

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2

IN THE MATTER OF:

**DEL VALLE GROUP**

P. O. Box 2319

Toa Baja, Puerto Rico 00951-3114

**San Germán Surf and Water Fun Park  
Construction Project**

Road PR-2, Km. 174

San Germán, Puerto Rico 00683

**RESPONDENT**

**DOCKET NUMBER  
CWA-02-2017-3451**

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

**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 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 United States 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 of the Caribbean Environmental Protection Division of EPA, Region 2 ("Complainant").
2. Pursuant to Section 309(g)(2)(B) of the CWA, 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 Code of Federal Regulations ("C.F.R.") Part 22, a copy of which is attached, Complainant hereby requests that the Regional Administrator assess a civil penalty against **Del Valle Group** ("Respondent"), as a result of Complainant's determination that the Respondent violated Sections 301(a) and 402(p) of the CWA, 33 U.S.C. §§ 1311(a) and 1342(p), for its failure to apply for and obtain National Pollutant Discharge Elimination System ("NPDES") permit coverage for its discharges of pollutants from the San Germán Surf and Water Fun Park Construction Project

(the "Project") located in San Germán, Puerto Rico, for its discharges of pollutants from the Project into a water of the United States without NPDES permit coverage, and for non-compliance with the NPDES General Permit for Discharges from Construction Activities ("CGP").

3. Section 301(a) of the CWA, 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 CWA, establishes the National Pollutant Discharge Elimination System or "NPDES" as the national program for, among other things, issuing and enforcing permits.
5. Section 402(a)(1) of the CWA, 33 U.S.C. § 1342(a)(1), provides that "the Administrator may, after opportunity for public hearing, issue a permit for the discharge of any pollutant. . . . upon condition that such discharge will meet . . . such requirements as the Administrator determines are necessary to carry out the provisions of the [CWA]."
6. Section 402 of the CWA authorizes the Administrator to promulgate regulations for the implementation of the NPDES requirements.
7. Section 402(p)(2)(B) of the CWA authorizes the Administrator of EPA to issue NPDES permits to storm water discharges associated with industrial activity.
8. Pursuant to the CWA, on April 1, 1983, EPA promulgated regulations known as "EPA Administered Permit Programs: the National Pollutant Discharge Elimination System," which was codified at 40 C.F.R. Part 122, as amended.
9. Pursuant to the NPDES regulations at 40 C.F.R. § 122.1(b)(1), the NPDES Permit Program requires permits for the discharge of any pollutant from any point source into waters of the United States.
10. Pursuant to 40 C.F.R. § 122.21(a)(1), any person who discharges or proposes to discharge pollutants, and who does not have an effective permit, must submit a complete NPDES permit application to EPA.
11. NPDES regulations at 40 C.F.R. § 122.26(a)(1)(ii) requires a NPDES permit for storm water discharges associated with industrial activity.
12. NPDES regulations at 40 C.F.R. § 122.26(b)(14) requires certain categories of facilities to obtain a NPDES permit for storm water discharges associated with industrial activity.
13. The CWA and its implementing NPDES regulations contain the following definitions:

- a. "Best Management Practices" or "BMPs" mean schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of "waters of the United States." BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage. 40 C.F.R. § 122.2;
- b. "discharge of a pollutant" means any addition of any pollutant to navigable waters and/or waters of the United States from any point source. Section 502(12) of the CWA, 33 U.S.C. § 1362(12), and 40 C.F.R. § 122.2;
- c. "facility" or "activity" means 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 C.F.R. § 122.2;
- d. "industrial activity" means the eleven categories of industrial activities included in the definition of "storm water discharges associated with industrial activity," as defined in 40 C.F.R. §§ 122.26(b)(14)(i)-(xi);
- e. "navigable waters" means the waters of the United States, including the territorial seas. Section 502(7) of the CWA, 33 U.S.C. § 1362(7);
- f. "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;
- g. "permit" means an authorization, license, or equivalent control document issued by EPA or an "approved State" to implement the requirements of 40 C.F.R. Parts 122, 123 and 124. 40 C.F.R. § 122.2;
- h. "person" means an individual, corporation, partnership or association. Section 502(5) of the CWA, 33 U.S.C. § 1362(5), and 40 C.F.R. § 122.2;
- i. "point source" means 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 CWA, 33 U.S.C. § 1362(14), and 40 C.F.R. § 122.2;
- j. "pollutant" includes 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 CWA, 33 U.S.C. § 1362(6), and 40 C.F.R. § 122.2;

- k. "site" means the land or water area where any "facility" or "activity" is physically located or conducted, including adjacent land used in connection with the facility or activity. 40 C.F.R. § 122.2;
  - l. "storm water associated with industrial activity" means the discharge from any conveyance which is used for collecting and conveying storm water and which is directly related to manufacturing, processing or raw materials storage areas at an industrial plant. 40 C.F.R. §§ 122.2 and 122.26(b)(14);
  - m. "storm water associated with construction activity" as the discharge of storm water from construction activities including clearing, grading and excavation that result in land disturbance of equal to or greater than 5 acres. 40 C.F.R. § 122.26(b)(14)(x); and
  - n. "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 C.F.R. § 122.2.
14. Pursuant to Section 402 of the CWA, on February 16, 2012, EPA re-issued the CGP. The CGP became effective on date of its issuance, and expires on February 16, 2017.
15. Appendix A of the CGP contains the following definitions:
- a. "commencement of earth-disturbing activities" means the initial disturbance of soils (or "breaking ground") associated with clearing, grading, or excavating activities or other construction-related activities (e.g., stockpiling of fill material);
  - b. "commencement of pollutant-generating activities" at construction sites occurs in any of the following circumstances:
    - (1) clearing, grubbing, grading, and excavation has begun;
    - (2) raw materials related to your construction activity, such as building materials or products, landscape materials, fertilizers, pesticides, herbicides, detergents, fuels, oils, or other chemicals have been placed at your site;
    - (3) use of authorized non-storm water for washout activities, or dewatering activities, have begun; or
    - (4) any other activity has begun that causes the generation of or the potential generation of pollutants;

- c. “construction activities” means earth-disturbing activities, such as the clearing, grading, and excavation of land;
- d. “construction site” means the land or water area where construction activities will occur and where stormwater controls will be installed and maintained. The construction site includes construction support activities, which may be located at a different part of the property from where the primary construction activity will take place, or on a different piece of property altogether;
- e. “discharge-related activity” means activities that cause, contribute to, or result in storm water and allowable non-storm water point source discharges, and measures such as the siting, construction, and operation of storm water controls to control, reduce, or prevent pollutants from being discharged;
- f. “earth-disturbing activity” or “land-disturbing activity” means actions taken to alter the existing vegetation and/or underlying soil of a site, such as clearing, grading, site preparation (e.g., excavating, cutting, and filling), soil compaction, and movement and stockpiling of top soils;
- g. “exposed soils” means soils that as a result of earth-disturbing activities are left open to the elements;
- h. “final stabilization” on areas not covered by permanent structures means, either:
  - (1) vegetation has been established, or for arid or semi-arid areas, will be established that provides a uniform (e.g., evenly distributed, without large bare areas) perennial vegetative cover with a density of 70 percent of the natural background vegetative cover, or
  - (2) non-vegetative stabilization methods have been implemented to provide effective cover for exposed portions of the site;
- i. “new project” means a construction project that commences construction activities on or after February 16, 2012;
- j. “operator” means any party associated with a construction project that meets either of the following two (2) criteria:
  - (1) the party has operational control over construction plans and specifications including the ability to make modifications to those plans and specifications; or

- (2) the party has day-to-day operational control of those activities at a project that are necessary to ensure compliance with the permit conditions.
  - k. “pollutant-generating activities” means those activities that lead to or could lead to the generation of pollutants (such as, but not limited to, sediments, oil and grease, and trash, debris, and solids) nutrients, either as a result of earth disturbance or a related support activity;
  - l. “stabilization” means the use of vegetative and/or non-vegetative cover to prevent erosion and sediment loss in areas exposed through the construction process; and
  - m. “work day” means a calendar day on which construction activities will take place.
- 16. The CGP establishes requirements, such as, eligibility, Storm Water Pollution Prevention Plan (“SWPPP”) development, inspections, corrective actions and other special and general conditions.
  - 17. Part 1.4 of the CGP requires an operator seeking coverage under the CGP to submit to EPA a complete and accurate Notice of Intent (“NOI”) prior to commencing construction activities.
  - 18. Table 1, included in Part 1.4.2 of the CGP, details the deadlines for submitting the NOI. Operators of new projects are required to file a NOI to obtain coverage under the CGP at least fourteen (14) days prior to commencing earth disturbing activities.
  - 19. As detailed in Table 1 of Part 1.4.2 of the CGP, an operator is considered covered under the CGP fourteen (14) calendar days after EPA has acknowledged receipt of the operator’s NOI on the EPA’s website, unless EPA notifies the operator that the authorization has been delayed or denied.
  - 20. Parts 1.4 and 7.1.1 of the CGP require operators to develop a SWPPP prior to submitting to EPA the NOI for coverage under the CGP.
  - 21. Part 7.4.1.1 of the CGP requires operators to modify the SWPPP, including the site map(s), when the permittee made changes to the construction plans, stormwater control measures, pollution prevention measures, or other activities at the site that are no longer accurately reflected in the SWPPP.
  - 22. Section 308(a)(A) of the CWA provides that “[w]henever required to carry out the objective of . . . [CWA Section 402], the Administrator shall require the owner or operator of any point source to (i) establish and maintain such records, (ii) make such reports, (iii) install, use, and maintain such monitoring equipment or

methods (including where appropriate, biological monitoring methods), (iv) sample such effluents (in accordance with such methods, at such locations, at such intervals, and in such manner as the Administrator shall prescribe), and (v) provide such other information as [the Administrator] may reasonably require.”

23. Section 309(a)(3) of the Act provides that “[w]henver on the basis of any information available . . . the Administrator finds that any person is in violation of [CWA Sections 301 and 308], or is in violation of any permit condition or limitation implementing any of such sections in a permit issued under [Section 402 of the Act, the Administrator] shall issue an order requiring such person to comply with such section....”
24. Section 309(g)(1)(B) of the CWA, 33 U.S.C. § 1319(g)(1)(B), authorizes the Administrator, upon a finding that any person has violated, among other things, Section 301(a) of the CWA, or has violated any permit condition or limitation implementing such section in a permit issued under Section 402 of the CWA, to assess a civil penalty.

## **II. JURISDICTIONAL STATEMENTS**

25. Del Valle Group (“Respondent”) is organized and authorized to do business under the laws of the Commonwealth of Puerto Rico.
26. Respondent is a “person” pursuant to Section 502(5) of the CWA, 33 U.S.C. § 1362(5).
27. Respondent was hired by the Municipality of San Germán to conduct construction activities at the Project, which is located at Road PR-2, Km. 174, San Germán, Puerto Rico.
28. The Project is a “facility” as defined in 40 C.F.R. § 122.2.
29. The construction activities performed by the Respondent at the Project consisted of earth movement, including clearing and grubbing, cut and fill, excavation, site preparation, and installation of a storm sewer collection and discharge system in an area comprising of about 27.7 acres.
30. At all relevant times alleged in this Complaint, Respondent had day-to-day operational control over the construction activities being conducted at the Project. Respondent also had control over the implementation of the SWPPP at the Project to ensure compliance with the CGP.
31. At all relevant times alleged in this Complaint, Respondent was an “operator” of the Project as defined in 40 C.F.R. § 122.2 and Appendix A of the CGP.
32. The Project is a “point source” pursuant to Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

33. Respondent discharged storm water containing “pollutants” from the Project into the Toruno Creek, which flows into the Guanajibo River.
34. The Toruno Creek and the Guanajibo River are waters of the United States pursuant to Section 502(7) of the CWA, 33 U.S.C. § 1362(7), and 40 C.F.R. § 122.2.
35. Respondent is subject to the provisions of the CWA, 33 U.S.C. § 1251, et seq., and the applicable NPDES permit application regulations found at 40 C.F.R. Part 122.
36. Respondent was required to apply for and obtain NPDES permit coverage for the Project’s 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

37. Complainant re-alleges Paragraphs 1 – 36, above.
38. On March 20, 2013, a duly authorized EPA official conducted a Compliance Evaluation Inspection (“CEI”) of the Project. The purpose of the CEI was to evaluate Respondent’s compliance with the CWA and applicable NPDES regulations, and the CGP.
39. The findings of the CEI were summarized in the NPDES Water Compliance Inspection Report (“CEI Report”), dated April 11, 2013.
40. The findings of the CEI revealed, among other things, that:
  - a. on or about January 21, 2013, Respondent commenced pollutant-generating activities at the Project;
  - b. a SWPPP had not been developed for the Project;
  - c. Respondent had an all-weather rain data sheet evidencing the occurrence of rain events at the Project on February 2, 4, and 18, 2013, and on March 6, 9, and 18, 2013;
  - d. construction activities were ongoing at the Project at the time of the CEI;
  - e. effective erosion and sediment controls had not been selected, installed, and maintained at the Project, as required by Part 2.1 of the CGP;
  - f. EPA observed that BMPs installed at the Project, such as silt fences, failed to provide natural buffers or equivalent sediment controls, as required by Part 2.1.2 of the CGP;

- g. the construction of temporary and permanent retention ponds to reduce sediments in the storm water discharge was not observed at the Project, as required by Part 2.1.3.2 of the CGP;
  - h. most of the Project was observed without temporary or final soil stabilization, as required by Part 2.2 of the CGP;
  - i. off-site vehicle tracking controls were not observed at the entrance of the Project, as required by Part 2.1.2.3 of the CGP;
  - j. soil stockpiles were observed without erosion or sediment controls, as required by Part 2.1.2.4 of the CGP;
  - k. a sign was not posted, as required by Part 1.5 of the CGP; and
  - l. inspections were not performed by qualified personnel, as required by Part 4.1.1 of the CGP.
41. On March 21, 2013 (the date after the CEI), Respondent submitted to EPA an electronic version of the SWPPP developed for the Project.
42. On March 27-28, 2013, an EPA official reviewed the EPA Storm Water NOI Processing Center database and the EPA files located at EPA Region 2's Caribbean Environmental Protection Division (the "EPA 1<sup>st</sup> Review") to determine if Respondent had obtained NPDES coverage under the CGP for the Project.
43. The EPA 1<sup>st</sup> Review revealed that:
- a. on March 20, 2013 (the same date of the CEI), Respondent filed an electronic NOI form ("eNOI") seeking coverage under the CGP for its discharges of pollutants from the Project into waters of the United States;
  - b. the eNOI was submitted after pollutant-generating activities at the Project began on or about January 21, 2013;
  - c. the eNOI filed by Respondent was incomplete and inaccurate. Respondent failed to include with its eNOI filing required information and/or provided inaccurate information as detailed below:
    - (1) Part III – the IRS Employer Identification Number (EIN) was not provided;
    - (2) Part III – the phone number of the NOI Preparer was not provided;

- (3) Part IV – the estimated project start date provided (i.e. March 20, 2013) was inaccurate because the pollutant-generating activities at the Project began on or about January 21, 2013;
  - (4) Part V – the information provided about the proximity of any surface waters within 50 feet of the Project's earth disturbance was inaccurate;
  - (5) Part VII – the SWPPP was not adequately prepared in advance to filling the eNOI, as required by the CGP;
  - (6) Part VIII – the eligibility determination about the federally-listed threatened or endangered species or their designated critical habitat(s) was inaccurate; and
  - (7) the title of person who signed the eNOI was missing;
- d. a review of the SWPPP submitted by Respondent on March 21, 2013, revealed that it was deficient. Respondent failed to include, among others things, the following:
- (1) failed to describe the required control measures to be implemented and maintained to prevent sediments from reaching a surface water located within 50 feet of the construction disturbances as required by Parts 2.1.2 and 7.2.9 of the CGP;
  - (2) failed to provide a detailed sequence and estimated dates of the construction as required by Part 7.2.5 of the CGP;
  - (3) failed to address the design requirements for stormwater runoff and run-on at the Project as required in Part 2.1.1 of the CGP; and
  - (4) failed to include a maintenance schedule for structural and non-structural BMPs as required by Part 2.1 of the CGP.
44. Based on the observations made by the EPA official during the CEI and further investigations, EPA issued an Administrative Compliance Order ("ACO"), Docket Number CWA-02-2013-3114, dated April 11, 2013, against the Municipality of San Germán and Respondent to address the violations described above. The ACO incorporated findings of violations, and required Respondent to, among other things:
- a. cease and desist the discharge of pollutants through storm water runoff from the Project into the Toruno Creek and the Guanajibo River;

- b. cease and desist all clearing, grading and excavation activities at the Project;
  - c. develop and submit an adequate SWPPP, including legible site maps and site-specific inspection report forms, to comply with the terms and requirements of CGP;
  - d. submit a Compliance Plan ("CP") to bring the Project into compliance with the CGP and the Act; and
  - e. file a complete and accurate eNOI to seek coverage under the CGP.
45. On April 18, 2013, Respondent submitted to EPA the acknowledgment of receipt of the ACO, as required by the ACO.
46. On August 21, 2013, Respondent submitted to EPA a revised SWPPP for the Project, as required by the ACO.
47. In or about September 2013, an EPA official reviewed the EPA Storm Water NOI Processing Center database (the "EPA 2<sup>nd</sup> Review") to determine if Respondent had obtained NPDES coverage for the Project.
48. The EPA 2<sup>nd</sup> Review revealed that:
- a. on August 22, 2013, Respondent filed an eNOI seeking coverage under the CGP for its discharges of pollutants from the Project into waters of the United States on August 22, 2013;
  - b. the eNOI filed was complete and accurate; and
  - c. Respondent's authorization to discharge storm water associated with construction activities under the CGP became effective on September 5, 2013.
49. On November 12, 2013, a duly-authorized EPA official conducted an Enforcement Case Support Inspection ("ECSI") of the Project. The purpose of the ECSI was to determine Respondent's compliance with the CWA, the CGP, and the ACO.
50. The findings of the ECSI were summarized in the NPDES Water Compliance Inspection Report ("ECSI Report"), dated April 30, 2014.
51. The findings of the ECSI revealed that Respondent was not adequately implementing the controls as required by the CGP. Among other things, Respondent failed to:

- a. install sediment controls, such as silt fences, at the bottom of the slopes, such as Zone 2, as required in Part 2.1 of the CGP;
  - b. adequately protect several catch basins/inlets, as required in Part 2.1 of the CGP;
  - c. divert stormwater run-on from exposed areas, such as slope drains in Zones 1 and 2, within the Project, as required in Part 2.1 of the CGP;
  - d. implement temporary perimeter sediment barrier at several stockpiles in Zones 1 and 2 of the Project, as required in Part 2.1 of the CGP; and
  - e. clearing, grubbing and grading activities were observed in areas of the Project that were not included in the SWPPP dated August 20, 2013, the eNOI, and the Compliance Plan Respondent submitted to comply with the ACO. These areas lacked erosion and sediment controls and soil stabilization, as required in Parts 2.1 and 2.2 of the CGP.
52. On March 13, 2014, Respondent submitted to EPA a Notice of Termination (NOT) to terminated coverage under the CGP, as required in Part 8 of the CGP.
53. As of March 13, 2014, Respondent was no longer required to comply with the ACO and CGP.
54. Based on the findings on Paragraphs 37 to 52 above, Respondent is liable for the violations of Sections 301(a) and 402(p) of the CWA, 33 U.S.C. §§ 1311(a) and 1342(p), as specified below:
- a. **Claim 1 – Failure to apply for and obtain NPDES permit coverage.** Respondent did not submit an individual NPDES permit application as required by 40 C.F.R. § 122.21, nor did it file a complete and accurate NOI form seeking coverage under the CGP from January 21, 2013 (date when Respondent initiated pollutant-generating activities at the Project) to August 22, 2013 (date when Respondent submitted a complete and accurate NOI form seeking coverage under the CGP). The number of days that Respondent failed to file for NPDES permit coverage was **213 days**.
  - b. **Claim 2 – Illegal discharges of pollutant (storm water associated with construction activities) into waters of the United States without NPDES permit coverage.** Storm events of 0.25 inches or greater occurred on at least 9 instances during the period of February 4, 2013 (date when Respondent recorded the first storm event greater 0.25 inches at the Project) to September 4, 2013 (the date prior to Respondent obtaining CGP coverage). Therefore, the number of days on which

Respondent discharged pollutants from the Project into a water of the United States without NPDES permit coverage was **9 days**.

- c. **Claim 3 – Failure to comply with Part 7 of the CGP**. Respondent failed to amend its August 20, 2013 SWPPP, as required by Part 7.4.1.1 of the CGP, to include additional earth movement activity areas that were discovered during the ECSI. The period of violation is from August 21, 2013 (date on which Respondent submitted a complete and accurate eNOI) to November 12, 2013 (date when the EPA official conducted the ECSI). Therefore, the total number of days that Respondent was involved in construction activities without an amended SWPPP was **84 days**.

55. 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), EPA, Region 2 hereby proposes to issue a Final Order Assessing Administrative Penalties (“Final Order”) to Respondent assessing a penalty of **\$67,605.00**. 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 Respondent’s prior compliance history, degree of culpability, economic benefit or savings accruing to Respondent by virtue of the violations, and Respondent’s ability to pay the proposed penalty. EPA has also taken in consideration the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended through 2015, which prescribes a formula for adjusting statutory civil penalties to reflect inflation, maintain the deterrent effect of statutory civil penalties, and promote compliance with the law.

Based on the Findings set forth above, Respondent has been found to have violated the CWA, its implementing NPDES regulations, and the CGP. Respondent failed to timely apply for NPDES permit coverage prior to commencing earth-disturbing activities and/or pollutant generating activities on January 21, 2013, as required by the CGP. Respondent is culpable for the violations. EPA took into account Respondent’s past history of violations under the CWA, its knowledge of the NPDES regulations, the CGP, and the risks to human health and the environment posed by the uncontrolled discharges of storm water runoff from the Project into the Toruno Creek and the Guanajibo River, waters of the United States.

The violations discussed in this Complaint are serious since Respondent’s failure to timely prepare and amend the SWPPP for the Project and its discharges of pollutants into waters of the United States caused a potential amount of pollutants to reach surface water that could cause direct and indirect negative effects on human health and the environment. Respondent knew of its obligations under the NPDES regulations, the CGP, and the Act. Respondent has a

prior history of violations under the CWA and it's implementing NPDES regulations. EPA may issue a final Order Assessing Administrative Penalties thirty (30) days after Respondent's receipt of this Notice, unless Respondent, 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 intend 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, 16<sup>th</sup> 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's 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 defense, (2) the facts that Respondent dispute (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's 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 the 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. §§ 551-59, 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, 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 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 Respondent fails 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 Respondent fails 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, 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's 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). 40 C.F.R. § 22.17(d). 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 Respondent's 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's requesting a formal hearing do not prevent him 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's 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 his 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).

Respondent's 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's 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 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 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:

**United States Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P. O. Box 979077  
St. Louis, MO 63197-9000  
Docket No. CWA-02-2017-3451**

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's 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's 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:

**Evelyn Rivera-Ocasio, Esq.  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 2  
City View Plaza II, Suite 7000  
Guaynabo, Puerto Rico 00968**

**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's 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 6 DAY OF DECEMBER, 2016.



**CARMEN R. GUERRERO-PÉREZ**

Director

Caribbean Environmental Protection Division

United States Environmental Protection Agency - Region 2

To: **Mr. Humberto Reynolds**  
Del Valle Group  
P. O. Box 2319  
Toa Baja, Puerto Rico 00951-2319

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

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION II

IN THE MATTER OF:

**DEL VALLE GROUP**

P. O. Box 2319  
Toa Baja, Puerto Rico 00951-3114

**San Germán Surf and Water Fun Park  
Construction Project**

Road PR-2, Km. 174  
San Germán, Puerto Rico 00683

**RESPONDENT**

**DOCKET NUMBER  
CWA-02-2017-3451**

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

**CERTIFICATE OF SERVICE**

I certify that I have this day caused to be sent the foregoing **Complaint**, dated December 6, 2016, and bearing the above-reference docket number, in the following manner to the respective addressee below:

**Complaint sent via Pouch Mail to:**

**Karen Maples**  
Regional hearing Clerk  
U.S. Environmental Protection Agency, Region 2  
290 Broadway  
New York, New York 10007



**Aileen Sanchez**

Secretary  
Office of Regional Counsel – Caribbean Team  
US Environmental Protection Agency, Region 2  
City View Plaza II, Suite 7000  
#48 RD. 165 km 1.2  
Guaynabo, PR 00968-8069  
phone: (787) 977-5803  
email: sanchez.aileen@epa.gov



Date