



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

APR 16 2008

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Article Number: 7005 3110 0000 4880 6030

Nassim Tactuk
Ferrovial Agroman SA
Ponce de Leon 1250
San Jose Building, Office 711
Santurce, Puerto Rico 00907

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. 2
2008 APR 17 PM 3:42
REGIONAL HEARING
CLERK

RE: Notice of Proposed Assessment of a Civil Penalty Class I
Docket No. CWA-02-2008-3312
Ferrovial Agroman SA
Construction Road PR-10, Section 1A, ROAD 123 KM 50.9, Utuado, Puerto Rico
Permit Number PRR10B424

Dear Mr. Tactuk:

Enclosed is a document entitled "Administrative Complaint, Findings of Violation, Notice of Proposed Assessment of an Administrative Penalty, and Notice of Opportunity to Request a Hearing" ("Complaint").

The United States Environmental Protection Agency (EPA) has issued this Complaint against Ferrovia Agroman SA (Respondent) as a result of our determination that the Respondent violated Sections 301, 308 and 402 of the Clean Water Act (Act), 33 U.S.C. §§1311, 1318 and 1342, for violations of EPA's National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges From Construction Activities (CGP or Construction General Permit). This Complaint is filed pursuant to the authority contained in §309(g) of the Act, 33 U.S.C. §1319(g). The Complaint proposes that a penalty of **\$32,500** be assessed against the Respondent for the violations.

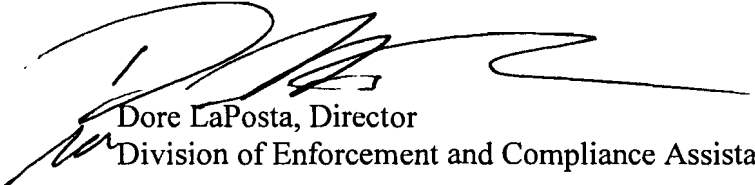
The Respondent has the right to a hearing to contest the factual allegations of the Complaint. If the Respondent admits the allegations or they are found to be true after there has been an opportunity for a hearing on them, the Respondent has the right to contest the penalty proposed in the Complaint. I have enclosed a copy of the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits" (CROP), 40 CFR Part 22, which the Agency follows in cases of this kind. Please note the requirements for an Answer at §22.15 of the CROP. **Should a Respondent wish to contest the allegations in the Complaint or the penalty proposed in the Complaint, the Respondent must file an original and a copy of a written Answer within thirty (30) days of the Respondent's receipt of the enclosed Complaint to the EPA Regional Hearing Clerk at the following address:**

Internet Address (URL) • <http://www.epa.gov>

Recycled/Recyclable • Printed with Vegetable Oil Based Inks on 100% Postconsumer, Process Chlorine Free Recycled Paper

Should you have any questions concerning this matter, please feel free to contact Henry Mazzucca, P.E. Chief Compliance Section at (212) 637-4229 or Ms. Gomes.

Sincerely,



Dore LaPosta, Director
Division of Enforcement and Compliance Assistance

Enclosures

1. Complaint
2. Consolidated Rules of Practice
3. Supplemental Environmental Project Policy
4. SEP Brochure and Potential SEP Projects
5. Information for Small Business

cc: Wanda E. Garcia Hernández, Director, Water Quality Area, EQB

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 2

IN THE MATTER OF:

Ferrovial Agroman SA
Ponce de Leon 1250
San Jose Building
Santurce, Puerto Rico 00907

Respondent

NPDES Permit Number PRR10B424

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

DOCKET NO.
CWA-02-2008-3312

CERTIFICATE OF SERVICE

I certify that on APR 16 2008, I served the foregoing fully executed Administrative Complaint, Findings of Violation, Notice of Proposed Assessment of an Administrative Penalty, and Notice of Opportunity to Request a Hearing, bearing the above referenced docket number, on the persons listed below, in the following manner:

Original and One Copy
By Hand:

Office of Regional Hearing Clerk
U.S. Environmental Protection
Agency - Region 2
290 Broadway, 16th floor
New York, New York 10007-1866

Copy by Certified Mail
Return Receipt Requested:

Ferrovial Agroman SA
Ponce de Leon 1250
San Jose Building
Santurce, Puerto Rico 00907

Copy by Certified Mail
Return Receipt Requested:

Wanda E. García Hernández, Director
Environmental Quality Board
P.O. Box 11488
Santurce, Puerto Rico 00910

Dated: 04/16/08 Marie St. Germain
Secretary
New York, New York

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 2

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. 2

2008 APR 17 8 31:42
REGIONAL ADMINISTRATIVE
HEARING

IN THE MATTER OF:

Ferrovial Agroman SA
Ponce de Leon 1250
San Jose Building, Office 711
Santurce, Puerto Rico 00907

Respondent

NPDES Tracking Number PRR10B424

Proceeding to Assess a Class I Administrative
Penalty Pursuant to Section 309(g) of the Clean
Water Act, 33 U.S.C. §1319(g)

DOCKET NO.
CWA-02-2008-3312

**ADMINISTRATIVE COMPLAINT
FINDINGS OF VIOLATION, NOTICE OF PROPOSED
ASSESSMENT OF AN ADMINISTRATIVE PENALTY, AND
NOTICE OF OPPORTUNITY TO REQUEST A HEARING**

I. Statutory Authority

1. This Administrative Complaint, Findings of Violation, Notice of Proposed Assessment of an Administrative 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 ("Act" or "CWA"), 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, Division of Enforcement and Compliance Assistance ("DECA") 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 CFR Part 22 (2001), a copy of which is attached, Complainant hereby requests that the Regional Administrator assess a civil penalty against Ferrovia Agroman SA ("Respondent") as a result of Complainant's determination that the Respondent is in violation of Sections 301, 308 and 402 of the Act, of the Act, 33 U.S.C. §1311, §1318 and §1342, for the unlawful discharge of pollutants into navigable waters without authorization by a National Pollutant Discharge Elimination System ("NPDES") permit.

3. Section 301(a) of the Act, 33 U.S.C. §1311(a), provides in part that it is unlawful for any person to discharge any pollutant except as in compliance with, *inter alia*, Section 402 of the CWA, 33 U.S.C. §1342.
4. Section 308 of the Act, 33 U.S.C. §1318, provides, in relevant part, that the Administrator of EPA may require the owner or operator of any point source to, among other things; maintain such records; make such reports; install, use and monitor such equipment; sample such effluents; and provide such other information as may reasonably be required in order to carry out Section 402 of the Act, 33 U.S.C. §1342.
5. Section 402 of the Act, 33 U.S.C. §1342, provides that the Administrator may, after opportunity for public hearing, issue a 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.
6. “National Pollutant Discharge Elimination System” (“NPDES”) under Section 402 of the Act, 33 U.S.C. §1342, means the national program for, among other things, issuing and enforcing permits. See 40 CFR §122.2.
7. The Administrator of EPA has promulgated regulations, 40 CFR §122.26(a)(1)(ii) and §122.26(b)(14), which require operators to obtain a NPDES permit for storm water discharges associated with industrial activity.
8. The regulations at 40 CFR §122.26(b)(14)(x) regulate industrial storm water discharges associated with construction activities including clearing, grading and excavation that result in land disturbance of five (5) or more acres.
9. EPA issued the “NPDES General Permit for Discharges for Storm Water Discharges from Construction Activities” (“CGP” or “Permit”) which became effective on July 1, 2003 and expires on July 1, 2008. The general permit number for this CGP in Puerto Rico is PRR100000.
10. Part 3.10 of the CGP requires that inspections be conducted at least once every 7 calendar days, or at least once every 14 calendar days and within 24 hours of the end of a storm event of 0.5 inches or greater.
11. Part 3.1 of the CGP requires that a Storm Water Pollution Prevention Plan (“SWPPP”) must be prepared prior to the submission of the Notice of Intent (“NOI”).
12. Part 3.12 of the CGP requires that the SWPPP be retained at the construction site.
13. The Act and its implementing regulations and applicable NPDES permit contain the following definitions:

- a. "Navigable waters" means the waters of the United States pursuant to Section 502(7) of the Act, 33 U.S.C. §1362(7). "Waters of the United States" means, but are not limited to, waters which are currently used or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide and including wetlands, rivers, streams (40 CFR §122.2).
 - b. "Pollutant" means, but is not limited to, solid waste, dredged spoil, rock, sand, cellar dirt, sewage, sewage sludge, and industrial, municipal and agricultural waste discharged into water, pursuant to Section 502(6) of the Act, 33 U.S.C. §1362(6).
 - c. "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, pursuant to Section 502(14) of the Act, 33 U.S.C. §1362(14).
 - d. "Discharge of a pollutant" means any addition of any pollutant to navigable waters from any point source, pursuant to Section 502(12) of the Act, 33 U.S.C. §1362(12).
 - e. "Person" means, but is not limited to, an individual, corporation, partnership or association, pursuant to Section 502(5) of the Act, 33 U.S.C. §1362(5).
14. "Commencement of construction activities" means the initial disturbance of soils associated with clearing, grading, excavation activities or other construction activities. See Appendix A of the CGP.
 15. "Operator," for the purpose of the NPDES storm water general permit for construction activities and in the context of storm water associated with construction activity, is defined at Appendix A of the CGP to mean 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 for the site or other permit conditions. See Appendix A of the CGP.
 16. Part 1.3.A.3 of the CGP authorizes discharge of pollutants from support activities (which include material storage areas, excavated material disposal areas, and borrow areas) provided that appropriate controls and measures are identified in the SWPPP covering the discharges from the support activity areas.

17. Part 3.1.D of the CGP requires that the SWPPP must be implemented as written.
18. Part 3.3.C of the CGP requires that the SWPPP must contain a legible site map, showing the entire site, identifying specific location information, direction(s) of storm water flow, areas of soil disturbance and areas of stabilization.
19. Part 3.4.C of the CGP requires that the SWPPP must contain records of dates for major grading activities, temporary or permanent cessation of construction activities and initiation of stabilization measures.
20. Part 3.4.G of the CGP requires that the SWPPP must describe measures to minimize, to the extent practicable, off-site vehicle tracking of sediments onto paved surfaces and the generation of dust.
21. Part 3.6.A of the CGP requires that all sediment and control measures and other protective measures identified in the SWPPP must be maintained in effective operating condition.
22. Part 3.7 of the CGP requires that the SWPPP must include documentation supporting a determination of permit eligibility with regard to Endangered Species.
23. Part 3.10.G of the CGP requires that an inspection report must be completed for each inspection and include a minimum of information specified, including locations and corrective action.
24. Part 3.13.A of the CGP requires that all control measures must be properly selected, installed and maintained in accordance with any relevant manufacturer's specifications and good engineering practices.
25. Part 3.13.E.1 of the CGP requires that for common drainage locations that serve an area with 10 or more acres disturbed at one time, a temporary (or permanent) sediment basin that provides storage for a calculated volume of runoff from the drainage from a 2-year, 24-hour storm, or equivalent control measures must be provided where attainable until final stabilization of the site.

II. Jurisdictional Findings

26. At all relevant times, Ferrovia Agroman SA, Respondent, owned, operated and engaged in the construction activity of a bridge over the Rio Grande de Arecibo and additional sections of road on a 53 acre site in the Utuado area of Puerto Rico, which includes a soils storage area, referred to in previous correspondence, inspection reports and an administrative order as a landfill, used for cut/fill operations.
27. Respondent's project described above is located at PR-10, Section 1A, PR-123, Km 50.9, Utuado, Puerto Rico (the "Site").

28. Respondent's Site is comprised of approximately 53 acres of total land area.
29. At all relevant times, the construction activity at Respondent's Site included earth clearing, grading and excavation which resulted in the disturbance of no less than five acres of total land area.
30. Respondent is a person within the meaning of Section 502(5) of the CWA, 33 U.S.C. §1362(5).
31. Respondent's Site is and was, at all relevant times, a point source as defined in Section 502 (14) of the Act, 33 U.S.C. §1362(14).
32. Respondent filed an application with the EPA for coverage under the NPDES permit system with respect to its Site, by filing a Notice of Intent, NOI, for Stormwater Discharges Associated with Construction Activity dated July 14, 2004.
33. On July 22, 2004, Respondent's coverage under EPA's CGP became effective and Respondent was issued NPDES Permit Tracking No. PRR10B424 ("Permit") for its industrial discharges of storm water associated with construction activity from its Site into the Rio Grande de Arecibo a navigable water as defined in Section 502(7) of the Act, 33 U.S.C. §1362(7).
34. Respondent prepared a Storm Water Pollution Prevention Plan ("SWPPP") which was dated December 7, 2004, and which was revised on June 12, 2006.
35. On November 30, 2005, an EPA representative conducted a Compliance Evaluation Inspection (CEI) at the site, finding that:
 - a. SWPPP– Disturbed areas which include the soils storage area, the construction entrance off PR-123, and the Southern Portion of Area E were not included in the SWPPP as required. The site maps that were included did not contain portions of the required information. The Endangered Species-portion of the SWPPP did not contain portions of the required information. Complete site inspection reports and required records were not included.
 - b. Silt Fences – Silt fences in Area E and in other areas of the construction site were in disrepair and/or not properly maintained so that storm water could flow beneath them. In other areas, material was piled up and overtopped the silt fences.
 - c. Construction Entrances – The construction entrances at Area E and at the soils storage area were not properly stabilized, and dirt and dust were tracked onto the road near the soils storage area entrance.

- d. BMPs – No storm water erosion controls were in place at the site entrance, including the unpaved parking area, and the bridge across the Rio Grande de Arecibo. Un-maintained silt fences were used within the channel, which did not appear to be an appropriate BMP for this area. Maintenance to the BMPs were not made due to the lack of inspections. No BMPs were situated along a section of the stream. Hay bales and a metal retaining wall were not in place in Area E, as required by the SWPPP.
 - e. Sediment Basins – there were no sediment basins installed on the 53 acre site or at the soils storage area.
36. On August 30-31, 2006, an EPA representative conducted a CEI at the site, finding that:
- a. Silt Fences - silt fences at the Site entrance were not buried into the soil and were in a state of disrepair.
 - b. Construction Entrances – The construction entrance at Area E of the Site was not properly stabilized and sediment was tracked onto the road leading down towards the Rio Grande de Arecibo. The stabilized construction entrance at the soils storage area was not properly maintained, which resulted in sediment flowing into a stream.
 - c. BMPs – hydroseeding of the soils storage area as a control measure to stabilize the soils storage area slopes was ineffective.
 - d. Sediment Basins – there were no sediment basins installed on the 53 acre site or at the soils storage area.

III. FINDINGS OF VIOLATION

37. Paragraphs twenty-six through thirty-six of the Jurisdictional Findings are re-alleged and incorporated herein as though set forth in full.
38. From or about July 22, 2004 to and including November 30, 2005, Respondent failed to:
- a. Include the unpaved, parking area/site entrance, bridge across the Rio Grande de Arecibo, soils storage area, and the southern Part of Area E in the SWPPP, in violation of Part 1.3.A.3 of the CGP;
 - b. Include associated Site Maps of the areas and complete site map information in the SWPPP, in violation of Part 3.3.C of the CGP;
 - c. Include complete Endangered Species information in the SWPPP, in violation of Part 3.7 of the CGP;

- c. Include complete Endangered Species information in the SWPPP, in violation of Part 3.7 of the CGP;
- d. Include records and complete site inspection reports as required in the SWPPP, in violation of Parts 3.4.C, and 3.10.G.5, .7, .8, and .9.
- e. Properly maintain BMPs at the Site, in violation of Parts 3.1 and 3.6 of the CGP;

From or about July 22, 2004 to and including August 30-31, 2006, Respondent failed to:

- f. Install sediment basins at common drainage locations, in violation of Part 3.13.E of the CGP.

On November 30, 2005 and August 30-31, 2006, Respondent failed to:

- g. Properly install and maintain the construction entrances, in violation of Parts 3.4 and 3.6 of the CGP, and failed to implement Sections II.A.2.f (Construction Entrance) and III.B (Offsite Vehicle Tracking) of the SWPPP, in violation of Parts 3.1.D of the CGP.

On August 30-31, 2006, Respondent failed to:

- h. Stabilize the soils storage area slopes through the use of the appropriate BMPs for erosion control, in violation of Part 3.13.A of the CGP;

All in violation of Sections 301, 308, and 402 of the Act, Title 33, United States Code, Sections 1311, 1318, and 1342.

- 39. Based on the above Findings of Violation, EPA finds that Respondent failed to comply with permit conditions of its NPDES Permit, Tracking No. PRR10B424, all in violation of Sections 301, 308, and 402 of the Act, Title 33, United States Code, Sections 1311, 1318, and 1342.

III. 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), and the Debt Collection Improvement Act of 1996, EPA, Region 2 hereby proposes to issue a Final Order Assessing Administrative Penalties (“Final Order”) to Respondent assessing a penalty **\$32,500**. EPA determined the proposed penalty after taking into account the applicable factors identified at Section 309(g)(3) of the Act, 33 U.S.C. §1319(g)(3). EPA has taken account of 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

Respondent files an Answer to the Complaint and requests a hearing on this notice pursuant to the following section.

IV. Procedures Governing This Administrative Litigation

The rules of procedure governing this civil administrative litigation have been set forth in the CROP, 40 CFR Part 22. A copy of these rules accompanies this Complaint.

A. Answering The Complaint

Where either 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 CFR §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 CFR §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 the Respondent has any knowledge. 40 CFR §22.15(b). Where Respondent lacks knowledge of a particular factual allegation and so states in its answer, the allegation is deemed denied. 40 CFR §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 disputes (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 CFR §22.15(b).

Respondent's failure affirmatively to raise in the answer facts that constitute or that might constitute the grounds of their 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 its Answer, a Hearing upon the issues raised by the Complaint and Answer may be held. 40 CFR §22.15(c). If, however, Respondent does not request a hearing, the Presiding Officer (as defined in 40 CFR §22.3) may hold a Hearing if the Answer raises issues appropriate for adjudication. 40 CFR §22.15(c).

Any Hearing in this proceeding will be held at a location determined in accordance with 40 CFR §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 CFR 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 any Answer to admit, deny, or explain any material factual allegation contained in the Complaint, such failure constitutes an admission of the allegation. 40 CFR §22.15(d). If Respondent fails to file a timely [i.e. in accordance with the 30-day period set forth in 40 CFR §22.15(a)] Answer to the Complaint, Respondent may be found in default upon motion. 40 CFR §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 CFR §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 CFR §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 CFR §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.

V. 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 CFR §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 CFR §22.18.

Any request for an informal conference or any questions that Respondent may have regarding this Complaint should be directed to:

Diane T.Gomes
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th Floor
New York, NY 10007-1866
Telephone (212) 637-3235
Fax: (212) 637-3202
Email: gomes.diane@epa.gov

The parties may engage in settlement discussions irrespective of whether Respondent has requested a Hearing. 40 CFR §22.18(b)(1). Respondent's requesting a formal hearing does 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 CFR §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 CFR §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 CFR §22.18(b)(2). In accepting the Consent Agreement, Respondent waives its right to contest the allegations in the Complaint and waives its right to appeal the Final Order that is to accompany the Consent Agreement. 40 CFR §22.18(b)(2). In order to conclude the proceeding, a Final Order ratifying the parties' agreement to settle will be executed. 40 CFR §22.18(b)(3).

Respondent 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 and Final Order 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.

VI. 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 \$32,500 within 30 days after receipt the Complaint, provided that Respondent file with the Regional Hearing Clerk, Region 2 (at the address noted above), and a copy of the check or other instrument of payment. 40 CFR §22.18(a). A copy of the check or other instrument of payment should be provided to the Chief, Compliance Section, identified above. 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
In the Matter of Ferrovia Agroman, PR-10
Docket No. CWA-02-2008-3312
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

Pursuant to 40 CFR §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 CFR §22.18(a)(3). In accordance with 40 CFR §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 (note that a new enforcement action may be initiated based on continued non-compliance). Further, pursuant to 40 CFR §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.

VII. Filing of Documents

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

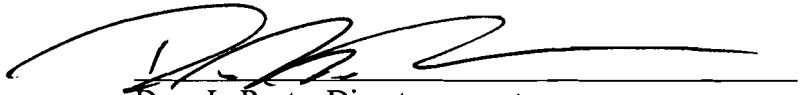
A copy of the Answer, any Hearing Request and all subsequent documents filed in this action shall be sent to:

Diane T. Gomes
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th Floor
New York, NY 10007-1866
Telephone (212) 637-3235
Fax: (212) 637-3202
Email: gomes.diane@epa.gov

VIII. 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, or 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 15th DAY OF April, 2008.


Dore LaPosta, Director
Division of Enforcement and Compliance Assistance
U. S. Environmental Protection Agency - Region 2
290 Broadway
New York, New York 10007