

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2

IN THE MATTER OF:

**INVERSIONES DEL MERCADO, INC.**  
P.O. Box 364386  
San Juan, Puerto Rico 00936-4368  
**NPDES GCP Number PRR10B896**

and

**JOFA CONTRACTORS, INC.**  
RR 10 Box 5226  
San Juan, Puerto Rico 00926  
**NPDES GCP Number PRR10BF65**

**Posada del Coronel Housing Development**

**RESPONDENTS**

**DOCKET NUMBER CWA-02-2008-3460**

PROCEEDING PURSUANT TO SECTION  
309(G) OF THE CLEAN WATER ACT, 33  
U.S.C. § 1319(G), TO ASSESS CLASS II  
CIVIL PENALTY

REGIONAL HEARING  
CLERK

2016 MAY 12 AM 10:44

U.S. Environmental  
Protection Agency-Reg 2

**MOTION TO WITHDRAW COMPLAINT**  
**AGAINST JOFA CONTRACTORS, INC. WITHOUT PREJUDICE**

EPA Region 2 ("EPA") files this motion pursuant to 40 C.F.R. § 22.14(d) for permission to withdraw the instant Complaint against JOFA Contractors, Inc. (hereinafter referred as "Respondent JOFA"), without prejudice, based upon the following information:

1. On July 1, 2003, EPA noticed in the Federal Register (68 FR 39087) the issuance of the final National Pollutant Discharge Elimination System General Permit for Discharges from Large and Small Construction Activities (the "NPDES CGP"). The NPDES CGP became effective on July 1, 2003, and expired at midnight, July 1, 2008.
2. On January 11, 2007, a duly authorized enforcement officer performed an inspection (the "Inspection") at the Posada del Coronel Housing Development (the "Project").
3. The purpose of the inspection was for the inspector to determine compliance with the Clean Water Act (the "Act" or "CWA") and the applicable National Pollutant Discharge Elimination System ("NPDES") regulations, 40 C.F.R. Part 122, at the Project.
4. Pursuant to the NPDES regulations, storm water discharges associated with industrial activity must be covered by a NPDES Permit. 40 C.F.R §122.26(a)(1)(ii)

5. EPA defined the term “storm water discharge associated with industrial activity” to include discharges from construction activities. 40 CFR 122.26(b)(14)(x).
6. According to NPDES regulations the term “owner” or “operator” means the owner or operator of any facility or activity subject to regulation under the NPDES program. 40 C.F.R §122.2
7. Respondent Inversiones del Mercado, Inc. (hereinafter referred to as “Respondent Inversiones del Mercado”) was the owner of the Project pursuant to 40 C.F.R §122.2.
8. As owner of the Project, Respondent Inversiones del Mercado hired Respondent JOFA to perform the day-to-day construction activities at the Project.
9. Respondent JOFA was an operator of the Project pursuant to 40 C.F.R §122.2 and within the definition of Appendix A of the NPDES CGP.
10. The findings of the Inspection revealed that Respondent JOFA began clearing activities at the Project on or about October 2006.
11. The findings of the Inspection also revealed that Respondent JOFA, as an operator of the Project, failed to, among other things, obtain permit coverage under the NPDES CGP, provide stormwater run-on and run-off management, and implement adequate sediment and erosion control measures at the Project.
12. On September 11, 2007, EPA issued an Administrative Compliance Order (hereinafter referred as the “ACO”), Docket No. CWA-02-2007-3075, against Respondent Inversiones del Mercado and Respondent JOFA (together hereinafter referred to as “Respondents”) for their failure to address the CWA violations found during the Inspection.
13. The ACO required Respondents to, among other things, submit a compliance plan for the Project, provide temporary stabilization to areas where clearing, grading and/or excavation activities had temporarily ceased, and provide maintenance of the erosion and storm water management controls.
14. The ACO also required Respondent JOFA to file a Notice of Intent (“NOI”) form seeking coverage under the NPDES CGP.
15. On October 1, 2007 Respondent JOFA filed a NOI form as an operator of the Project seeking coverage under the NPDES CGP. Respondent JOFA’s NPDES CGP became effective on October 8, 2007.
16. Respondents addressed all compliance issues required under the ACO.
17. On September 30, 2008, EPA filed an Administrative Complaint, Findings of Violation, Notice of Proposed Assessment of an Administrative Penalty, and Notice of Opportunity to Request a Hearing (the “Complaint”), Docket No. CWA-02-2008-3460, against Respondents for CWA violations at the Project.
18. In the Complaint, EPA alleged that Respondents had failed to develop and implement the Stormwater Pollution Prevention Plan at the Project as required by Part 5 of the NPDES CGP, and that Respondent JOFA failed to timely apply for coverage under the NPDES CGP while performing construction

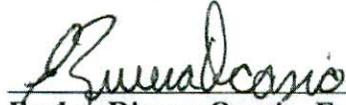
activities at the Project from October 1, 2006 (date when Respondent JOFA began earth movement activities at the Project) until October 1, 2007 (date when Respondent JOFA submitted a complete NOI to seek coverage under the NPDES CGP).

19. EPA did not receive Respondents' return receipt acknowledging receipt of the Complaint.
20. Respondents did not file an answer to the Complaint as required by Section 22.15 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 govern proceedings of this kind.
21. After the issuance of the Complaint, EPA met with Respondents on several occasions to conduct settlement negotiations, and no agreement was reached.
22. On April 8, 2015, EPA met with Respondent Inversiones del Mercado, the owner of the Project, in an attempt to settle the allegations in the Complaint. During this meeting, EPA learned that Respondent Inversiones del Mercado had defaulted on its loan agreement for the construction of the Project. EPA also learned that Respondent Inversiones del Mercado reached an agreement with its mortgage bank that resulted in the termination of the mortgage loan.
23. During the April 8, 2015 meeting, EPA also learned that Respondent JOFA no longer existed as a corporation. EPA also learned that Respondent Inversiones del Mercado has a law suit against Respondent JOFA's guarantor to collect monetary claims from the bond due to JOFA's breach of contract.
24. No further attempts were made to contact Respondent JOFA after EPA learned from Respondent Inversiones del Mercado that Respondent JOFA no longer existed as a corporation.
25. On or about October 2015, EPA performed a review of the Registry of Corporations and Entities of the Department of State of the Commonwealth of Puerto Rico to verify whether Respondent JOFA was active as a corporation under the laws of the Commonwealth of Puerto Rico.
26. As a result of the aforementioned review, EPA learned that on February 14, 2014, the Puerto Rico Department of State notified Respondent JOFA of its failure to comply with its annual obligation to file reports and/or pay annual dues, as applicable, for a number of years, and that the Commonwealth of Puerto Rico Secretary of State had the legal authority to cancel in full Respondent JOFA's certificate of incorporation if no action was taken within sixty (60) days of the date of such notification, without any further notification. (see Attachment I for a copy of the notice of revocation letter)
27. On April 16, 2014, the Puerto Rico Department of State cancelled Respondent JOFA's Certificate of Incorporation within its Corporations and Entities Registry. (see Attachment II for a copy of the Certificate of Revocation of the Certificate of Incorporation)
28. Complainant anticipates settlement with Respondent Inversiones del Mercado.
29. On the basis of the facts described in paragraphs 12 through 28, above, EPA seeks permission of this Regional Judicial Officer (RJO) to withdraw Respondent JOFA from the instant Complaint without prejudice.

**THEREFORE**, the Complainant, prays this RJO to grant its motion to withdraw its claims against Respondent JOFA from the instant Complaint without prejudice.

Respectfully submitted today February 16, 2016.

For Complainant US EPA Region 2



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**Evelyn Rivera-Ocasio, Esq.**

Assistant Regional Counsel

Office of Regional Counsel for Caribbean Programs

US Environmental Protection Agency - Region 2

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Guaynabo, PR 00968-8069



Commonwealth of Puerto Rico  
**DEPARTMENT OF STATE**  
San Juan, Puerto Rico

14-Feb-2014

JOFA CONSTRUCTOR INC.

Ref. Register Number: 124590 JOFA CONSTRUCTOR INC.

The General Corporation Law of Puerto Rico, Act No. 164-2009, provides that, if an entity fails to comply with its annual obligation to file reports or pay annual dues, as applicable, for certain consecutive years, the Secretary of State is authorized to cancel in full its certificate of incorporation or organization, respectively.

To this date, **14-Feb-2014**, the entity **JOFA CONSTRUCTOR INC.** has not complied with its obligations for the following years: **2008, 2009, 2010, 2011, 2012.**

The entity shall be in compliance **within sixty (60) days** after the date of this notice. **If the entity does not correct the identified deficiencies, the Secretary of State will administratively cancel the entity without any further notification.**

The Department of State, Corporations Division, must receive the missing documentation for the years listed above or the correction of the deficiencies noted, within the specified period of sixty (60) days. Missing reports or dues must be filed or paid at the Department of State.

If you have questions regarding this notice, you may contact us by email at [support@estado.gobierno.pr](mailto:support@estado.gobierno.pr) or by phone (787) 722-2121 ext. 4348.

A handwritten signature in black ink, appearing to read 'Francisco J. Rodriguez Bernier'.

**FRANCISCO J. RODRIGUEZ BERNIER, ESQ**  
UNDER SECRETARY OF STATE



Commonwealth of Puerto Rico  
**DEPARTMENT OF STATE**  
San Juan, Puerto Rico

**CERTIFICATE OF REVOCATION OF THE  
CERTIFICATE OF INCORPORATION**

I, **DAVID E. BERNIER RIVERA**, Secretary of State of the Commonwealth of Puerto Rico,

**CERTIFY:** That, "**JOFA CONSTRUCTOR INC.**", registry number **124590**, has been cancelled in accordance to the Puerto Rico General Corporations Act, on **April 16, 2014** at **12:01 AM**.



**IN WITNESS WHEREOF**, I hereby sign this certificate, in the City of San Juan, Puerto Rico, today, **May 03, 2014**.

A handwritten signature in black ink, appearing to read "David E. Bernier Rivera".

**DAVID E. BERNIER RIVERA**  
Secretary of State

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION II

IN THE MATTER OF:

**INVERSIONES DEL MERCADO, INC.**

and

**JOFA CONTRACTORS, INC.**

**Posada del Coronel Housing  
Development**

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PROCEEDING PURSUANT TO SECTION  
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U.S.C. § 1319(G), TO ASSESS CLASS II  
CIVIL PENALTY

**RESPONDENTS**

**CERTIFICATE OF SERVICE**

I certify that I have on this day caused to be sent the foregoing *Motion to Withdraw Complaint Against JOFA Contractors, Inc. without Prejudice*, dated February 16, 2016, and bearing the above-referenced docket number, in the following manner to the respective addressees below:

Original and copy by Overnight Mail to:

**Karen Maples**

Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region2  
290 Broadway, 16<sup>th</sup> Floor  
New York, NY 10007-1866

Copy by Overnight Mail to:

**Helen S. Ferrara**

Presiding Officer  
U.S. Environmental Protection Agency, Region2  
290 Broadway, 16<sup>th</sup> Floor  
New York, NY 10007-1866

Copy by Certified Mail/Return Receipt to:

**Michel Rachid**

Inversiones del Mercado, Inc.  
PO Box 364386  
San Juan, P.R. 00936-4386

**Jorge Falero**

JOFA Contractors, Inc  
RR 10 Box 5226  
San Juan, PR 00926

Date

5/11/16

Name

