

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

IN THE MATTER OF:

CABO DEL SOL, INC.
P.O. BOX 800362
PONCE, PUERTO RICO 00780-0362

Villas de Vista Bahía Residential
Development
NPDES CGP Number PRR10BF82

RESPONDENT

DOCKET NUMBER CWA-02-2010-3464

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

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II
2010 OCT -1 A 11:37
REGIONAL HEARING
CLERK

**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 U.S. Environmental Protection Agency (EPA) by Section 309(g)(2)(B) of the Clean Water Act ("CWA" or "Act"), 33 U.S.C. § 1319(g)(2)(B). The Administrator has delegated this authority to the Regional Administrator of EPA, Region 2, who in turn has delegated it to the Director, Caribbean Environmental Protection Division (CEPD) of EPA, Region 2 (Complainant).
2. Pursuant to Section 309(g)(2)(B) of the Act, and in accordance with the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits" (CROP), 40 C.F.R. Part 22 a copy of which is attached, Complainant hereby requests that Regional Administrator assess a civil penalty against Cabo del Sol, Inc. (Respondent) as a result of Complainant's determination that Respondent is in violation of Sections 301 and 402 of the Act, 33 U.S.C. §§ 1311 and 1342, respectively, for its failure to comply with certain conditions of the "NPDES General Permit for Discharges from Large and Small Construction Activities" at the Villas de Vista Bahía Residential Development (the "Project").

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 308(a)(A) of the Act, 33 U.S.C. § 1318(a)(A), establishes that whenever required to carry out the objective of the Act, the Administrator shall require the owner or operator of any point source to:
 - a. establish and maintain such records;
 - b. make such reports;
 - c. install, use and maintain such monitoring equipment or methods;
 - d. sample such effluents; and
 - e. provide such other information as may be required.
5. Section 402 of the Act, 33 U.S.C. § 1342, defines the National Pollutant Discharge Elimination System as the national program for, among other things, issuing and enforcing permits.
6. 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.
7. Section 402 (p) of the Act, 33 U.S.C. §1342(p), requires a permit with respect to a discharge associated with industrial activity.
8. Section 402 of the Act authorizes the Administrator to promulgate regulations for the implementation of the NPDES requirements.
9. 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.
10. 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.
11. Pursuant to the NPDES regulations at 40 C.F.R. § 122.26(a)(1)(ii) and § 122.26(b)(14), operators are required to obtain a NPDES permit for storm water discharges associated with industrial activity, including construction activity.

12. The Act and 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 C.F.R. § 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 C.F.R. § 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 C.F.R. § 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 C.F.R. § 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 C.F.R. § 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 C.F.R. § 122.2;
 - g. "Owner" or "operator" as the owner or operator of any facility or activity subject to regulation under the NPDES program. 40 C.F.R. § 122.2; and
 - h. "Construction activity" as clearing, grading and excavating activities that result in the disturbance of one (1) or more acres of total land area. 40 C.F.R. § 122.26(b)(14)(x) and 40 C.F.R. § 122.26(b)(15)(i).
13. For the purposes of the NPDES storm water general permit for construction activities and in the context of storm water associated with construction activity (57 FR 41190 and 63 FR 7859), the term "Operator" means any party associated with a construction project that meets either of the following two (2) criteria:

- a. The party has operational control over construction plans and specifications including the ability to make modifications to those plans and specifications; or
 - b. The party has day-to-day operational control of those activities at a project which are necessary to ensure compliance with a storm water pollution prevention plan (SWPPP) for the site or other permit conditions.
14. For the purposes of the NPDES storm water general permit for construction activities and in the context of storm water associated with construction activity (68 FR 39087 - Appendix A) the term "commencement of construction activities" means the initial disturbance of soils associated with clearing, grading, excavation activities or other construction-related activities.
 15. On July 1, 2003, EPA issued the "NPDES General Permit for Discharges from Large and Small Construction Activities" (the "Construction Permit").
 16. The Construction Permit was published in the Federal Register on July 1, 2003 (68 FR 39087). The Construction Permit became effective on July 1, 2003 and expired at midnight, July 1, 2008.
 17. Section 2.3.A of the Construction Permit establishes application deadlines for owners or operators of new projects. Such owners or operators were required to file a complete and accurate NOI form prior to commencement of construction activities.
 18. Section 3.1.A of the Construction Permit requires Respondent to prepare a SWPPP prior to submission of the NOI form.
 19. Section 3.1.D of the Construction Permit requires Respondent to implement the SWPPP as written from commencement of construction activity until final stabilization is complete.
 20. Section 3.4 of the Construction Permit requires Respondent to implement controls to reduce pollutants.
 21. Section 3.6 of the Construction Permit requires Respondent to maintain in effective operating conditions all erosion and sediment control and protective measures identified in the SWPPP.
 22. Section 3.8 requires that copies of the Construction Permit and of the signed and certified NOI form that was submitted to EPA must be included in the SWPPP.

23. Section 3.12.A of the Construction Permit requires Respondent to retain at the construction site a copy of the SWPPP, NOI form, and acknowledgement letter from EPA from the date of commencement of construction activities to the date of final stabilization.
24. Section 3.12.B of the Construction Permit requires Respondent to post a sign or other notice conspicuously near the main entrance of the construction site. The sign must contain a copy of the NOI filed for the Project, and the current location of the SWPPP and the name and telephone number of the contact person for scheduling viewing times.
25. Section 3.13.A of the Construction Permit requires that all control measures must be properly selected, installed, and maintained in accordance with any relevant manufacturer specifications and good engineering practices.
26. Section 3.13.D of the Construction Permit requires Respondent to provide stabilization measures, as soon practicable, in portions of the site where construction activities have temporarily or permanently ceased, but in no case more than 14 days after the construction activity in that portion of the site has temporarily or permanently ceased.
27. Section 3.13.E of the Construction Permit requires Respondent to implement a combination of sediment and erosion control measures to achieve maximum pollutant removal.
28. Section 3.13.F of the Construction Permit requires Respondent to place velocity dissipation devices at discharge locations and along the length of any outfall channel to provide a non-erosive flow velocity from the structure to a water course so that the natural physical and biological characteristics and functions are maintained and protected.

II. Jurisdictional Findings

29. Respondent is a corporation organized and authorized to do business under the laws of the Commonwealth of Puerto Rico.
30. Respondent is a person within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5).
31. Respondent is the owner/operator of the Project, as defined in 40 C.F.R. § 122.2.
32. Respondent has operational control over the Project's construction plans and specifications, including the ability to make modifications to those plans and specification.

33. Respondent has day-to-day operational control over activities at the Project which are necessary to ensure compliance with the Project's SWPPP and other permit conditions.
34. The Project is located at PR State Road # 2, Km. 215.7, Encarnación Ward, Peñuelas, Puerto Rico.
35. The construction activities associated with the Project consist of the development of 120 residential units and the construction of a 250,000 - gallon drinking water distribution tank.
36. The construction activities at the Project are best described by the Standard Industrial Classification code 1522 (Residential Housing).
37. Earth movement activities at the Project involve clearing, grading and excavation on approximately 10.96 acres of land.
38. Earth movement activities associated with the construction of the Project began on or about October 15, 2007.
39. Respondent's Project is a "construction activity" as defined in 40 C.F.R. § 122.26(b)(14)(x).
40. The Project is a "point source" within the meaning of Section 502(14) of the Act, 33 U.S.C. § 1362(14), and 40 C.F.R. § 122.2.
41. Respondent discharged storm water containing "pollutants" from the Project into an intermittent creek which discharges into the Caribbean Sea.
42. The Caribbean Sea is a water of the United States, pursuant to Section 502(7) of the Act, 33 U.S.C. § 1362(7), and 40 C.F.R. § 122.2.
43. Owners or operators of construction activities are required to apply and obtain NPDES permit coverage for storm water discharges associated with construction activities. 40 C.F.R. § 122.26(b)(14)(x).
44. Respondent's Project is covered by the NPDES permit application regulations for construction activities. 40 C.F.R. § 122.26(b)(14)(x).
45. Respondent is the owner/operator of the Project, as defined in 40 C.F.R. § 122.2. Respondent is subject to the provisions of the Act, 33 U.S.C. § 1251, *et seq.*, and the applicable NPDES permit application regulations found at 40 C.F.R. Part 122. Respondent was required to apply for and obtain NPDES permit coverage for the storm water discharges from the Project pursuant to 40 C.F.R. § 122.26(b)(14)(x).

46. On September 29, 2008, EPA reissued the Construction Permit (2008 CGP). The 2008 CGP became effective on September 29, 2008, and expired on June 30, 2010.
47. Pursuant to Subpart 2.4.B of the 2008 CGP, Respondent is authorized to discharge storm water from the Project under the terms and conditions of the Construction Permit.

III. Findings of Violations

48. Complainant re-alleges Paragraphs 29-47 above.
49. On December 30, 2008, a duly authorized EPA enforcement officer performed an inspection at the Project (Inspection) to determine Respondent's compliance with the Act and the applicable NPDES regulations.
50. The findings of the Inspection were included in the NPDES Water Compliance Inspection Reports, dated March 12, 2009.
51. The findings of the Inspection revealed that Respondent failed to comply with the following requirements of Part 3 of the Construction Permit:
 - a. SWPPP was not signed and certified by an authorized officer as required by Part 3.12.D of the Construction Permit.
 - b. The SWPPP was incomplete (i.e. did not contain the intended sequence and timing of activities of soil disturbance at the Project, etc.).
 - c. Respondent did not implement adequate storm water pollution prevention measures at the Project as required under Part 3 of the Construction Permit.
 - d. Respondent did not adequately install and maintain the erosion and sediment control measures and other protective measures at the Project as required under Part 3 of the Construction Permit.
 - e. Respondent did not adequately install and maintain the erosion and sediment control measures and other protective measures at the Project as required under Part 3 of the Construction Permit.
 - f. Unstable slopes were observed throughout the Project (where construction activities have temporarily or permanently ceased).

- g. Respondent did not post a sign or other notice at the Project concerning the NOI form and the location of the SWPPP.
 - h. The Project's entrance did not have an effective off-site vehicle tracking control of sediments.
 - i. The Project did not have a sediment basin for drainage locations at the site.
 - j. Velocity dissipation devices such as rock outlet protection, sediment traps, reinforced soil retaining systems, and gabions were not observed at storm water outfalls; among others.
52. On December 11, 2008, an EPA official conducted reviews of the EPA National Storm Water Processing Center database¹ and the EPA files (EPA review). The EPA Review revealed that on October 23, 2007, Respondent filed a NOI form seeking coverage under the Construction Permit.
53. Based on the observations made by EPA during the Inspection and findings of the EPA Review, EPA issued the Administrative Compliance Order CWA-02-2009-3128 ("Compliance Order" or "Order"), dated June 4, 2009, against Respondent to address the violations mentioned above. The Compliance Order incorporated findings of violations, and ordered Respondent to
- a. cease and desist from discharging storm water from the Project into the Caribbean Sea;
 - b. cease and desist all clearing, grading and/or excavation activities at the Project;
 - c. provide temporary stabilization to areas at the Project where clearing, grading and excavation activities had occurred;
 - d. provide final stabilization to areas where clearing, grading and excavation activities would no longer be performed;
 - e. construct and/or install erosion and storm water management controls;
 - f. provide maintenance to the erosion and storm water management controls;

¹ <http://www.epa.gov/npdes/stormwater>

- g. prepare and submit to EPA a complete SWPPP; and
 - h. prepare and submit a Compliance Plan to bring the Project into compliance with the Act, the NPDES regulations and the Construction Permit; among other.
54. On June 11, 2009, Respondent received the Compliance Order.
55. Based on the findings on paragraphs 48-54 above, Respondent is liable for the violations of Sections 301(a) of the Act, 33 U.S.C. §§ 1311(a), as specified below:
- a. **Claim 1 – Failure to post a sign at the Project:** Respondent did not post a sign or other notice at the Project concerning the NOI form and the location of the SWPPP as required by Section 3.12.B of the Construction Permit. This violation is for December 30, 2008, the date when EPA performed the Inspection at the Project.
 - b. **Claim 2 - Failure to develop a complete and adequate SWPPP:** Respondent did not develop a complete and adequate SWPPP in order to provide storm water pollution prevention at the Project, as required under Part 3 of the Construction Permit. The SWPPP remained incomplete from October 16, 2007, (date when Respondent should have had a complete SWPPP - seven days prior to Respondent's filing of the NOI form) to October 1, 2009 (date when EPA issued the Compliance Order). The number of days that Respondent failed to have a complete and adequate SWPPP is **717 days**.
 - c. **Claim 3 - Failure to adequately implement a complete SWPPP:** Respondent did not implement the SWPPP at the Project, as required under Part 3 of the Construction Permit, from October 23, 2007 (date when Respondent filed the NOI form) to October 1, 2009 (date when Respondent stated that activities at the Project had ceased). The number of days that Respondents failed to implement the SWPPP is **710 days**.

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 **\$84,842.00**. 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 by the Debt Collection Improvement 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 to have violated in numerous occasions the NPDES regulations and the Act. Respondent failed to prepare an adequate and complete SWPPP and implement it, as required by the Construction Permit. Respondent is culpable for the violations. EPA took into account Respondent's knowledge of the NPDES regulations, the Construction Permit, and the risks to human health and the environment posed by the uncontrolled discharges of storm water runoff from the Project into the Caribbean Sea, a water of the United States.

The violations discussed in this Complaint are serious since Respondent's failure to develop and implement storm water pollution prevention measures at the Project caused a potential amount of sediments 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 Act, the NPDES regulations and the Construction Permit. Respondent does not have a prior history of violations under the NPDES program. 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 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'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 Respondents request 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, 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 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 Respondents for a failure to timely file an Answer to the Complaint, any order issued therefore shall be issued pursuant to 40 C.F.R. § 22.17(c).

Any penalty assessed in the default order shall become due and payable by Respondents without further proceedings thirty (30) days after the Default Order becomes final pursuant to 40 C.F.R. § 22.27(c). 40 C.F.R. § 22.17(d). If necessary, EPA may then seek to enforce such Final Order of Default against Respondents, and to collect the assessed penalty amount, in federal court.

VI. Informal Settlement Conference

Whether or not 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 have requested a hearing. 40 C.F.R. § 22.18(b)(1). Respondent's requesting a formal hearing do not prevent them 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 their right to contest the allegations in the Complaint and waives any right to appeal the Final Order that is to accompany the Consent Agreement. 40 C.F.R. § 22.18(b)(2). In order to conclude the proceeding, a Final Order ratifying the parties' agreement to settle will be executed. 40 C.F.R. § 22.18(b)(3).

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:

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

Pursuant to 40 C.F.R. § 22.18(a)(3), if 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 - 16th Floor
New York, New York 10007-1866.**

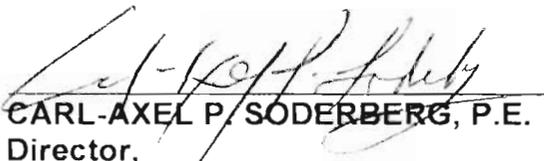
2. A copy of the Answer, any Hearing Request and all subsequent documents filed in this action shall be sent to:

**Héctor L. Vélez Cruz, Esq.
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 2
1492 Ponce de León Ave., Suite 417
San Juan, Puerto Rico 00907-4127
Telephone: (787) 977-5850
Fax: (787) 729-7748
velez.hector@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'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 30 DAY OF September, 2010.


CARL-AXEL P. SODERBERG, P.E.

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

To: **Mr. Ramón Figueroa**
President
CABO DEL SOL, Inc.
P.O. Box 800362
Ponce, Puerto Rico 00780-0362

cc: **Mr. Roberto Ayala**
Director
Water Quality Area
PR Environmental Quality Board
P. O. Box 11488
San Juan, PR 00910

IN THE MATTER OF:

CABO DEL SOL, INC.

P.O. Box 800362
Ponce, Puerto Rico 00780-0362

Villas de Vista Bahia Residential
Development
NPDES CGP Number PRR10BF82

RESPONDENT

**COMPLAINT
And
NOTICE OF OPPORTUNITY
TO REQUEST A HEARING**

CWA-02-2010-3464

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

CERTIFICATE OF SERVICE

I certify that the foregoing Administrative Complaint was sent to the following persons, in the manner specified, on the date below:

Original & Copy UPS:

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

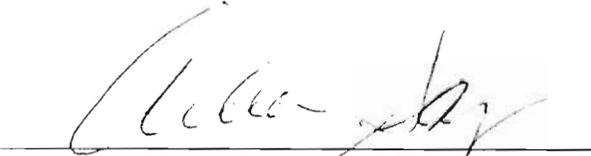
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Mr. Ramón Figueroa
President
CABO DEL SOL, Inc.
P.O. Box 800362
Ponce, Puerto Rico 00780-0362

&

Mr. Roberto Ayala
Director
Water Quality Area
PR Environmental Quality Board
P.O. Box 11488
San Juan, PR 00910

Dated: 9/30/10


Aileen Sanchez ORC. CT