

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2

**In the Matter of:**

**A.B.E.F. Development Corporation**

PMB 363/200 Ave. Rafael Cordero, Suite 140  
Caguas, Puerto Rico 00725-3757

**Herminio Cotto Construction Corporation**

P.O. Box 1600, Suite 1008  
Cidra, Puerto Rico 00739

**Respondents**

Proceeding pursuant to Section 309(g)(2)(A) of the  
Clean Water Act, 33 U.S.C. § 1319(g)

**DOCKET NUMBER**  
**CWA-02-2010-3465**

**Motion in Compliance with Order to Submit Modified Penalty Calculation**

COMES NOW Complainant, the U.S. Environmental Protection Agency (“EPA” or “Complainant”) through the undersigned attorney, and respectfully alleges, prays and requests as follows:

1. On May 3, 2017, this Honorable Court issued an *Order directing Complainant to Clarify its Memorandum and calculations of the Proposed Penalty* (the Order).
2. Complainant filed a Motion on July 6, 2017, addressing the requests for clarification in the Order, and requesting additional time to submit the modified penalty calculations and sworn statement.
3. On April 17, 2018, this Honorable Court issued an *Order Extending Complainant’s Time to Clarify Calculations of the Proposed Penalties*.

4. Pursuant to the *Order Extending Complainant's Time to Clarify Calculations of the Proposed Penalties*, Complainant herein submits the requested information. (See attached.)

**Certificate of Service**

I hereby certify that a true copy of this Status Report was served to: Herminio Cotto Construction, Inc., P.O. Box 1600, Suite 1008, Cidra, Puerto Rico, 00739; and Louis Rosado-Viana, Metro Office Park #7, Suite 204, Metro Parque 7, Guaynabo, Puerto Rico 00968.

Respectfully submitted, in Guaynabo, Puerto Rico, this 1<sup>st</sup> day of June, 2018.



**Carolina Jordán-García, Esq.**

U.S. Environmental Protection Agency, Region 2

City View Plaza II, Suite 7000

Road PR-165, Km 1.2, #48

Guaynabo, PR 00968

Telephone: (787) 977-5834

Email: [jordan-garcia.carolina@epa.gov](mailto:jordan-garcia.carolina@epa.gov)

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION 2  
CARIBBEAN ENVIRONMENTAL PROTECTION DIVISION  
MULTIMEDIA PERMITS AND COMPLIANCE BRANCH**

**MEMORANDUM**

**SUBJECT:** Recommendation to Propose a Clean Water Act Administrative Penalty against A.B.E.F. Development Corp. (ABEF) and Herminio Cotto Construction, Inc. (HCC).  
Case Name: "Extensión Praderas de Ceiba Norte"  
NPDES Permit Number: PRR10BO92 (ABEF) and PRR10BN72 (HCC)  
Docket Number: CWA-02-2010-3465

**FROM:** Yolianne Maclay, Environmental Engineer  
Multi-Media Permits and Compliance Branch

**TO:** Case File

This memorandum describes the revision of the administrative penalty Class II calculated on September 21, 2010 (2010 Memorandum), pursuant to Section 309(g)(2)(B) of the Clean Water Act (the "Act"), 33 U.S.C. § 309(g)(2)(B), against A.B.E.F. Development Corp. (ABEF) and Herminio Cotto Construction, Inc ("HCC") (hereinafter, the "Respondents"), for violations of the Clean Water Act. The purpose of the revised penalty calculation is to assign individual penalties to each Respondent.

**A. Final Proposed Penalty**

The Final Proposed Penalty calculated in this document for Respondent ABEF and Respondent HCC was based on the 2010 Memorandum, which describes how the final proposed penalty was calculated as one sum. This memorandum explains how that quantity was divided into two individual penalties for the two Respondents, ABEF who is the owner of the construction project and HCC who is the operator of the construction project.

The Final Proposed Penalty as of the 2010 Memorandum was calculated adding the Proposed Gravity Component plus the Economic Benefit plus the Adjustment Factors and resulted in a Penalty of \$58,765.00.

**B. Proposed Gravity Component**

Based on the findings described in the 2010 Memorandum, the threats to the “Quebrada Ceiba” (water of the United States), the nature, circumstances, extent, and seriousness of the violations and my professional experience; a 65% gravity penalty component was assigned to HCC and a 35% of the gravity penalty component was assigned to ABEF. Therefore, the gravity component of \$42,180.00 proposed on the 2010 Memorandum, will be divided into two amounts of **\$27,838.00** assigned to Respondent HCC and **\$14,342.00** assigned to Respondent ABEF.

### C. Economic Benefit

The BEN Calculations are summarized in Table 1 describing the amounts assigned to each Respondent.

Respondent ABEF obtained an economic benefit for its delay in submitting the NOI form for coverage under the Construction Permit. The calculated economic benefit is **\$9.00** as described in the 2010 Memorandum.

Respondent HCC obtained an economic benefit for its delay in submitting the NOI form for coverage under the Construction Permit. The calculated economic benefit is **\$6.00** as described in the 2010 Memorandum.

In addition, Respondents obtained an Economic Benefit for an incomplete SWPPP. The economic benefit obtained as calculated in the 2010 Memorandum is \$57. This amount was divided in two equal amounts of **\$28.50** to assigned equal quantities to each Respondent.

Respondent HCC obtained an economic benefit for their failure to implement storm water controls at the Project. The calculated economic benefit was **\$1,357.00**. In addition, Respondent HCC obtained an economic benefit for their failure to provide maintenance to the BMPs. The calculated economic benefit was **\$156.00** as explained in the 2010 Memorandum. This two quantities (\$1,357.00 and \$156.00) were assigned to HCC because according to the SWPPP on Part 5.3 (Purpose and Limitation of the Plan), HCC is responsible for the implementation and maintenance of the BMPs until the completion of the Project.

**Table 1:** BEN Calculation summary for ABEF and HCC.

	A.B.E.F. Development Corporation	Herminio Cotto Construction, Inc.
<b>Claim 1-Failure to Submit NOI</b>	\$ 9.00	\$ 6.00
<b>Claim 3- Inadequate SWPPP</b>	\$ 28.50	\$ 28.50
<b>Claim 4 – Failure to implement a SWPPP</b>	N/A	\$1,513.00 (the sum of 1,357.00 plus \$156.00)
<b>TOTAL</b>	<b>\$37.50</b>	<b>\$1,547.50</b>

In summary, Respondent ABEF obtained an Economic Benefit in the amount of **\$37.50** and Respondent HCC obtained an Economic Benefit in the amount of **\$1,547.50**.

**C. Calculation of the Penalty Adjustment Factors with Respect to the Violator**

1. Prior History of Violations

ABEF does not have a prior history of violations under the CWA; therefore no additional amount was assigned.

HCC has prior history of violations under CWA Section 301. On 2006, an Order was issued against Herminio Cotto Construction, Inc. for unpermitted discharges. The Docket Number was CWA-02-2006-3041 and the total compliance action cost was \$10,000.

For this reason we are increasing HCC Penalty **\$5,000**.

2. Degree of Culpability

Respondents did not comply with the related NPDES storm water regulations developed to ensure prevention and minimization of contamination of storm water by the Projects construction activities.

Respondents obtained an economic benefit as a result of its noncompliance with the Act and the NPDES regulations. HCC have prior history of violations under the CWA 301(a).

Respondents are in violation of the Act for their failure to comply with certain requirements of the permit, Respondents unlawful discharge of pollutants (storm water runoff associated with construction activities) into navigable waters and its failure to timely apply for a NPDES storm water permit. Respondents should have known of their obligations and complied with its NPDES permit and the Act. ABEF and HCC knowingly violated Section 301(a) of the Act, and the NPDES regulations which implements the Act. They were and are aware of the NPDES storm water permit application regulations for construction activities. On the Follow up Inspection, EPA enforcement officers observed how construction activities were being performed and that most of the houses had been completed, making evident the fact that Respondents did not comply with the requirements of the cease and desist ordered in the ACO.

The penalty is increased in **\$10,000** for Respondents' degree of culpability. This \$10,000 were divided into equal amounts of **\$5,000** per Respondent.

3. Ability to Pay

No ability to pay argument is anticipated. Therefore, the proposed penalty has not been reduced for an inability to pay.

**D. Final Proposed Penalty**

Respondent ABEF Final Proposed Penalty = (Proposed Gravity Component) + (Economic Benefit) +/- (Adjustment Factors Culpability)

$$= \$14,342.00 + \$37.50 + 5,000 = \$19,380$$

**Respondent ABEF Final Proposed Penalty = \$19,380**

Respondent HCC Final Proposed Penalty = (Proposed Gravity Component) + (Economic Benefit) +/- (Adjustment Factors: History of violations and Culpability)

$$= \$27,838.00 + \$1,547.50 + 5,000 + 5,000 = \$39,385$$

**Respondent HCC Final Proposed Penalty = \$39,385**

**E. Recommendations**

In conclusion, the final proposed penalty for Respondent ABEF is \$19,380 and for Respondent HCC is \$39,385.

This recommendation is consistent with the statutory factors in § 309(g), to the facts of this case, and the descriptions of the claims documented in the 2010 Memorandum.

Attachment

cc: ORC/CT

1. 2010 Memorandum

