

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2

U.S. ENVIRONMENTAL  
PROTECTION AGENCY  
JUL 29 P 1:52  
REGIONAL HEARING  
CLERK

IN THE MATTER OF:

**Tri-Stella Development Group, Inc.**  
P. O. Box 11918  
Caparra Heights Station  
San Juan, Puerto Rico 00926

**DOCKET NUMBER CWA-02-2011-3454**

and

**Dynamics Engineers, Corp.**  
P. O. Box 1581  
Trujillo Alto, Puerto Rico 00977

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

**Caminos Verdes II Development**

**RESPONDENTS**

**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 Tri-Stella Development Group, Inc. (TRI-STELLA) and Dynamics Engineers, Corp. (DEC), (hereinafter, the "Respondents"), as a result of Complainant's determination that the

Respondents are in violation of Sections 301 and 402 of the Act, 33 U.S.C. §§ 1311 and 1342, respectively, for Respondent DEC's failure to apply for and obtain National Pollutant Discharge Elimination System (NPDES) permit coverage prior to commencement of construction activities at the Caminos Verdes II Development (the "Project") and for Respondent TRI-STELLA's failure to comply with the conditions of EPA's July 1, 2003 NPDES General Permit for Discharges from Large and Small Construction Activities.

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. § 122.21, an owner or operator of a construction site is required to submit an individual permit application no later than ninety (90) days, before the date on which construction is to commence, unless the owner or operator obtains authorization under an NPDES storm water general permit for construction activities.
12. Pursuant to the NPDES regulations at 40 CFR § 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.
13. The Act, 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 CFR § 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 CFR § 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 CFR § 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 CFR § 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 CFR § 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 CFR § 122.2;
  - g. "Owner" or "operator" as the owner or operator of any facility or activity subject to regulation under the NPDES program. 40 CFR § 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 CFR § 122.26(b)(14)(x) and 40 CFR §122.26(b)(15)(i).
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 (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 for the site or other permit conditions.
15. 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.
16. On July 1, 2003, EPA issued the "NPDES General Permit for Discharges from Large and Small Construction Activities" (the "Construction Permit").
17. 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.
18. 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.

19. Section 3.1.A of the Construction Permit requires Respondents to prepare a SWPPP prior to submission of the NOI.
20. Section 3.1.D of the Construction Permit requires Respondents to implement the SWPPP as written from commencement of construction activity until final stabilization is complete.

## II. Jurisdictional Findings

21. Respondents TRI-STELLA and DEC are corporations organized and authorized to do business under the laws of the Commonwealth of Puerto Rico.
22. Each Respondent is a “person” within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5).
23. Respondent TRI-STELLA is the owner/operator, as defined in 40 C.F.R. § 122.2, of the Project.
24. On October 30, 2006, Respondent TRI-STELLA hired Respondent DEC to conduct construction activities at the Project. Under the contract, Respondent DEC was required to perform earth movement, site preparation and other activities.
25. Respondent DEC is an operator, as defined in 40 C.F.R. § 122.2, at the Project.
26. The Project is located at State Road 844, Km 3.2, Int. State Road 199, El Capá Sector, Cupey Ward, San Juan, Puerto Rico.
27. The Project is a residential development which consists of the construction of multi-family residential units for a total of seventy (70) single units.
28. The construction activities at the Project are best described by the Standard Industrial Classification code 1522 (Residential Buildings, Other Than Single-Family).
29. The construction activities at the Project involve, among others, land disturbance, site preparation, utilities installation, and construction of residential units and recreational areas.
30. Earth movement activities at the Project involve clearing, grading and excavation on approximately 5 acres of land.

31. Respondents began clearing activities at the Project on or about February 6, 2007.
32. Respondent TRI-STELLA's Project is a "construction activity" as defined in 40 C.F.R. § 122.26(b)(14)(x).
33. 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.
34. Respondents discharged storm water containing "pollutants" from the Project into an intermittent unnamed creek which in turn discharges into the Rio Grande de Loíza, reaching the Atlantic Ocean.
35. The intermittent unnamed creek, the Rio Grande de Loíza and the Atlantic Ocean are waters 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.
36. 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).
37. Respondents TRI-STELLA's Project is covered by the NPDES permit application regulations for construction activities. 40 C.F.R. § 122.26(b)(14)(x).
38. Respondent TRI-STELLA is the owner and/or operator of the Project, as defined in 40 C.F.R. § 122.2. Respondent DEC is an operator of the Project as defined in 40 C.F.R. § 122.2. Respondents are 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. Respondents were 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).

### **III. Findings of Violations**

39. Complainant re-alleges Paragraphs 21-38 above.
40. On February 23, and March 15, 2007, a duly authorized EPA enforcement officer performed inspections of the Project (1<sup>st</sup> and 2<sup>nd</sup> Inspections) to determine Respondents' compliance with the Act and the applicable NPDES regulations.
41. The findings of the 1<sup>st</sup> and 2<sup>nd</sup> Inspections were included in the NPDES Water Compliance Inspection Reports, dated August 31, 2007. The findings of the inspection revealed that:

- a. Earth movement activities at the Project began on or about February 6, 2007;
  - b. Respondents did not have a complete and up to date SWPPP;
  - c. Respondents did not implement adequate storm water pollution prevention measures at the Project as required under Part 3 of the Construction Permit;
  - d. Uncontrolled storm water runoffs from the Project were being discharged into an intermittent unnamed creek discharging into the Río Grande de Loíza, reaching the Atlantic Ocean in violation of Part 3 of the Construction Permit;
  - e. Respondents 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. Large off-site accumulations of sediment that had escaped from the Project were observed impacting the adjacent land and the intermittent unnamed creek. Such sediment accumulations were not removed at a frequency sufficient to minimize off-site impacts as required by Section 3.13.B of the Construction Permit;
  - g. Unstable slopes were observed throughout the Project;
  - h. Respondents did not conduct the inspections in accordance with Section 3.10 of the Construction Permit; and
  - i. Respondents did not post a sign or other notice at the Project concerning the NOI and the location of the SWPPP as required by Section 3.12.B of the Construction Permit; among others.
42. On February 27, 2007, an EPA official conducted reviews of the EPA National Storm Water Processing Center database<sup>1</sup> and the EPA files (EPA review). The EPA Review revealed that on February 7, 2007, Respondent TRI-STELLA filed a NOI form seeking Construction Permit coverage for its construction activities as an owner and operator at the Project. Respondent TRI-STELLA obtained coverage under the Construction Permit on February 14, 2007.

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

43. The EPA Review also revealed that as of such date Respondent DEC had not filed a NOI form seeking coverage under the Construction Permit nor had it filed an individual NPDES permit for its construction activities as an operator at the Project.
44. Based on the observations made by EPA during the 1<sup>st</sup> and 2<sup>nd</sup> Inspections, EPA issued the Administrative Compliance Order CWA-02-2007-3043 ("Compliance Order" or "Order"), dated September 10, 2007, against Respondents to address the violations mentioned above. The Compliance Order incorporated findings of violations, and ordered Respondents to:
  - a. cease and desist all clearing, grading and/or excavation activities at the Project;
  - b. provide temporary stabilization to areas at the Project where clearing, grading and excavation activities have occurred;
  - c. provide final stabilization to areas where clearing, grading and excavation activities will no longer be performed;
  - d. construct and/or install erosion and storm water management controls;
  - e. provide maintenance to the erosion and storm water management controls;
  - f. control and/or install velocity dissipation devices along the length of the steel slopes in the Project;
  - g. amend the SWPPP to specify the responsibilities of each Respondent for the implementation of the SWPPP;
  - h. revise the site map included in the SWPPP;
  - i. Respondent DEC shall prepare and file a NOI form for coverage under the Construction Permit; and
  - j. prepare and submit a Compliance Plan to bring the Facility into compliance with the Construction Permit, the Act, and the NPDES regulations; among other.



45. On September 19, 2007, Respondents received the Compliance Order.
46. On October 10, 2007, EPA issued a letter closing the Compliance Order. The determination was based upon Respondents' substantial compliance with the provisions of the Order.
47. On November 13, 2007, Respondent DEC filed an NOI form seeking NPDES coverage under the Construction Permit for its construction activities. Respondent DEC obtained coverage under the Construction Permit on November 20, 2007.
48. On May 1, 2008, a duly authorized EPA enforcement officer performed a third inspection of the Project (3<sup>rd</sup> Inspection) to determine Respondents' compliance with the Act, the applicable NPDES regulations, and the Compliance Order.
49. The findings of the 3<sup>rd</sup> Inspection revealed that Respondents failed to appropriately maintain pollution control measures.
50. Based on the findings on paragraphs 39-49 above, Respondents are liable for the violations of Sections 301(a) and 402 of the Act, 33 U.S.C. §§ 1311(a) and 1342, as specified below:
  - a. **Claim 1 – Failure to apply for and obtain NPDES permit coverage.**  
Respondent DEC did not submit an individual NPDES permit application as required by 40 C.F.R. § 122.21, nor did it file a complete and accurate NOI form prior to commencement of construction activities as required by Part 2 of the Construction Permit from February 6, 2007 (date when Respondent DEC began to perform earth movement activities at the Project), through November 13, 2007 (date when Respondent DEC filed the NOI form seeking NPDES coverage under the Construction Permit for its storm water discharges associated with its construction activities).
  - b. **Claim 2 – Illegal discharges of pollutant (storm water) into waters of the United States without NPDES permit coverage.**  
Respondent DEC discharged pollutants from the Project into waters of the United States without NPDES permit coverage, in violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a), from February 6, 2007 (date when Respondent DEC began to perform earth movement activities at the Project), through November 13, 2007 (date when Respondent DEC filed the NOI form seeking NPDES coverage under the Construction Permit for its storm water discharges associated with its construction activities).

**c. Claim 3 - Failure to post a sign and retain a copy of the SWPPP at the Project**

Respondent TRI-STELLA did not post a sign or other notice at the Project concerning the NOI and the location of the SWPPP as required by Section 3.12.B of the Construction Permit. This violation is for February 23, and March 15, 2007, the date when EPA performed the 1<sup>st</sup> and 2<sup>nd</sup> inspections at the Project.

**d. Claim 4 - Failure to develop a complete and adequate SWPPP**

Respondent TRI-STELLA did not prepare a complete SWPPP, in order to provide storm water pollution prevention for the Project, as required under Part 3 of the Construction Permit. The SWPPP remained incomplete from February 7, 2007, (date when earth movement activities began at the Project) until September 10, 2007 (date when EPA issued the Compliance Order). The number of days that Respondents failed to implement the SWPPP are 216.

**e. Claim 5 - Failure to adequately implement the SWPPP at the Project**

Respondent TRI-STELLA did not implement the SWPPP at the Project, as required under Part 3 of the Construction Permit, from February 7, 2007 (date when earth movement activities began at the Project) until September 10, 2007 (date when EPA issued the Compliance Order). The number of days that Respondents failed to implement the SWPPP are 216.

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), and the Debt Collection Improvement Act of 1996, EPA, Region 2 hereby proposes to issue a Final Order Assessing Administrative Penalties (Final Order) to Respondents assessing a penalty of **\$56,454.00**. 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 is required to take in consideration the nature, circumstances, extent and gravity of the violation (or violations), and Respondents' prior compliance history, degree of culpability, economic benefit or savings accruing to Respondents by virtue of the violations, and Respondents' ability to pay the proposed penalty.

Based on the Findings set forth above, Respondents have been found to have violated in numerous occasions the NPDES regulations and the Act. Respondent DEC failed to

apply for NPDES permit coverage for its construction activities at the Project for more than nine (9) months and it illegally discharged pollutants into waters of the United States in sixteen (16) instances during such period. Respondent TRI-STELLA failed to post a sign and retain a copy of the SWPPP at the Project, perform inspections, and prepare and implement a complete and adequate storm water pollution prevention plan as required by the Construction Permit. Respondents are culpable for the violations. EPA took into account Respondents' 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 an unnamed creek discharging into the Rio Grande de Loíza and reaching the Atlantic Ocean, all waters of the United States.

The violations discussed in this Complaint are serious since Respondents' failure to develop and implement storm water pollution prevention at the Project caused a significant amount of sediments to reach surface water that could cause direct and indirect negative effects on human health and the environment. Respondents knew of their obligations under the NPDES regulations, Construction Permit, and the Act. Respondents do not have a prior history of violations under the NPDES program. EPA may issue a final Order Assessing Administrative Penalties thirty (30) days after Respondents' receipt of this Notice, unless Respondents, 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 Respondents intend to contest any material fact upon which the Complaint is based, to contend that the proposed penalty is inappropriate or to contend that Respondents are entitled to judgment as a matter of law, Respondents must file with the Regional Hearing Clerk of EPA, Region 2, both an original and one copy of a written Answer to the Complaint, and such Answer must be filed within thirty (30) days after service of the Complaint. 40 C.F.R. § 22.15(a). The address of the Regional Hearing Clerk of EPA, Region 2, is:

**Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 2  
290 Broadway, 16<sup>th</sup> floor  
New York, New York 10007-1866.**

Respondents 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).

Respondents' 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 Respondents has any knowledge. 40 C.F.R. § 22.15(b). Where Respondents 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 Respondents 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).

Respondents' failure to affirmatively raise in the Answer facts that constitute or that might constitute the grounds of its defense may preclude Respondents, 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 Respondents 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, Respondents do 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 Respondents 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 Respondents 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 Respondents fail 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 Respondents 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, Respondents may be found in default upon motion. 40 C.F.R. § 22.17(a). Default by Respondents constitute, for purposes of the pending proceeding only, an admission of all facts alleged in the Complaint and a waiver of Respondents' 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 Respondents 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, Respondents may comment on the charges made in this complaint, and Respondents may also provide whatever additional information that it believes is relevant to the disposition of this matter, including: (1) actions Respondents have 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 Respondents' ability to continue in business, and/or (4) any other special facts or circumstances Respondents wishes to raise.

Complainant has the authority to modify the amount of the proposed penalty, where appropriate, to reflect any settlement agreement reached with Respondents, to reflect any relevant information previously not known to Complainant or to dismiss any or all of the charges, if Respondents can demonstrate that the relevant allegations are without merit and that no cause of action as herein alleged exists. Respondents are referred to 40 C.F.R. § 22.18.

Any request for an informal conference or any questions that Respondents 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 Respondents have requested a hearing. 40 C.F.R. § 22.18(b)(1). Respondents' 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 Respondents' 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, Respondents waive 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).

Respondents' 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. Respondents' 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, Respondents may choose to pay the total amount of the proposed penalty within 30 days after receipt of the Complaint, provided that Respondents file 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 Respondents elect 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 Respondents shall constitute a waiver of Respondents' 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 Respondents' obligation and responsibility to comply with all applicable statutory and regulatory requirements, and to maintain such compliance.

#### **VIII. Filing of Documents**

1. The original and one copy of the Answer and any Hearing Request and all subsequent documents filed in this action should be sent to:

**Regional Hearing Clerk  
U.S. Environmental Protection Agency  
290 Broadway - 16<sup>th</sup> Floor  
New York, New York 10007-1866.**

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

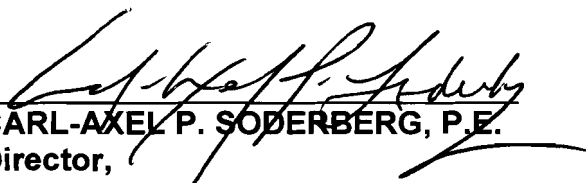
**Héctor L. Vélez Cruz, Esq.  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 2  
1492 Ponce de León Ave., Suite 417  
San Juan, Puerto Rico 00907-4127  
Telephone: (787) 977-5850  
Fax: (787) 729-7748.**

#### **IX. General Provisions**

1. Respondents have 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 Respondents' 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 28<sup>th</sup> DAY OF July, 2011.

  
**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. Adrian Stella**  
President  
Tri-Stella Development Group, Inc.  
P. O. Box 11918  
Caparra Heights Station  
San Juan, Puerto Rico 00926

**Mr. José E. Bacardí**  
President  
Dynamics Engineers, Inc.  
P. O. Box 1581  
Trujillo Alto, Puerto Rico 00977

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



IN THE MATTER OF:

**Tri-Stella Development Group, Inc.**  
P.O. Box 11918  
Caparra Heights Station  
San Juan, Puerto Rico 00926

and

**Dynamics Engineers, Corp.**  
P.O. Box 1581  
Trujillo Alto, Puerto Rico 00977

**Caminos Verdes II Development**  
**RESPONDENTS**

**DOCKET NUMBER CWA-02-2011-3454**

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-16<sup>th</sup> Floor  
New York, NY 10007-1866

**CERTIFIED MAIL  
RETURN RECEIPT**

**Mr. Adrian Stella**  
President  
Tri-Stella Development Group, Inc.  
P.O. Box 11918  
Caparra Heights Station  
San Juan, Puerto Rico 00926

In the Matter of Quality Engineers and Contractors Inc.,  
and Cidra Excavation, Inc.  
Docket No. CWA-02-2007-3411  
Motion Requesting Leave to File First Amended Complaint

**Mr. José E. Bacardí**  
President  
Dynamics Engineers, Inc.  
P.O. Box 1581  
Trujillo Alto, Puerto Rico 00977

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

July 28, 2011  
DATE

  
Aileen Sanchez ORC-CT