



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
 CARIBBEAN ENVIRONMENTAL PROTECTION DIVISION  
 CITY VIEW PLAZA, SUITE 7000  
 #48 165 RD. KM 1.2  
 GUAYNABO, PR 00968-8069

071015

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Ms. Lisbeth Fernández  
 H & D Development Corporation  
 P.O. Box 4315  
 Bayamón, Puerto Rico 00958

**RE: Notice of Proposed Assessment of a Civil Penalty  
 Docket No. CWA-02-2013-3356  
 Campo Real Development Pump Station**

Dear Ms. Fernández:

On September 26, 2013, the U.S. Environmental Protection Agency (“EPA” or “Agency”) issued a Complaint against H & D Development Corporation (“Respondent”) alleging that Respondent discharged unauthorized pollutants into waters of the United States, from the Campo Real Development’s Pump Station in violation of Section 301 of the Clean Water Act (the “Act”), 33 U.S.C. § 1311. The Complaint was issued 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 **\$36,663.00** be assessed against Respondent for the violations. On the same date, the Complaint was mailed to Respondent with a return receipt to EPA’s Caribbean Environmental Protection Division. Our record shows that Mr. Luis Vélez received the Complaint on behalf of Respondent on October 3, 2013. (A copy of the return receipt is herein included).

EPA is hereby re-sending a copy of the Complaint issued on September 26, 2013. 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, establishes that Respondent has the right to a hearing to contest the factual allegations in the Complaint. If Respondent admits the allegations, or is found to be true after there has been an opportunity for a hearing on them, Respondent has the right to contest the penalty proposed in the Complaint. I have enclosed a copy of the CROP.

Please note the requirements for an Answer at Section 22.15 of the CROP. If Respondent wishes to contest the allegations or the penalty proposed in the Complaint, Respondent must file an original and a copy of a written Answer within thirty (30) days of Respondent’s receipt of the enclosed Complaint to the EPA Regional Hearing Clerk at the following address:

U.S. Environmental  
 Protection Agency-Reg 2  
 2015 JUL 15 PM 3:01  
 REGIONAL HEARING  
 CLERK

Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 2  
290 Broadway, 16th Floor  
New York, New York 10007-1866

If Respondent does not file an Answer within thirty (30) days of receipt of this Complaint, Respondent may be judged to have defaulted (see Section 22.17 of the CROP). If a default order is entered, the entire proposed penalty may be assessed without further proceedings.

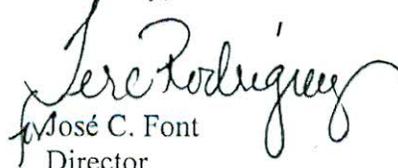
Whether or not Respondent requests a formal hearing, Respondent may informally confer with EPA concerning the alleged violations and the amount of the proposed penalty. EPA encourages all parties against whom it files a Complaint to pursue the possibility of settlement as a result of such informal conference with the Agency. The Agency also encourages the use of Supplemental Environmental Projects ("SEPs"), where appropriate, as part of the settlement. Enclosed is a copy of the EPA Supplemental Environmental Projects Policy 2015 Update (March 10, 2015) for your consideration. Respondent may represent itself or be represented by an attorney at any stage of the proceedings, including any informal discussions, whether in person or by telephone. An attorney from the Agency'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 may choose to say in an Answer, nor does it extend the thirty (30) days by which Respondent 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:

Evelyn Rivera-Ocasio, Esq.  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 2  
City View Plaza II, Suite 7000  
#48, Road 165, km. 1.2  
Guaynabo, PR 00968-8069  
Telephone: (787) 977-5859  
rivera-ocasio.evelyn@epa.gov

We urge your prompt attention to this matter.

Sincerely,



José C. Font  
Director

Caribbean Environmental Protection Division

Enclosures



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
CARIBBEAN ENVIRONMENTAL PROTECTION DIVISION  
CITY VIEW PLAZA II, SUITE 7000  
GUAYNABO, PUERTO RICO 00968-8069

SEP 26 2013

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Ms. Lisbeth Fernández  
H & D Development Corporation  
P.O. Box 4315  
Bayamón, Puerto Rico 00958

**RE: Notice of Proposed Assessment of a Civil Penalty  
Docket No. CWA-02-2013-3356  
Campo Real Development Pump Station**

U.S. Environmental  
Protection Agency-Reg 2  
2015 JUL 15 PM 3:01  
REGIONAL HEARING  
CLERK

Dear Ms. Fernández:

Enclosed is a Complaint which the U.S. Environmental Protection Agency ("EPA" or "Agency") is issuing to H & D Development Corporation ("Respondent") as a result of our determination that Respondent has discharged unauthorized pollutants into waters of the United States, from the Campo Real Development's Pump Station in violation of Section 301 of the Clean Water Act (the "Act"), 33 U.S.C. §1311. 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 **\$36,663.00** be assessed against Respondent for the violations.

The Respondent has the right to a hearing to contest the factual allegations in the Complaint. If the Respondent admits the allegations, or they are found to be true after there has been an opportunity for a hearing on them, the Respondent has the right to contest the penalty proposed in the Complaint. I have enclosed 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 at Section 22.15 of the CROP. If the Respondent wishes to contest the allegations in the Complaint or the penalty proposed in the Complaint, the Respondent must file an original and a copy of a written Answer within thirty (30) days of the Respondent's receipt of the enclosed Complaint to the EPA Regional Hearing Clerk at the following address:

Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 2  
290 Broadway, 16th Floor  
New York, New York 10007-1866

If the Respondent does not file an Answer within thirty (30) days of receipt of this Complaint, the Respondent may be judged to have defaulted (see Section 22.17 of the CROP). If a default order is entered, the entire proposed penalty may be assessed without further proceedings.

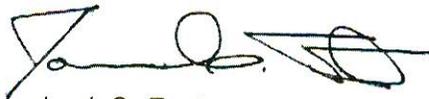
Whether or not the Respondent requests a formal hearing, the Respondent may informally confer with EPA concerning the alleged violations and the amount of the proposed penalty. EPA encourages all parties against whom it files a Complaint to pursue the possibility of settlement as a result of such informal conference with the Agency. The Agency also encourages the use of Supplemental Environmental Projects (SEPs), where appropriate, as part of the settlement. Enclosed is a copy of the Final EPA Supplemental Environmental Projects Policy (May 1, 1998) for your consideration. The Respondent may represent itself or be represented by an attorney at any stage of the proceedings, including any informal discussions, whether in person or by telephone. An attorney from the Agency'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 the Respondent may choose to say in an Answer, nor does it extend the thirty (30) days by which the Respondent 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:

Lourdes del Carmen Rodriguez, Esq.  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 2  
City View Plaza II, Suite 7000  
#48, Road 165, km. 1.2  
Guaynabo, PR 00968-8069  
Telephone: (787) 977-5819  
rodriguez.lourdes@epa.gov

We urge your prompt attention to this matter.

Sincerely,



José C. Font  
Director  
Caribbean Environmental Protection Division

Enclosures

cc: Wanda Garcia, PREQB (copy w/ enclosure)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2

IN THE MATTER OF:

H & D Development Corporation

RESPONDENT

P.O. Box 4315  
Bayamón, Puerto Rico 00958

NPDES Tracking Number PRU002776

Docket No. CWA-02-2013-3356

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

REGIONAL HEARINGS  
CLERK  
2015 JUL 15 PM 3:01

U.S. Environmental  
Protection Agency-Reg 2

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 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)(A) of the Clean Water Act (Act), 33 U.S.C. § 1319(g)(2)(A). 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).
2. Pursuant to Section 309(g)(2)(A) 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, a copy of which is attached, Complainant hereby requests that the Regional Administrator assess a civil penalty against **H & D Development Corporation** (Respondent), as a result of Complainant's determination that the Respondent is in violation of Sections 301 and 402 of the Act, for its discharges of pollutants (sewage or sanitary wastewater) from its Campo Real Development (the "Development") located in Las Piedras, Puerto Rico, into waters of the United States without National Pollutant Discharge Elimination System (NPDES) permit coverage.

3. 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."
4. Section 402 of the Act, 33 U.S.C. § 1342, defines the NPDES as the national program for, among other things, issuing and enforcing permits.
5. Section 402 of the Act, 33 U.S.C. § 1342, authorizes the Administrator to issue a NPDES permit for the discharge of any pollutant, or combination of pollutants, subject to certain requirements of the Act and such conditions as the Administrator determines are necessary.
6. Section 402 (p) of the Act, 33 U.S.C. §1342(p), requires a permit with respect to a discharge associated with industrial activity.
7. Section 402 of the Act authorizes the Administrator to promulgate regulations for the implementation of the NPDES requirements.
8. 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.
9. 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.
10. The Act, its implementing regulations and applicable NPDES permit contain the following definitions:
  - a. "Person" as an individual, corporation, partnership or association. Section 502(5) of the Act, 33 U.S.C. § 1362(5), and 40 CFR § 122.2;
  - b. "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. Section 502(6) of the Act, 33 U.S.C. § 1362(6), and 40 CFR § 122.2;
  - c. "Navigable waters" as the waters of the United States, including the territorial seas. Section 502(7) of the Act, 33 U.S.C. § 1362(7); "waters of the United States" means all waters such as lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, among others, and their tributaries. 40 CFR § 122.2;

- d. "Discharge of a pollutant" as any addition of any pollutant to navigable waters and/or waters of the United States from any point source. Section 502(12) of the Act, 33 U.S.C. § 1362(12), and 40 CFR § 122.2;
- e. "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. Section 502(14) of the Act, 33 U.S.C. § 1362(14), and 40 CFR § 122.2;
- f. "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. 40 CFR § 122.2;
- g. "Owner" or "operator" as the owner or operator of any facility or activity subject to regulation under the NPDES program. 40 CFR § 122.2; and

## II. Jurisdictional Findings

- 11. Respondent is a corporation organized and authorized to do business under the laws of the Commonwealth of Puerto Rico.
- 12. Respondent is a "person" within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5).
- 13. Respondent is the owner and developer of the Development.
- 14. The Development is located at Road # 9917, Km. 1.9, Tejas Ward, Las Piedras, Puerto Rico.
- 15. The Development is comprised of 78 dwellings of one or two stories, recreational facilities, and a Pump Station.
- 16. Respondent is the owner and operator of the Pump Station which consists of a concrete house, wet well, bar screens, two submersible pumps, and electrical system, among other equipment for wastewater collection.
- 17. The pump station collects the Development's sanitary wastewater sewage. The sanitary wastewater sewage is then discharged into the Puerto Rico Aqueduct and Sewer Authority's (PRASA) Humacao Regional Wastewater Treatment Plant and its appurtenances.
- 18. The Development and the Pump Station are a facility as defined in 40 C.F.R. § 122.2.

19. Respondent discharges pollutants from the Development's Pump Station into the Ceiba Creek which eventually discharges into the Gurabo River.
20. The Ceiba Creek and the Gurabo River are waters of the United States within the meaning of Section 502(7) of the Act, 33 U.S.C. § 1362(7).
21. Respondent is subject to the provisions of the Act, 33 U.S.C. § 1251, *et seq.*, and the applicable NPDES regulations found at 40 C.F.R. Part 122. Respondent was required to apply for and obtain NPDES permit coverage for the Development's pump station discharges of pollutants into waters of the United States pursuant to Section 402(a)(1) of the Act, 33 U.S.C. § 1342(a)(1).

### III. Findings of Violations

22. Complainant re-alleges Paragraphs 11-21, above.
23. On December 22, 2012, PRASA official Mr. Miguel Hernández conducted an inspection of the Development's Pump Station to address complaints from residents of the development regarding foul odors apparently coming from the Pump Station; and (2) during the inspection Mr. Hernández discovered that the Pump Station was discharging sanitary waste water into the Ceiba Creek and that the Pump Station's two submersible pumps were out of service.
24. On January 28, 2013, a resident of the Development filed PRASA Complaint Number 44536147, alleging that she perceived foul odors and observed sanitary waste water discharges from the Development's Pump Station into the Ceiba Creek, which discharges into the Gurabo River.
25. On January 30, 2013, a resident of the Development took pictures depicting the Pump Station discharges of sanitary waste water into the Ceiba Creek.
26. In a letter dated January 31, 2013, PRASA informed Respondent, and notified EPA, that on January 30, 2013, PRASA personnel inspected the Pump Station and found it discharging sanitary waste water into the Ceiba Creek which discharges into the Gurabo River.
27. On February 5, 2013, a resident of the Development took pictures of the Pump Station depicting discharges of sanitary waste water into the Ceiba Creek and the lack of maintenance at the Pump Station.
28. On February 5, 2013, EPA called Respondent representative, Ms. Lisbeth Fernández, in efforts to gather information regarding the Pump Station and

to require the cease of the discharges of sanitary waste water from the Pump Station into the Ceiba Creek, which discharges into the Gurabo River.

29. On February 26, 2013, an EPA enforcement officer performed a Reconnaissance inspection (RI) of the Pump Station. The purpose of the RI was to evaluate Respondent compliance with the Act and the NPDES regulations.
30. During the RI, EPA met with Respondent representative Mr. Carlos Monzón. The findings of the RI revealed:
  - a. Mr. Monzón informed EPA that Respondent is responsible and in charge of providing operation and maintenance to the Pump Station;
  - b. the Pump Station's diesel tank dike had stagnant storm-water and debris accumulated;
  - c. the Pump Station's Alternate Power Unit (APU) could not be tested on a simulated power failure because the Respondent representative attending the inspection was not qualified to operate the Pump Station;
  - d. Respondent did not have a log book for the Pump Station to document all the activities at the Pump Station (i.e. visits, maintenance, repair works, record keeping, sewage overflow, etc.);
  - e. the Pump Station was painted with PRASA's colors;
  - f. the emergency telephone numbers posted at front of the Pump Station were PRASA's instead of Respondent who is the owner and operator (PRASA is not the owner or operator); and
  - g. Respondent operational and maintenance practices were deficient.
31. On February 26, 2013, a copy of a letter dated February 8, 2013, and sent by Mr. Felix A. Baez, General Manager for Waste Environmental Technologies (WET), to Respondent representative Ms. Lisbeth Fernandez Santos, was hand delivered by WET at EPA's Caribbean Environmental Protection Division's offices.

32. The letter states that on or about February 7, 2013:
- a. WET was hired by Respondent to provide operation and maintenance to the Pump Station in order to eliminate the discharges of sanitary waste water;
  - b. the maintenance activities that WET performed consisted of the removal, cleaning and disposition of grease and sand debris accumulated in the Pump Station;
  - c. WET performed housekeeping activities in the Pump Station and surrounding areas consisting of the removal of excessive vegetation and cleaning in order to clear the access to the Pump Station;
  - d. WET emptied the Pump Station's pit (wet well) and the submersible pumps and the entrance bar screens were washed and the accumulated grease chunks and sludge were removed; and
  - e. WET performed an assessment of the Pump Station and found that:
    - i. Submersible Pump 1 was clogged;
    - ii. Submersible Pump 2 was operating emitting loud noises and in occasions its main circuit electrical break would trip; and
    - iii. the Pump Station's emergency power generator was out of service and had the following mechanical problems:
      - 1) spilling oil from the manifold;
      - 2) battery pack was out of service; and
      - 3) heater was out of service.
33. On March 7, 2013, an EPA official also conducted a review of the EPA files (EPA review). The EPA Review revealed that as of such date Respondent had not filed an individual NPDES permit for coverage of its discharges of pollutants into waters of the United States.
34. Based on the findings above, EPA determined that Respondent was in violation of Section 301 of the Act for its discharges of pollutants into a water of the United States without a NPDES permit. Accordingly, pursuant to the authority of Sections 308(a) and 309(a) of the Act, 33 U.S.C. §§ 1318(a) and 1319(a), EPA issued the Administrative Compliance Order CWA-02-2013-3113 ("Compliance Order" or "Order"), dated April 15, 2013, against

Respondent to address the violations mentioned above. The Compliance Order incorporated findings of violations and ordered Respondent to, among other things, cease and desist the discharge of pollutants (sewage) into waters of the United States, and to submit to EPA a compliance plan and a preventive maintenance program to bring the Development's Pump Station into proper operational conditions.

35. On April 17, 2013, Respondent received the Compliance Order.
36. On July 7, 2013, Respondent submitted to EPA a certification stating that as of such date, the discharges of pollutants from the Development into waters of the United States had ceased.
37. As of the date of issuance of this Administrative Complaint, Respondent has failed to submit to EPA and implement a Preventive Maintenance Program for the Development's Pump Station and Sanitary Collection System as required by the Order.
38. Based on the findings on paragraphs 22 - 37 above, Respondent is liable for the violations of Sections 301(a) and 402 of the Act, 33 U.S.C. §§ 1311(a) and 1342, as specified below:

**Illegal discharges of pollutant (untreated sanitary sewage) into waters of the United States without NPDES permit coverage.**

Respondent discharged pollutants from the Development into waters of the United States without NPDES permit coverage, in violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a), from December 22, 2012 (date when unauthorized discharge of pollutants began), through July 7, 2013 (date when Respondent certified that the unauthorized discharge of pollutants [sewage] had ceased).

The 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), and the Debt Collection Improvement Act of 1996, EPA, Region 2 hereby proposes to issue a Final Order Assessing Administrative Penalties (Final Order) to Respondent assessing a penalty of **\$36,663.00**. EPA determined the proposed penalty after taking into account the applicable factors identified at 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 Act of 1996, which requires EPA to adjust penalties for inflation on a periodic basis.

Based on the Findings set forth above, Respondent has been found violating Section 301 of the Act, by discharging pollutants (raw sewage) into waters of the United States without a NPDES permit. Respondent failed to take appropriate measures to prevent the Sanitary Sewer Overflows (SSOs) from the Development's Pump Station. Untreated sewage contains very high amounts of pollutants such as Biological Oxygen Demand (BOD), Total Suspended Solids (TSS), Coliforms, Phosphorous, Nitrogen, Chlorine, Sulfide, heavy metals, toxics, etc., that could be dangerous to human health if a person becomes in contact with this discharge. The violation is serious. SSOs occurred at least on three instances from December 22, 2012 thru July 7, 2013. Respondent does not have a prior history of violations under the Act.

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, requests a hearing on this Notice pursuant to the following section.

#### **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 Respondent intends to contest any material fact upon which the Complaint is based, to contend that the proposed penalty is inappropriate or to contend that Respondent is entitled to judgment as a matter of law, Respondent 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**

Respondent 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).

Respondent 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 Respondent has any knowledge. 40 C.F.R. § 22.15(b). Where Respondent lacks knowledge of a particular factual allegation and so states in its 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 the defense, (2) the facts that Respondent disputes (and thus intends to place at issue in the proceeding), (3) the basis for opposing the proposed relief and (4) whether Respondent requests a hearing. 40 C.F.R. §22.15(b).

Respondent failure to affirmatively raise in the Answer facts that constitute or that might constitute the grounds of its defense may preclude Respondent, 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 Respondent in its Answer, a hearing upon the issues raised by the Complaint and Answer may be held. 40 C.F.R. § 22.15(c). If, however, Respondent does 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. §§ 51-59, and the procedures set forth in Subpart D of 40 C.F.R. Part 22.

Should Respondent 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 Respondent not request a hearing, EPA will issue a Final Order, and only members of the public who submit timely comments 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 Respondent fails in its 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 fails to file a timely i.e. in accordance

with the 30-day period set forth in 40 C.F.R. § 2.15(a)] Answer to the Complaint, Respondent 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 Respondent 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 Respondent without further proceedings thirty (30) days after the Default Order becomes final pursuant to 40 C.F.R. § 22.27(c). 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 Respondent requests 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, Respondent may comment on the charges made in this Complaint, and Respondent may also provide whatever additional information that it believes is relevant to the disposition of this matter, including: (1) actions Respondent has 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 Respondent wishes to raise.

Complainant has the authority to modify the amount of the proposed penalty, where appropriate, to reflect any settlement agreement reached with Respondent, to reflect any relevant information previously not known to Complainant or to dismiss any or all of the charges, if Respondent can demonstrate that the relevant allegations are without merit and that no cause of action as herein alleged exists. Respondent is referred to 40 C.F.R. § 22.18.

Any request for an informal conference or any questions that Respondent 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 Respondent has requested a hearing. 40 C.F.R. § 22.18(b)(1). Respondent 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 Respondent 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, Respondent waives its right to contest the allegations in the Complaint and waives its 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).

Respondent 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. Respondent 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, Respondent may choose to pay the total amount of the proposed penalty within thirty (30) days after receipt of the Complaint, provided that Respondent files 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 the previous page. 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:

**U. S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000**

Pursuant to 40 C.F.R. § 22.18(a)(3), if Respondent 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 Respondent shall constitute a waiver of Respondent 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 Respondent 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 - 16<sup>th</sup> 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:

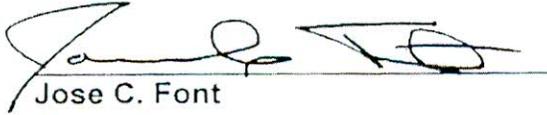
**Lourdes del Carmen Rodriguez, Esq.  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 2  
City View Plaza II, Suite 7000  
#48, Road 165, km. 1.2  
Guaynabo, PR 00968-8069  
Telephone: (787) 977-5819  
rodriguez.lourdes@epa.gov**

#### **IX. General Provisions**

1. Respondent has 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 Respondent 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 26<sup>th</sup> DAY OF September, 2013.



**Jose C. Font**  
Director,  
Caribbean Environmental Protection Division  
United States Environmental Protection Agency - Region 2

To: Ms. Lisbeth Fernández  
Representative  
H & D Development Corporation  
P.O. Box 4315  
Bayamón, Puerto Rico 00958

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



First-Class Mail  
Postage & Fees Paid  
USPS  
Permit No. G-10

U.S. ENVIRONMENTAL PROTECTION AGENCY  
CARIBBEAN ENVIRONMENTAL PROTECTION DIVISION  
CITY VIEW PLAZA II - SUITE 7000  
48 RD. 165 KM. 1.2  
GUAYNABO, PUERTO RICO 00968-8069

XX

ATTN: Miguel Batista  
Notice of Proposed Assessment of a Civil Penalty Docket  
No. CWA-02-2013-3356 Campo Real Development Pump  
Station

**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Ms. Lisbeth Fernández  
H & D Development Corporation  
P.O. Box 4315  
Bayamón, Puerto Rico 00958

2. Article Number

(Transfer from service label)

7008 1140 0004 1564 6041

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature  Agent  
  Addressee

B. Received by (Printed Name) C. Date of Delivery  
Luis Velazquez 10-3-13

D. Is delivery address different from item 1?  Yes  
If YES, enter delivery address below:  No

3. Service Type  
 Certified Mail  Express Mail  
 Registered  Return Receipt for Merchandise  
 Insured Mail  C.O.D.

4. Restricted Delivery? (Extra Fee)  Yes

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION II

**IN THE MATTER OF:**

**H & D Development Corporation**  
P.O. Box 4315  
Bayamón, Puerto Rico 00958

Campo Real Development's Pump Station  
NPDES Tracking Number PRU002776

**DOCKET NUMBER CWA-02-2013-3356**

Proceeding pursuant to Sections 309(g) of the  
Clean Water Act, 33 U.S.C. § 319(g) to assess  
Class I Civil Penalty

**RESPONDENT**

**CERTIFICATE OF SERVICE**

I certify that I have this day 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**" to the following person at the address listed below:

Ms. Lisbeth Fernández  
Representative  
H & D Development Corporation  
P.O. Box 4315  
Bayamón, Puerto Rico 00958

I also certify that I sent an exact copy of the original and a copy of the foregoing Administrative Complaint for filing to:

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

July 10, 2015  
Date

  
NAME