

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

IN THE MATTER OF:

Camioneros de Volteo de PR, Inc.
HC 20 PO Box 10997
Juncos, Puerto Rico 00777

Loma Vista Soil Extraction Site
Road PR-944, Km. 1.8, Hato Nuevo Ward
Gurabo, Puerto Rico 00778

NPDES ID: PRU549874

RESPONDENT

DOCKET NUMBER
CWA-02-2019-3352

Proceeding pursuant to
Section 309(g)(2)(A) of the
Clean Water Act,
33 U.S.C. § 1319(g)(2)(A),
to Assess Class I 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 U.S. Environmental Protection Agency ("EPA") by Section 309(g)(2)(A) of the Clean Water Act ("CWA" or the "Act"), 33 U.S.C. § 1319(g)(2)(A). The Administrator has delegated this authority to the Regional Administrator of EPA, Region 2, who in turn has delegated it to the Director, Caribbean Environmental Protection Division ("CEPD") of EPA, Region 2 ("Complainant").
2. Pursuant to Section 309(g)(2)(A) of the Act, and in accordance with the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits" ("CROP"), 40 Code of Federal Regulations ("C.F.R.") Part 22, a copy of which is attached, Complainant hereby requests that Regional Administrator assess a civil penalty against Camioneros de Volteo de PR, Inc. ("Respondent"), as a result of Complainant's determination that the Respondent violated Sections 301(a) and 402(p) of the Act, 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 storm water discharges associated with industrial activity from its quarrying mining site located in Gurabo, Puerto Rico, and for its discharges of pollutants (storm water runoff associated with industrial activities) from this site into waters of the United States without NPDES permit coverage.

3. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), provides in part that “[e]xcept as in compliance with [CWA Section 402], the discharge of any pollutant by any person shall be unlawful.”
4. Section 402 of the CWA, 33 U.S.C. § 1342, defines the National Pollutant Discharge Elimination System (“NPDES”) as the national program for, among other things, issuing and enforcing discharge permits.
5. Section 402 of the CWA authorizes the Administrator to promulgate regulations for the implementation of the NPDES requirements.
6. 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].”
7. Pursuant to the CWA, 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.
8. 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.
9. 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.
10. Pursuant to 40 C.F.R. § 122.21(a)(2)(i), all applicants for EPA-issued NPDES permits must submit applications on EPA permit application forms. More than one application form may be required from a facility depending on the number and types of discharges or outfalls found there.
11. Section 402(p)(2)(B) of the CWA authorizes the Administrator of EPA to issue NPDES permits to stormwater discharges associated with industrial activity.
12. Pursuant to the CWA, EPA promulgated NPDES regulations defining the term “stormwater associated with industrial activity.” 40 C.F.R. § 122.26(b).

13. Pursuant to the NPDES regulations at 40 C.F.R. §§ 122.26(a)(1)(ii) and 122.26(b)(14), certain facility operators are required to obtain an NPDES permit for stormwater discharges associated with industrial activity.
14. Pursuant to 40 C.F.R. § 122.26(b)(14)(iii), facilities that involve the operation of sand and gravel pits and dredges and preparing sand and gravel of different sizes for construction uses were included in the definition of stormwater associated with industrial activity.
15. The CWA and its implementing NPDES regulations contain the following definitions:
 - a. "Administrator" means the Administrator of EPA, or an authorized representative. 40 C.F.R. § 122.2;
 - b. "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;
 - c. "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;
 - d. "facility" 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;
 - e. "industrial activity" means the eleven categories of industrial activities included in the definition of "stormwater discharges associated with industrial activity" as defined in 40 C.F.R. §§ 122.26(b)(14)(i)-(xi);
 - f. "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);
 - g. "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;
 - h. "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. The term "permit" does not include any permit which has not yet been the subject of final agency action, such as a "draft permit" or a "proposed permit." 40 C.F.R. § 122.2;

- i. "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;
 - j. "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;
 - k. "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;
 - l. "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;
 - m. "stormwater associated with industrial activity" means the discharge from any conveyance which is used for collecting and conveying stormwater 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); 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.
16. On September 29, 2008, EPA re-issued the Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity (the "2008 MSGP"), as authorized under Section 402(p) of the CWA, 33 U.S.C. § 1342(p). The 2008 MSGP became effective on September 29, 2008 and had an expiration date of September 29, 2013. However, the 2008 MSGP was administratively continued in accordance with 40 C.F.R. § 122.6 and remained in force until June 3, 2015.
17. On June 4, 2015, EPA re-issued the NPDES Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity (the "2015 MSGP"), as authorized under Section 402(p) of the CWA, 33 U.S.C. § 1342(p). The 2015 MSGP became effective on June 4, 2015 and will expire on June 4, 2020.
18. The 2015 MSGP established electronic Notice of Intent ("eNOI") filing requirements, development and implementation of a Storm Water Pollution Prevention Plan ("SWPPP"), inspections, monitoring, reporting, recordkeeping and other special and general conditions.

19. Part 1.2. of the 2015 MSGP establishes the eligibility and eNOI filing requirements for operators of industrial activities covered under the 2015 MSGP. Specifically, Operators of industrial activities that commenced discharging prior to September 2, 2015, but not covered under the 2008 MSGP or another NPDES permit and not operating consistent with EPA's no action assurance for the NPDES Stormwater Multi-Sector General Permit for Industrial Activities. Operators need to file for coverage immediately, to minimize the time discharges from the facility will continue to be unauthorized.
20. Upon the electronic NOI submittal, the discharge authorization under the 2015 MSGP becomes effective thirty (30) days after EPA notifies the applicant that it has received a complete electronic NOI, unless EPA notifies the applicant that the authorization to discharge has been denied or delayed.
21. Part 8.J.3 and Appendix A of the 2015 MSGP contain the following definitions:
 - a. "active mining activities" means activities related to the extraction, removal or recovery, and beneficiation of non-metallic minerals from the earth; removal of overburden and waste rock to expose mineable minerals; and site reclamation and closure activities. All such activities occur within the "active mining area." Reclamation involves activities undertaken, in compliance with applicable mined land reclamation requirements, to return the land to an appropriate post-mining contour and land use in order to meet applicable federal and state reclamation requirements. In addition, once earth-disturbing activities conducted prior to active mining activities have ceased and all related requirements in Part 8.J.4 of the 2015 MSGP have been met, and a well-delineated "active mining area" has been established, all activities (including any clearing, grading, and excavation) that occur within the active mining area are "active mining activities";
 - b. "active mining area" means a place where work or other activity related to the extraction, removal or recovery of non-metallic minerals is being conducted, except, with respect to surface mines, any area of land on or in which grading has been completed to return the earth to desired contour and reclamation work has begun. Note: Earth-disturbing activities described in the definition in Part 8.J.3.2 of the 2015 MSGP that occur on areas outside the active mining area (e.g., for expansion of the mine into undeveloped territory) are considered "earth-disturbing conducted prior to active mining activities" and must comply with the requirements in Part 8. J.4 of the 2015 MSGP;
 - c. "measurable storm event" means a precipitation event that results in a measurable amount of precipitation (i.e., a storm event that results in an actual discharge) and that follows the preceding storm event by at least 72 hours (3-days). The 72-hour storm interval does not apply if you document that less than a 72-hour interval is representative for local storm events;

non-stormwater discharges” means discharges that do not originate from storm events. They can include, but are not limited to, discharges of process water, air conditioner condensate, non-contact cooling water, pavement wash water, external building wash-down, irrigation water, or uncontaminated ground water or spring water;

- d. “mining operations” are grouped into two distinct categories, with distinct effluent limits and requirements applicable to each: a) "earth-disturbing activities conducted prior to active mining activities); and b) active mining activities, which includes reclamation. “Mining operations” can occur at both inactive mining facilities and temporarily inactive mining facilities;
- e. “operator” means any entity with a stormwater discharge associated with industrial activity that meets either of the following two (2) criteria:
 - (1) the entity has operational control over industrial activities, including the ability to modify those activities; or
 - (2) the entity has day-to-day operational control of activities at a facility necessary to ensure compliance with the permit (e.g., the entity is authorized to direct workers at a facility to carry out activities required by the permit).
- f. “qualified personnel” means those individuals who are knowledgeable in the principles and practices of industrial stormwater controls and pollution prevention, and who possess the education and ability to assess conditions at the industrial facility that could impact stormwater quality, and the education and ability to assess the effectiveness of stormwater controls selected and installed to meet the requirements of the permit;
- g. “significant materials” include, but is not limited to: raw materials; fuels; materials such as solvents, detergents, and plastic pellets; finished materials such as metallic products; raw materials used in food processing or production; hazardous substances designated under Section 101(14) of CERCLA; any chemical the facility is required to report pursuant to section 313 of Title III of SARA; fertilizers; pesticides; and waste products such as ashes, slag and sludge that have the potential to be released with stormwater discharges;
- h. “storm event” means a precipitation event that results in a measurable amount of precipitation.

22. Among others, the 2015 MSGP established the following requirements:
- a. eligibility (Part 1);
 - b. compliance measures and effluent limits (Part 2), which require the selection, design, and construction/implementation of control measures, such as non-structural and structural BMPs, to meet the non-numeric effluent limits. The selection, design, installation, and implementation of the control measures must be in accordance with good engineering practices and manufacturer's specifications;
 - c. inspections (Part 3);
 - d. corrective actions (Part 4);
 - e. Stormwater Pollution Prevention Plan ("SWPPP") in accordance with good engineering practices and industry standards (Part 5);
 - f. monitoring (Part 6);
 - g. reporting and record-keeping (Part 7);
 - h. sector-specific requirements (Part 8); and
 - i. special and general conditions (Appendixes A to P).
23. Section 308(a)(A) of the CWA, 33 U.S.C. § 1318(a)(A), 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."
24. Section 309(a)(3) of the CWA, 33 U.S.C. § 1319(a)(3), provides that "[w]henever 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...."
25. Section 309(a)(5)(A) of the CWA, 33 U.S.C. § 1319(a)(5)(A), provides that "[a]ny Order issued under [CWA Section 309] shall be by personal service, shall state with reasonable specificity the nature of the violation, and shall specify a time for

compliance . . . taking into account the seriousness of the violation and any good faith efforts to comply with applicable requirements.”

26. EPA is the agency within the Commonwealth of Puerto Rico with authority to administer the federal NPDES program. EPA maintains enforcement authority for violations of the CWA and its implementing regulations.

II. Jurisdictional Statements

27. Respondent is organized and authorized to do business under the laws of the Commonwealth of Puerto Rico.
28. Respondent is a “person” pursuant to Section 502(5) of the CWA, 33 U.S.C. § 1362(5).
29. Respondent is the owner and/or operator of a soil extraction mining site (“Facility” or “Loma Vista Soil Extraction Site”).
30. The Facility is located at Road PR-944, Km. 1.8, Hato Nuevo Ward, Gurabo, Puerto Rico.
31. Respondent’s main industrial activity at the Facility involves the operation of mining, quarrying, or otherwise preparing non-metallic minerals, except fuels.
32. Respondent’s activities at the Facility are best described by the Standard Industrial Classification Code 1499 (Miscellaneous Nonmetallic Minerals, Except fuels).
33. The Loma Vista Soil Extraction Site is a “facility,” as defined in 40 C.F.R. § 122.2.
34. At relevant times alleged in this Complaint, Respondent was the “owner and/or operator” of the Facility, as defined in 40 C.F.R. § 122.2.
35. The Facility is a “point source” pursuant to Section 502(14) of the CWA, 33 U.S.C. § 1362(14).
36. Respondent discharged storm water containing “pollutants” from the Facility into an unnamed ephemeral stream, which in turn discharges into Río Gurabo.
37. The unnamed ephemeral stream is a “point source” pursuant to Section 502(14) of the CWA, 33 U.S.C. § 1362(14).
38. Río Gurabo is a “water 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.
39. 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. § 122.

40. Respondent was required to apply for and obtain NPDES permit coverage for the Facility's discharges of pollutants into a water of the United States pursuant to Section 402(p) of the CWA, 33 U.S.C. § 1342(p).

III. Findings of Violation

41. Complainant re-alleges Paragraphs 1 – 40, above.
42. On April 25, 2019, an EPA official reviewed EPA's eNOI database and EPA's files located at the Caribbean Environmental Protection Division (the "Review") in order to determine if Respondent had obtained NPDES coverage for the Facility. The Review revealed that:
- a. Respondent did not file a NOI seeking coverage under the 2008 MSGP nor under the 2015 MSGP; and
 - b. Respondent did not file an individual NPDES permit application for its discharges of pollutants from the Facility into waters of the United States.
43. On April 25, 2019, an EPA official conducted an NPDES Stormwater Inspection ("Inspection") of the Facility. The purpose of the Inspection was to evaluate Respondent's compliance with the 2015 MSGP.
44. The findings of the Inspection were summarized in an Inspection Report ("Inspection Report"), dated June 19, 2019.
45. The EPA official performed a walkthrough of the Facility, which revealed, among other things, that Respondent had not applied for and obtain coverage under the 2015 MSGP.
46. Subsequent to the Inspection, further review of EPA's eNOI database revealed that Respondent filed a NOI seeking coverage under the 2015 MSGP on May 29, 2019.
47. Based on the findings on Paragraphs 41-46 above, Respondent is liable for the violations of Sections 301(a) and 402(p) of the Act, 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 eNOI seeking coverage under the 2015 MSGP from September 2, 2015, to May 29, 2019 (date when Respondent filed a NOI form seeking coverage under the 2015 MSGP). Therefore, the number of days that Respondent operated the Facility without the required NPDES permit coverage was **1366 days**.

- b. **Claim 2 - Illegal discharges of pollutants (storm water associated with its industrial activities) into waters of the United States without NPDES permit coverage.** Measurable storm events occurred on at least 122 instances during the period of September 2, 2015 to May 29, 2019 (date when Respondent file a NOI form seeking coverage under the 2015 MSGP). Therefore, the number of days on which Respondent discharged pollutants from the CVPR into water of the United States without a NPDES permit coverage was **122 days**.

48. 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 Violations, 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 **\$18,545**. 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), 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 2019, 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 NPDES regulations and the Act. Respondent failed to timely apply for NPDES permit coverage immediately after starting to operate the Facility, as required by Part 1.2.1 the 2015 MSGP. Respondent is culpable for the violations alleged in this Complaint. EPA took into account Respondent's knowledge of the NPDES regulations, the 2015 MSGP, and the risks to human health and the environment posed by the uncontrolled discharges of stormwater runoff from the Facility into the Rio Gurabo, a water of the United States.

The violations discussed in this Complaint are serious since Respondent's failure to develop and implement a Facility-specific SWPPP 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, 2015 MSGP, and the Act. 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 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, **\$18,545**, within thirty (30) days after receipt of the Complaint, provided that Respondent files with the Regional Hearing Clerk, Region 2 (at the address noted in Part V.A, 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, below. 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 address:

**United States Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P. O. Box 979077
St. Louis, MO 63197-9000
Docket No. CWA-02-2016-3451**

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 - 16th Floor
New York, New York 10007-1866**

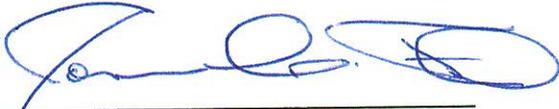
2. A copy of the Answer, any Hearing Request and all subsequent documents filed in this action shall be sent to:

Carolina Jordán-García, Esq.
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 2
City View Plaza II, Suite 7000
Guaynabo, Puerto Rico 00968
Telephone: (787) 977-5859

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 19th DAY OF September, 2019.



for **Carmen R. Guerrero-Pérez, Director**
Caribbean Environmental Protection Division
United States Environmental Protection Agency - Region 2

cc: **Ángel Meléndez, Director**
Water Quality Area
Department of Natural and Environmental Resources
P. O. Box 11488
San Juan, PR 00910

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

IN THE MATTER OF:

Camioneros de Volteo de PR, Inc.
HC 20 PO Box 10997
Juncos, Puerto Rico 00777

Loma Vista Soil Extraction Site
Road PR-944, Km. 1.8, Hato Nuevo Ward
Gurabo, Puerto Rico 00778

NPDES ID: PRU549874

RESPONDENT

DOCKET NUMBER
CWA-02-2019-3352

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

CERTIFICATE OF SERVICE

I certify that, on the date noted below, I caused to be mailed, by certified mail, return receipt requested, a copy of the foregoing "ADMINISTRATIVE COMPLAINT" and a copy of the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits", 40 C.F.R. Part 22, to the following persons at the addressed listed below:

Mr. Elliot Rivera Santiago
President
Camioneros de Volteo de PR, Inc.
HC 20 P.O. Box 10997
Gurabo, PR 00777

Also, I sent the original and a copy of the foregoing ADMINISTRATIVE COMPLAINT for filing, to:

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

Date:

September 23, 2019


Aileen Sánchez
Administrative Assistance
Multimedia Permits and Compliance Branch
Caribbean Environmental Protection Division
U.S. Environmental Protection Agency, Region 2