreement certifies that he or she is duly and fully authorized to enter into and ratify this Consent Agreement and all the terms and conditions set forth in this Consent Agreement.
27. Each party hereto agrees to bear its own costs and fees in this matter.
28. Respondent consents to service upon Respondent by a copy of the CA/FO by an EPA employee other than the Regional Hearing Clerk.
29. In any collection action, the validity, amount, and appropriateness of the penalty and of this CA/FO shall not be subject to review.

FOR RESPONDENT:

BY:



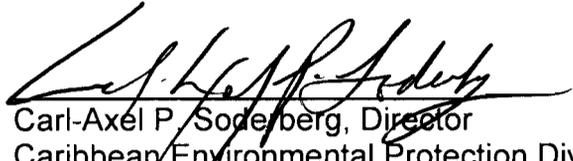
Authorized Signature

NAME: Mr. Israel Quintana
President
Cidra Excavation, S.E.
P.O. Box 11218 Caparra Heights Station
San Juan P.R. 00922

TITLE: President

DATE: 10/25/10

FOR COMPLAINANT:

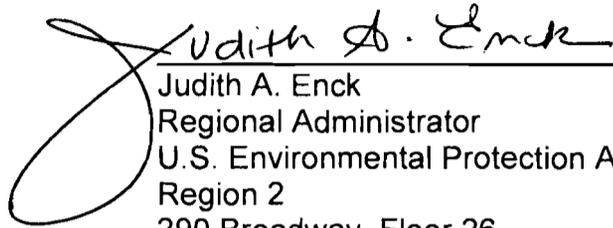


Carl-Axel P. Soderberg, Director
Caribbean Environmental Protection Division
U.S. Environmental Protection Agency,
Region 2
Centro Europa Building, Suite 417
1492 Ponce de León Avenue
San Juan, PR 00907-4127

FINAL ORDER

The Regional Administrator of the U.S. Environmental Protection Agency, Region 2, ratifies the foregoing Consent Agreement. The Agreement entered into by the parties is hereby approved, incorporated herein, and issued as an Order. The effective date of this Order shall be the date of filing with the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region 2, New York, New York.

DATED: 11/15/10



Judith A. Enck
Regional Administrator
U.S. Environmental Protection Agency
Region 2
290 Broadway, Floor 26
New York, NY 10007-1866

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **Consent Agreement and Final Order**, dated November 15, 2010, was sent in the following manner to the addresses listed below:

Original and Copy by **Overnight**:

Karen Maples
Regional Hearing Clerk
U.S. EPA, Region 2
290 Broadway, 16th Floor
New York, NY 10007-1866

Copy by **Overnight**:

Honorable Susan L. Biro
Chief Administrative Law Judge
Environmental Protection Agency
Office of Administrative Law Judges
1099 14th Street, N.W., Suite 350
Washington, D.C. 20005

Copy by **Certified Mail and PDF**:

Jose A. Hernandez Mayoral, Esq.
Bufete Hernandez Mayoral CSP
206 Tetuan Street, Suite 702
San Juan, PR 00901

Patricio Martinez-Lorenzo, Esq.
Martinez-Lorenzo Law Offices
Union Plaza Building, Suite 1200
416 Ponce de Leon Avenue
San Juan, PR 00918-3424

Dated: 11/30/2010

Aileen Sánchez, Program Support Assistant
EPA, Region 2, Office of Regional Counsel