

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2

In the Matter of:

Quality Engineers and  
Contractors Corporation  
Suite 201  
206 Eleanor Roosevelt  
Hato Rey, Puerto Rico 00918

and

Cidra Excavation, Inc.  
P.O. Box 11218  
Caparra Heights Station  
San Juan, P.R. 00922

Serena Housing Development

Respondents.

NPDES PERMIT No. PRR10B942

DOCKET NO. CWA-02-2007-3411

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

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REGION 2  
2007 FEB -5 AM 10:55  
REGIONAL HEARING  
CLERK

**ANSWER TO COMPLAINT, FINDINGS OF VIOLATION, NOTICE OF  
PROPOSED ASSESSMENT OF A CIVIL PENALTY AND REQUEST FOR  
HEARING**

Cidra Excavation, Inc. ("Cidra" or "Respondent"), through the undersigned attorneys, presents its Answer to the Administrative Complaint, Findings of Violation, Notice of Proposed Assessment of an Administrative Penalty, and Notice of Opportunity to Request a Hearing ("Complaint") issued by the Environmental Protection Agency ("EPA") on June 7th, 2007, and respectfully states, alleges and prays as follows:

**I. Statutory Authority**

1. The first sentence of Paragraph 1 of the "Complaint", is a statement of law that requires no admission, denial or explanation and, in the alternative, is denied. "Respondent" is without knowledge or information sufficient to form a belief as to the truth of the allegations of the second sentence of Paragraph 1 of the "Complaint".

2. Paragraph 2 of the "Complaint" is a statement of law and procedure, or of the application of law and procedure to facts, which requires no admission, denial or explanation and, in the alternative, is denied.

**II. Statutory and Regulatory Background**

3. Paragraphs 1 through 11 contain statements of law, of law and procedure or of the application of law and procedure to facts which, in general terms, describe the contents of the statutory and regulatory enactments therein cited, and that require no admission, denial or explanation and, in the alternative, are denied.

**III. Findings of Violation**

**A. Findings of Fact**

4. Cidra admits the allegations of Paragraph 12 of the Complaint, insofar as these refer to Cidra.

5. Paragraph 13 of the Complaint states conclusions of law that require no admission, denial or explanation and, in the alternative, are denied.

6. Paragraph 14 of the Complaint states conclusions of law that require no admission, denial or explanation and, in the alternative, are denied.

7. Respondent admits the allegations of Paragraph 15.

8. Respondent admits the allegations of Paragraph 16.

9. Respondent admits the allegations of Paragraph 17.

10. Respondent admits that activities at a construction project may, at different times, entail those described in Paragraph 18, but absent a specific averment as to time, lacks knowledge or information sufficient to form a belief as to the truth of the averments in Paragraph 18 and, therefore, denies the same.

11. Respondent, upon information and belief, admits the allegations of Paragraph 19.

12. Respondent, upon information and belief, admits the allegations of Paragraph 20.

13. Paragraph 21 of the Complaint states a conclusion of law that requires no admission, denial or explanation and, in the alternative, is denied.

14. Paragraph 22 of the Complaint states a conclusion of law that requires no admission, denial or explanation and, in the alternative, is denied.

15. Paragraph 23 of the Complaint states conclusions of law, or of the application of law to facts, that require no admission, denial or explanation and, in the alternative, are denied.

16. Paragraph 24 of the Complaint states a conclusion of law that requires no admission, denial or explanation and, in the alternative, is denied.

17. Paragraph 25 of the Complaint states a conclusion of law that requires no admission, denial or explanation and, in the alternative, is denied.

18. Paragraph 26 of the Complaint states a conclusion of law that requires no admission, denial or explanation and, in the alternative, is denied.

19. Paragraph 27 of the Complaint describes, in general terms, regulatory requirements appearing in 40 C.F.R. § 122.21, as to time to apply requirements, applicable to facilities described under 40 C.F.R. §122.26(b)(14)(x), but denies its applicability to this case.

20. Paragraph 28 of the Complaint states a conclusion of law that requires no admission, denial or explanation and, in the alternative, is denied.

21. Respondent concurs that Paragraphs 29 and 30 describe, in general terms, the issuance and notification in the Federal Register, effectiveness and duration of the permit therein described, but denies its applicability to this case.

22. Respondent concurs that Paragraph 31 of the Complaint describes, in general terms, requirements contained in Section 2.3 A of the "NPDES General Permit for Storm Water Discharges", but denies its applicability to this case.

23. Respondent admits the allegations of Paragraph 32 with the exception of that averment stating that "a NOI form" was "submitted" by "Respondents" which is denied, and avers, to the contrary, that "a NOI form" was "submitted" by Co-Respondent Quality Engineers & Contractors ("Quality") on or about November 30, 2005.

24. Respondent, upon information and belief, admits the allegations of Paragraph 33, with the exception of the averment that "Respondents obtained coverage", which is denied, and avers, to the contrary, that Quality obtained coverage.

25. Respondent concurs that Paragraph 34 of the Complaint describes, in general terms, a requirement contained in Section

3.1.A of the "NPDES General Permit for Storm Water Discharges", but denies its applicability to this case.

26. Respondent concurs that Paragraph 35 of the Complaint describes the content of Section 3.1.D of "NPDES General Permit for Storm Water Discharges", but denies its applicability to this case and/or to Cidra.

27. Respondent concurs that Paragraph 36 of the Complaint partially describes the content of Section 3.2.A of "NPDES General Permit for Storm Water Discharges", but denies its applicability to this case and/or to Cidra.

28. Respondent concurs that Paragraph 37 of the Complaint describes the content of Section 3.2.B of "NPDES General Permit for Storm Water Discharges", but denies its applicability to this case and/or to Cidra.

29. Respondent concurs that Paragraph 38 of the Complaint describes the content of Section 3.3.A of "NPDES General Permit for Storm Water Discharges", but denies its applicability to this case and/or to Cidra.

30. Respondent concurs that Paragraph 39 of the Complaint partially describes the content of Section 3.3.B of "NPDES General Permit for Storm Water Discharges", but denies its applicability to this case.

31. Respondent concurs that Paragraph 40 of the Complaint partially describes the content of Section 3.3.C of "NPDES General Permit for Storm Water Discharges", but denies its applicability to this case.

32. Respondent does not concur with the characterization of Section 3.4 of the "NPDES General Permit for Storm Water Discharges", appearing in Paragraph 41 of the Complaint but, in any event, denies its applicability to this case and/or to Cidra.

33. Respondent concurs that Paragraph 42 of the Complaint partially describes the content of Section 3.6 of "NPDES General Permit for Storm Water Discharges", but denies its applicability to this case and/or to Cidra.

34. Respondent concurs that Paragraph 43 of the Complaint describes the content of Section 3.3.C of "NPDES General Permit for Storm Water Discharges", but denies its applicability to this case and/or to Cidra.

35. Respondent concurs that Paragraph 44 of the Complaint partially describes the content of Section 3.10.A of "NPDES General Permit for Storm Water Discharges", but denies its applicability to this case and/or to Cidra.

36. Respondent concurs that Paragraph 45 of the Complaint partially describes the content of Section 3.10.D and G of

"NPDES General Permit for Storm Water Discharges", but denies its applicability to this case and/or to Cidra.

37. Respondent concurs that Paragraph 46 of the Complaint partially describes the content of Section 3.10.E of "NPDES General Permit for Storm Water Discharges", but denies its applicability to this case and/or to Cidra.

38. Respondent concurs that Paragraph 47 of the Complaint partially describes the content of Section 3.12.B of "NPDES General Permit for Storm Water Discharges", but denies its applicability to this case and/or to Cidra.

39. Respondent concurs that Paragraph 48 of the Complaint partially describes the content of Section 3.13.A of "NPDES General Permit for Storm Water Discharges", but denies its applicability to this case and/or to Cidra.

40. Respondent concurs that Paragraph 49 of the Complaint describes the content of Section 3.13.B of "NPDES General Permit for Storm Water Discharges", but denies its applicability to this case.

41. Respondent concurs that Paragraph 50 of the Complaint partially describes the content of Section 3.13.D of "NPDES General Permit for Storm Water Discharges", but denies its applicability to this case and/or to Cidra.



42. Respondent concurs that Paragraph 51 of the Complaint partially describes the content of Section 3.13.C of "NPDES General Permit for Storm Water Discharges", but denies its applicability to this case and/or to Cidra.

43. Respondent concurs that Paragraph 52 of the Complaint partially describes the content of Section 3.13.F of "NPDES General Permit for Storm Water Discharges", but denies its applicability to this case and/or to Cidra.

44. Respondent, upon information and belief admits, as stated in Paragraph 53, that inspections were performed by an EPA officer, but denies that an inspection was performed on October 26, 2006 and avers, that an EPA Water Compliance Inspection Report, dated December 20, 2006, establishes the date of this inspection as June 23, 2006. Respondent lacks knowledge or information sufficient to form a belief as to the date of performance of the February inspection and therefore denies that an inspection was performed on or about February 2, 2007. Respondent lacks knowledge or information sufficient to form a belief as to whether or not the person that performed the inspection was, as alleged, an "enforcement officer" and, likewise, as to whether or not the purpose of the inspector was "to determine Respondent's compliance with the Act, its NPDES

permit, and the applicable NPDES regulations" and, therefore, denies the same.

45. In response to the allegations of Paragraph 54 of the Complaint, Respondent admits that a NPDES Water Compliance Inspection Report, dated December 20, 2006 exists, but lacks knowledge or information sufficient to form a belief as to the existence and contents of a report dated February 22, 2007. Respondent furthermore answers that the reports speak for themselves.

46. Paragraph 54 a. of the Complaint, states a conclusion of law, or of the application of law to facts, that requires no admission, denial or explanation and, in the alternative, is denied.

47. Paragraphs 54 b-i of the Complaint state conclusions of law, or of the application of law to facts, that require no admission, denial or explanation and, in the alternative, are denied.

48. In response to the allegations of Paragraph 55 of the Complaint, Respondent denies that EPA issued Administrative Order CWA-02-2007-3011, dated January 11, 2007, to Cidra and, furthermore, answers that the Order speaks for it self.

49. Respondent denies Paragraph 56.

50. In response to Paragraph 57 of the Complaint, Respondent answers that that the Order speaks for it self.

**B. Conclusions of Law**

51. Paragraphs 58 a-d of the Complaint state conclusions of law, or of the application of law to facts, that require no admission, denial or explanation and, in the alternative, are denied.

52. Respondent lacks knowledge or information sufficient to form a belief as to the truth of the averments in Paragraph 59 and, therefore, denies the same.

**IV. Notice of Proposed Order Assessing a Civil Penalty**

In response to this section, Respondent alleges that the proposed final order assessing administrative penalties in the amount of \$80,683.00, has no basis in law or in fact. Moreover, EPA has no authority to assess a penalty under 33 U.S.C §1319(g) because, as admitted in Paragraph 59 of the Complaint, it has failed to consult with the Commonwealth of Puerto Rico before proposing to assess such amount against Respondent. Therefore, EPA's proposed penalty assessment should be dismissed.

In addition, the proposed penalty assessment is excessive, unwarranted, burdensome, and fails to take into account the factors identified in Section 309(g) (3) of the Clean Water Act, 33 U.S.C. §§ 1251 et seq., §1319(g) (3).

Except as specifically admitted, all factual allegations contained in Part IV of the Complaint are denied.

**V. Procedures Governing This Administrative Litigation**

No response to the allegations of Part V is requested and, thus, none is proffered.

**VI. Informal Settlement Conference**

No response to the allegations of Part VI is requested and, thus, none is proffered.

**VII. Resolution of this Proceeding Without Hearing or Conference**

No response to the allegations of Part VII is requested and, thus, none is proffered.

**VIII. Filing of Documents**

No response to the allegations of Part VIII is requested and, thus, none is proffered.

**IX. General Provisions**

No response to the allegations of Part IX is requested and, thus, none is proffered.

**AFFIRMATIVE DEFENSES**

1. The Complaint fails to state a claim upon which relief can be granted against Respondent.

2. As recognized by EPA in the October 26, 2006, Serena

2007, Administrative Compliance Order (Findings paragraph 6), and in the Complaint (paragraph 20), construction activities commenced on August 8, 2006 and not on January 9, 2006 as averred in Claim 1 and Part IV of the Complaint for Penalty Calculation purposes.

3. Respondent is not an owner/operator under the Clean Water Act, 33 U.S.C. 1251, et seq., for activities at the Site.

4. Respondent activities at the Site have not resulted in the discharge of pollutants to waters of the United States.

5. The intermittent creek that receives stormwaters from the Site and La Escarcha Creek are not waters of the United States and, thus, EPA lacks jurisdiction over Respondent activities at the Site.

6. To the extent that Respondents' acts or omissions may, without either so admitting or denying, be in non compliance with Section 401 of the Clean Water Act, 33 U.S.C. § 1342, those failures are de minimis in nature, have created no danger to health and public safety or human welfare, or a danger to the environment.

7. Any and all actions or omissions concerning compliance with "Clean Water Act" Sections 301 and 402, 33 U.S.C. §§1311, 1342, have not resulted in any economic benefit to "Respondent".

8. Respondent has, at all times, and acted in good faith.

9. Respondent reserves the right to amend these pleadings and to add such further affirmative defenses as discovery and development of the case should disclose.

**WHEREFORE,** it is respectfully requested that the "Complaint" in the instant case be dismissed.

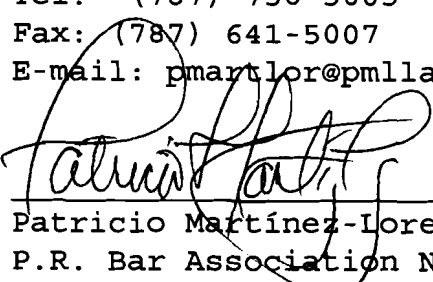
**CERTIFICATE OF SERVICE:** The original and one copy of this Answer to Administrative Complaint has been notified by certified mail, return receipt requested, to Regional Hearing Clerk, U.S. EPA, Region II, 290 Broadway - 16th Floor, New York, New York 10007-1066; and copy was notified by fax and the regular mail to Ms. Silvia Carreño-Coll, Assistant Regional Counsel, U.S. Environmental Protection Agency - Region 2, 1492 Ponce de León Ave., Suite 417, San Juan, Puerto Rico 00907-5822.

In San Juan, Puerto Rico this <sup>08<sup>th</sup></sup> day of January 2008.

Respectfully submitted.

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