

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG.II

2007 JUN -8 PM 2:57

REGIONAL HEARING
CLERK

IN THE MATTER OF:

**QUALITY ENGINEERS AND
CONTRACTORS , INC.**
Suite 201,
206 Eleanor Roosevelt
Hato Rey, Puerto Rico 00918

and

CIDRA EXCAVATION, INC.
P.O. Box 11218
Caparra Heights Station
San Juan, P.R. 00922

SERENA HOUSING DEVELOPMENT

RESPONDENTS.

NPDES PERMIT PRR10B942

DOCKET NUMBER CWA-02-2007-3411

Proceeding Pursuant to Section
309(g) of the Clean Water Act, 33 U.S.C.
§1319(g), to Assess Class II Civil Penalty

**COMPLAINT, FINDINGS OF VIOLATION, NOTICE OF PROPOSED
ASSESSMENT OF A CIVIL PENALTY, AND NOTICE OF
OPPORTUNITY TO REQUEST A HEARING**

I. Statutory Authority

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 U.S. Environmental Protection Agency ("EPA") by Section 309(g)(2)(B) of the Clean Water Act ("CWA" or "Act"), 33 U.S.C. § 1319(g)(2)(B). The Administrator has delegated this authority to the Regional Administrator of EPA, Region 2, who in turn has delegated it to the Director, Caribbean Environmental Protection Division ("CEPD") of EPA, Region 2 ("Complainant").
2. Pursuant to Section 309(g)(2)(B) of the Act, 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 C.F.R. Part 22 (2005) a copy of which is attached, Complainant hereby requests that the Regional Administrator assess a civil penalty against Quality Engineers and Contractors, Inc., and Cidra Excavation, Inc., (hereinafter, the "Respondents"), for their failure to implement a Storm Water Pollution Prevention Plan ("SWPPP") as required in Respondents' National Pollutant Discharge Elimination System ("NPDES") permit, in violation of Section 301(a) of the Act, 33 U.S.C. § 1311.

II. Statutory and Regulatory Background

1. Section 301(a) of the Act, 33 U.S.C. § 1311(a), provides in part that "[e]xcept as in compliance with this Section and Sections ...402, and 404 of the Act, the discharge of any pollutant by any person shall be unlawful."
2. Section 308(a)(A) of the Act, 33 U.S.C. § 1318(a)(A), establishes that whenever required to carry out the objective of the Act, the Administrator shall require the owner or operator of any point source to:
 - a. establish and maintain such records;
 - b. make such reports;
 - c. install, use and maintain such monitoring equipment or methods;
 - d. sample such effluents; and
 - e. provide such other information as may be required.
3. Section 502 of the Act , 33 U.S.C. § 1362, and its implementing regulations, contain the following definitions:
 - a. Section 502(5) defines "person" as an individual, corporation, partnership or association;
 - b. Section 502(7) defines "navigable waters" as the waters of the United States, including the territorial seas;
 - c. Section 502(6) defines "pollutant" as including, among others, solid waste, dredged spoil, rock, sand, cellar dirt, sewage, sewage sludge and industrial, municipal and agricultural waste discharged into water;
 - d. Section 502(14), defines "point source" as 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;

- e. Section 502(12) defines in part "discharge of a pollutant" as any addition of any pollutant to navigable waters from any point source.
4. Section 402 of the Act, 33 U.S.C. § 1342, defines the National Pollutant Discharge Elimination System as the national program for, among other things, issuing and enforcing permits.
5. Section 402 of the Act authorizes the Administrator to promulgate regulations for the implementation of the NPDES requirements.
6. Pursuant to the Act, on April 1, 1983, EPA promulgated regulations to implement the NPDES program, under EPA Administered Permit Programs: the NPDES, at 40 C.F.R. Part 122, as amended.
7. Pursuant to the NPDES regulations at 40 C.F.R. § 122.5(b), the NPDES program requires permits for the discharge of any pollutant from any point source into waters of the United States.
8. The NPDES regulations under 40 C.F.R. § 122.2 define such terms:
 - a. "Pollutant" in part, as dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, chemical wastes, rock, sand and others.
 - b. "Facility", as 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.
 - c. An "owner" or "operator" as the owner or operator of any facility or activity subject to regulation under the NPDES program.
 - d. "Point Source" as any discernible, confined and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, from which pollutants are or may be discharged.
 - e. "Discharge" as the discharge of a pollutant or combination of pollutants into waters of the United States from any point source.
 - f. "Waters of the United States" means all waters such as lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, among others, and their tributaries.
 - g. "NPDES" means National Pollutant Discharge Elimination System under Section 402 of the Act, 33 U.S.C. § 1342. National Pollutant Discharge Elimination System means the national program for, among other things, issuing and enforcing permits.

9. The NPDES regulations, under 40 C.F.R. § 122.26, Storm water discharges, define the following terms:
 - a. "Small construction activity" as, construction activities including clearing, grading and excavating that result in land disturbance of equal to or greater than 1 acre and less than 5 acres. 40 C.F.R. § 122.26(b)(15)(i).
 - b. "Municipal Separate Storm Sewer" as a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains) owned or operated by a State, or other public body created by or pursuant to State law. 40 C.F.R. § 122.26(b)(8)(i).
10. For purposes of the NPDES storm water general permit for construction activities and in the context of storm water associated with construction activity (57 FR 41190 and 63 FR 7859), the term "Operator" means any party associated with a construction project that meets either of the following two (2) 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 which are necessary to ensure compliance with a storm water pollution prevention plan for the site or other permit conditions.
11. For purposes of the NPDES storm water general permit for construction activities and in the context of storm water associated with construction activity (68 FR 39087 - Appendix A) the term "commencement of construction activities" means the initial disturbance of soils associated with clearing, grading, excavation activities or other construction-related activities.

III. Findings of Violation

A. Findings of Fact

12. Respondents, Quality Engineers and Contractors, Inc. ("Quality Engineers"), and Cidra Excavation, Inc. ("Cidra Excavation") are corporations organized and authorized to do business under the laws of the Commonwealth of Puerto Rico.
13. Each Respondent is a "person" within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5).
14. Quality Engineers is the owner and Cidra Excavation is an operator, as defined in 40 C.F.R. § 122.2, of a housing construction project known as "Serena Residential Development" (the "Project").

15. The Project is located at the intersection of State Road PR-861 and State Road PR-862, Km 1.0, Pájaros Ward, Bayamón, Puerto Rico.
16. The Project is a residential development which consists of the construction of one hundred and eighty three (183) single family house units.
17. The construction activities at the Project are best described by the Standard Industrial Classification code 1521 (single-family housing construction).
18. The construction activities at the Project involve, among others, land disturbance, site preparation, utilities installation, and construction of houses and recreational areas.
19. Earth movement activities at the Project involve clearing, grading and excavation on approximately 33.75 acres of land.
20. Respondents began clearing activities at the Project on or about August 8, 2006.
21. Respondents' Project is a "construction activity" as defined in 40 C.F.R. § 122.26(b)(14)(x).
22. The Project is a "point source" within the meaning of Section 502(14) of the Act, 33 U.S.C. § 1362(14), and 40 C.F.R. § 122.2.
23. The Respondents discharge storm water containing "pollutants" from the Project into a tributary of the La Escarcha Creek.
24. The La Escarcha Creek and its tributaries are waters of the United States, pursuant to Section 502(7) of the Act, 33 U.S.C. § 1362(7), and 40 C.F.R. § 122.2.
25. Owners or operators of construction activities are required to apply and obtain NPDES permit coverage for storm water discharges associated with construction activities. 40 C.F.R. § 122.26(b)(14)(x).
26. Respondents' Project is covered by the NPDES permit application regulations for construction activities. 40 C.F.R. § 122.26(b)(14)(x).
27. An owner or operator of a construction site is required to submit an individual permit application no later than ninety (90) days, before the date on which construction is to commence, unless the owner or operator obtains authorization under a NPDES storm water general permit for construction activities. 40 C.F.R. § 122.21.
28. Respondents are the owners and operators of the Project, as defined in 40 C.F.R. § 122.2. Respondents are subject to the provisions of the Act, 33 U.S.C.

§ 1251, *et seq.*, and the applicable NPDES permit application regulations found at 40 C.F.R. Part 122. Respondents were required to apply for and obtain NPDES permit coverage for the storm water discharges from the Project pursuant to 40 C.F.R. § 122.26(b)(14)(x).

29. On July 1, 2003, EPA issued the “NPDES General Permit for Discharges from Large and Small Construction Activities” (the “construction permit”).
30. The construction permit was published in the Federal Register on July 1, 2003 (68 FR 39087). The construction permit became effective on July 1, 2003 and will expire at midnight, July 1, 2008.
31. Section 2.3.A of the construction permit establishes application deadlines for owners or operators of new projects. Such owners or operators were required to file a complete and accurate Notice of Intent (“NOI”) form prior to commencement of construction activities.
32. Respondents submitted a NOI form for the Project, dated November 30, 2005.
33. Respondents obtained coverage under the construction permit on December 7, 2005. The permit number assigned to the Project is PRR10B942.
34. Section 3.1.A of the construction permit requires Respondents to prepare a SWPPP prior to submission of the NOI.
35. Section 3.1.D of the construction permit requires Respondents to implement the SWPPP, as written, from commencement of construction activity until the final stabilization is complete.
36. Section 3.2.A of the construction permit requires the operator that has control over construction plans and specifications to ensure that the SWPPP indicates the areas of the project where it has operational control over project specifications, including the ability to make modifications in specifications.
37. Section 3.2.B of the construction permit requires the operator that has control over day-to-day activities to ensure that the SWPPP indicates the areas of the project where it has operational control.
38. Section 3.3.A of the construction permit establishes that the SWPPP must identify all operators for the project site and the areas of the site over which each operator has control.
39. Section 3.3.B of the construction permit establishes that the SWPPP must describe the nature of the construction activity.
40. Section 3.3.C of the construction permit establishes that the SWPPP must contain a legible site map, showing the entire site, identifying:

- a. Direction(s) of the storm water flow and approximate slopes anticipated after major grading activities (Section 3.3.C.1 of the construction permit);
 - b. Locations of major structural and nonstructural best management practices (“BMPs”) identified in the SWPPP (Section 3.3.C.3 of the construction permit);
 - c. Location of off-site material, waste, borrow or equipment storage areas (Section 3.3.C.5 of the construction permit);
 - d. Location where storm water discharges to a surface water (Section 3.3.C.7 of the construction permit); and
 - e. Areas where final stabilization has been accomplished and no further construction-phase permit requirements apply (Section 3.3.C.8 of the construction permit).
41. Section 3.4 of the construction permit requires Respondents to implement controls to reduce pollutants.
 42. Section 3.6 of the construction permit requires Respondents to maintain in effective operating conditions all erosion and sediment control and protective measures identified in the SWPPP.
 43. Section 3.8 requires that copies of the construction permit and the signed certified NOI that was submitted to EPA must be included in the SWPPP.
 44. Section 3.10.A of the construction permit requires Respondents to specify in the SWPPP the inspection schedule to be followed, after taking into consideration the inspection schedules in Sections 3.10.A through C.
 45. Section 3.10.D and G of the construction permit require Respondents to conduct inspections by qualified personnel and to complete an inspection report for each inspection performed.
 46. Section 3.10.E of the construction permit requires Respondents to perform inspections in all areas of the site disturbed by construction activity and areas used for storage of materials that are exposed to precipitation. The inspections must include the identification of, or the potential for, pollutants entering the storm water conveyance system.
 47. Section 3.12.B of the construction permit requires Respondents to post a sign or other notice conspicuously near the main entrance of the construction site. The sign must contain a copy of the NOI filed for the Project, and the current location of the SWPPP and the name and telephone number of the contact person for scheduling viewing times.

48. Section 3.13.A of the construction permit requires that all control measures must be properly selected, installed, and maintained in accordance with any relevant manufacturer specifications and good engineering practices.
49. Section 3.13.B of the construction permit requires that if sediments escape the construction site, off-site accumulations of sediment must be removed at a frequency sufficient to minimize off-site impacts.
50. Section 3.13.D of the construction permit requires Respondents to provide stabilization measures, as soon as practicable, in portions of the site where construction activities have temporarily or permanently ceased, but in no case more than 14 days after the construction activity in that portion of the site has temporarily or permanently ceased.
51. Section 3.13.E of the construction permit requires Respondents to implement a combination of sediment and erosion control measures to achieve maximum pollutant removal.
52. Section 3.13.F of the construction permit requires Respondents to place velocity dissipation devices at discharge locations and along the length of any outfall channel to provide a non-erosive flow velocity from the structure to a water course so that the natural physical and biological characteristics and functions are maintained and protected.
53. On or about October 26, 2006, and February 2, 2007, a duly authorized EPA enforcement officer performed inspections at the Project to determine Respondents' compliance with the Act, its NPDES permit, and the applicable NPDES regulations.
54. The findings of the inspections were included in two NPDES Water Compliance Inspection Reports, dated December 20, 2006, and February 22, 2007. The findings of the inspections revealed that:
 - a. The SWPPP prepared for the Project, dated November 15, 2005, was incomplete. It did not provide the following, as required under Part 3 of the construction permit:
 - i. combination of sediment and erosion control measures to achieve maximum pollutant removal;
 - ii. placement of velocity dissipation devices to provide a non-erosive flow velocity; among other storm water pollution prevention measures;
 - iii. a legible site map that indicates: (1) approximate slopes anticipated after major grading activities; (2) areas of soil disturbance and areas

that will not be disturbed; (3) locations of major structural and nonstructural BMPs identified in the SWPPP; (4) locations where stabilization practices are expected to occur; (5) locations of off-site material, waste, borrow or equipment storage areas; (6) locations where storm water discharges into a surface water; and (7) areas where final stabilization has been accomplished and no further construction-phase permit requirements apply;

- iv. description of measures to prevent the discharge of solid materials into waters of the United States; and
 - v. areas of the Project where QEC has operational control over project specifications, including the ability to make modifications in specifications, and areas of the project where CE has operational control over day-to-day activities.
- b. Respondents did not implement adequate storm water pollution prevention measures at the Project, as required by Part 3 of the construction permit.
 - c. Respondents did not implement the SWPPP, as written, from commencement of construction activity until completion of final stabilization is complete as referenced by Part 3 of the construction permit.
 - d. Uncontrolled storm water runoffs from the Project were discharged into the tributary of the La Escarcha Creek, in violation of Part 3 of the construction permit.
 - e. Respondents did not adequately install and maintain the erosion and sediment control measures and other protective measures identified in the SWPPP (i.e., silt fences, etc.) at the Project as required by Part 3 of the construction permit.
 - f. Respondent allowed the escape of sediments in several areas of the La Escarcha Creek in violation of Part 3 of the construction permit. Some of the silt fences were down and did not adequately protect the water of the United States as required by the Construction General Permit ("CGP").
 - g. Large off-site accumulations of sediment from the Project impacting the adjacent land and the La Escarcha Creek were not removed at a frequency sufficient to minimize off-site impacts as required by Part 3 of the construction permit.
 - h. Respondent failed to stabilize unstable slopes throughout the Project in violation of Part 3 of the construction permit.

- i. Respondents failed to conduct inspections, in accordance with Section 3.10 of the construction permit.
55. Based on the observations made by EPA during the October 26, 2006, inspection EPA issued Administrative Order CWA-02-2007-3011 (“Compliance Order” or “Order”), dated January 11, 2007, to Respondents ordering them to address the violations mentioned above.
56. Respondents failed to comply with the Order.
57. The Compliance Order included findings of violations, and ordered Respondents to:
- a. cease and desist all clearing, grading and/or excavation activities at the construction project;
 - b. provide temporary stabilization to areas where clearing, grading and/or excavation activities had been temporarily ceased;
 - c. provide final stabilization to areas where clearing, grading and/or excavation activities will no longer be performed;
 - d. construct and/or install erosion and storm water management controls; and
 - e. provide maintenance to the erosion and storm water management controls; among others.

B. Conclusions of Law

58. As set forth above, Respondents are liable for the violations of Sections 301(a) of the Act, 33 U.S.C. § 1311(a), as specified below:

a. Claim 1 – Failure to conduct inspections

Respondents failed to conduct inspections at the Project, as required by Section 3.10.E of the construction permit and the SWPPP, from January 9, 2006 (date when earth movement activities began at the Project as submitted in the NOI), until January 11, 2007 (date when EPA issued the Compliance Order). Respondents failed to conduct a total of 26 inspections.

b. Claim 2 – Failure to develop a complete SWPPP

Respondents did not prepare a complete SWPPP, in order to provide storm water pollution prevention for the Project, as required under Part 3 of the construction permit. The SWPPP remained incomplete from December 07, 2005, (date by which Respondents obtained coverage under the construction permit), until January 11, 2007 (date when EPA issued the Compliance Order). The number of days that Respondents failed to have a complete SWPPP are 400.

c. Claim 3 – Failure to implement SWPPP

Respondents did not implement the SWPPP at the Project, as required by Part 3 of the construction permit, from January 9, 2006, (date when earth movement activities began at the Project), until January 11, 2007 (date when EPA issued the Compliance Order). The number of days that Respondents failed to implement the SWPPP are 367.

**d. Claim 4 – Failure to comply with the Administrative Order
CWA-02-2007-3011**

Respondents failed to timely comply with Administrative Order CWA-02-2007-3011, as required by Section 309 of the CWA. The number of days that Respondents failed to comply with the Order are 76 (date when EPA issued this Order).

59. EPA will notify the Commonwealth of Puerto Rico regarding this proposed action by mailing a copy of this Complaint and Notice and offering an opportunity for the Commonwealth to confer with EPA on the proposed penalty assessment.

IV. Notice of Proposed Order Assessing a Civil Penalty

Based on the foregoing Findings of Violation, and pursuant to the authority of Section 309(g) of the Act, 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 **\$80,683**. The proposed penalty has been determined in accordance with the applicable factors under Section 309(g)(3) of the Act, 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 by the Debt Collection Improvement Act of 1996, which requires EPA to adjust penalties for inflation on a periodic basis.

The penalty amounts were amended for violations occurring between January 1, 1997 and March 14, 2004. The maximum administrative penalty under Section 309(g) of the

Act, 33 U.S.C. § 1319(g), for those violations is \$11,000 per day per violation and \$137,500 for a maximum penalty amount. For violations after March 15, 2004, the maximum administrative penalty is \$11,000 per day per violation and \$157,500 for a maximum penalty amount.

Based on the Findings set forth above, Respondents have been found to have violated, on numerous occasions, the NPDES regulations and the Act. Respondents failed to perform inspections, prepare and implement a storm water pollution prevention plan, as required by the construction permit. Respondents are culpable for the violations. EPA took into account Respondents' knowledge of the NPDES regulations, the construction permit, and the risks to human health and the environment posed by the uncontrolled discharges of storm water runoff from the Project into a water of the United States, the tributary of the La Escarcha Creek.

The violations discussed in this Complaint are serious since Respondents' failure to develop and implement storm water pollution prevention at the Project caused a significant amount of sediments to reach surface water that could cause direct and indirect negative effects on human health and the environment. Respondents knew of their obligations under the NPDES regulations, construction permit, and the Act. Respondents do not have a prior history of violations under the NPDES program

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.

A. 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.**

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 and with regard to which Respondents have any knowledge. 40 C.F.R. § 22.15(b). Where Respondents lack knowledge of a particular factual allegation and so state in their Answer, the allegation is deemed denied. 40 C.F.R. § 22.15(b). The Answer shall also set forth: (1) the circumstances or arguments that are alleged to constitute the grounds of defense, (2) the facts that Respondents dispute (and thus intend to place at issue in the proceeding), (3) the basis for opposing the proposed relief, and (4) whether Respondents request a hearing. 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.

B. Opportunity to Request a Hearing

If requested by Respondents in their 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).

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 Act, 33 U.S.C. § 1319(g)(4)(B), 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.

C. 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 Respondents 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 Respondents 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 Respondents 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 Respondents, 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 Act and its applicable regulations. 40 C.F.R. § 22.18(b). At an informal conference with a representative(s) of Complainant, Respondents may comment on the charges made in this complaint, and Respondents may also provide whatever additional information that they believe 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 Complainant'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.

Complainant 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 Complainant 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' requesting a formal hearing does not prevent it from also requesting an informal settlement conference; the informal conference procedure may be pursued simultaneously with the formal adjudicatory hearing procedure. A request for an informal settlement conference constitutes neither an admission nor a denial of any of the matters alleged in the Complaint. Complainant does not deem a request for an informal settlement conference as a request for a hearing as specified in 40 C.F.R. § 22.15(c).

A request for an informal settlement conference does not affect 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 waives any right to appeal the Final Order that is to accompany the Consent Agreement. 40 C.F.R. § 22.18(b)(2). In order to conclude the proceeding, a Final Order ratifying the parties' agreement to settle will be executed. 40 C.F.R. § 22.18(b)(3).

Respondents' entering into a settlement through the signing of such Consent Agreement and its complying with the terms and conditions set forth in such Consent Agreement terminates this administrative litigation and the civil proceedings arising out of the allegations made in the Complaint. 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 to the "**Treasurer, United States of America**", in the full amount of the penalty assessed in this complaint to the following addressee:

**Regional Hearing Clerk
U. S. Environmental Protection Agency, Region 2
PO Box 360188
Pittsburgh, Pennsylvania 15251.**

Pursuant to 40 C.F.R. § 22.18(a)(3), if Respondents elects 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.**

2. A copy of the Answer, any Hearing Request and all subsequent documents filed in this action shall be sent to:

**Silvia Carreño
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 2
1492 Ponce de León Ave., Suite 417
San Juan, Puerto Rico 00907-4127
Telephone: (787) 977-5822
Fax: (787) 729-7748
e-mail:carreno.silvia@epa.gov**

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 Act, regulations promulgated thereunder, or any applicable permit.
3. Neither assessment nor payment of an administrative civil penalty pursuant to Section 309(g) of the Act will affect Respondents' continuing obligation to comply with the Act, and with any separate Compliance Order issued under Section 309(a) of the Act, 33 U.S.C. § 1319(a), for the violations alleged herein.

ISSUED THIS 7th DAY OF JUNE, 2007.



CARL-AXEL P. SODERBERG, P.E.
Director,
Caribbean Environmental Protection Division
United States Environmental Protection Agency - Region 2
1492 Ponce de León Ave., Suite 417
San Juan, Puerto Rico 00907-4127

To: Mr. Emilio Colón-Zavala, Associate
Quality Engineers and Contractors, Inc.
Suite 201, 206 Eleanor Roosevelt
Hato Rey , Puerto Rico 00918.

Mr. Ismael Quintana, President
Cidra Excavation, Inc.
P.O. Box 11218 Caparra Heights Station
San Juan P.R. 00922.

cc: Wanda García
Director
Water Quality Area
PR Environmental Quality Board
P.O. Box 11488
San Juan, PR 00910

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2**

IN THE MATTER OF:

**QUALITY ENGINEERS AND
CONTRACTORS , INC.**
Suite 201,
206 Eleanor Roosevelt
Hato Rey, Puerto Rico 00918

and

CIDRA EXCAVATION, INC.
P.O. Box 11218
Caparra Heights Station
San Juan, P.R. 00922

**SERENA HOUSING DEVELOPMENT
RESPONDENTS.**

NPDES PERMIT PRR10B942

DOCKET NUMBER CWA-02-2007-3411

Proceeding Pursuant to Section
309(g) of the Clean Water Act, 33 U.S.C.
§1319(g), to Assess Class II Civil Penalty

CERTIFICATE OF SERVICE

I certify that, on the date noted below, I caused to be mailed, by certified mail, return receipt requested, a copy of the foregoing "ADMINISTRATIVE COMPLAINT" and 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," 40 CFR Part 22 (July 1, 2001) to the following person at the address listed below:

Mr. Emilio Colón-Zavala, Associate
Quality Engineers and Contractors, Inc.
Suite 201, 206 Eleanor Roosevelt
Hato Rey , Puerto Rico 00918.

Mr. Ismael Quintana, President
Cidra Excavation, Inc.
P.O. Box 11218 Caparra Heights Station
San Juan P.R. 00922.

I mailed the original and a copy of the foregoing Complaint to the office of the Regional Hearing Clerk, United States Environmental Protection Agency, Region 2.

Date: June 7, 2007


San Juan, Puerto Rico