



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

JUL 15 2010

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Article Number: 7005 3110 0000 5939 2850

Mr. Jose J. Cardona Crespo, President
Del Mar Concrete, Inc.
P.O. Box 544
Aguada, PR 00602

RE: Notice of Proposed Assessment of a Civil Penalty Class I
Del Mar Concrete, Inc. - Docket No. CWA-02-2010-3308
NPDES Permit Tracking Numbers: PRU304000, PRR05BI20

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG.II
2010 JUL 20 PM 12: 29
REGIONAL HEARING
CLERK

Dear Mr. Cardona:

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 Del Mar Concrete, Inc. (Respondent or you) as a result of our determination that the Respondent has violated Sections 301, 308 and 402 of the Clean Water Act ("Act"), 33 U.S.C. §1311, §1318 and §1342 and/or EPA's National Pollutant Discharge Elimination System ("NPDES") Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity (MSGP or 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 civil penalty of **\$19,000.00** be assessed against the Respondent for these violations.

The Respondent has the right to a hearing to contest the factual allegations in the Complaint. If you admit the allegations, or they are found to be true after you have had an opportunity for a hearing on them, you have the right to contest the penalty proposed in the Complaint. I have enclosed a copy of the Consolidated Rules of Practice ("CROP"), found at 40 Code of Federal Regulations ("CFR") Part 22, which the EPA 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, you must file an Answer within thirty (30) days of your receipt of the enclosed Complaint to the EPA Regional Hearing Clerk at the following address:**

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

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

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If you do not file an Answer within thirty (30) days of receipt of this Complaint, you may be judged to have defaulted (See, §22.17 of the CROP). If a default order is entered, the entire proposed penalty may be assessed without further proceedings.

Whether or not you request a formal hearing, you may informally confer with EPA concerning the alleged violations and the amount of the proposed penalty. EPA encourages all parties against whom it files a Complaint to pursue the possibility of settlement as a result of such informal conference with the Agency. The Agency also encourages the use of Supplemental Environmental Projects, where appropriate, as part of the settlement. Enclosed is a copy of the Final EPA Supplemental Environmental Projects Policy (May 1, 1998) for your consideration. Respondents may represent themselves or be represented by an attorney at any stage of the proceedings, including any informal discussions, whether in person or by telephone. Please note that a request for an informal conference does not substitute for a written Answer or affect what you may choose to say in an Answer, nor does it extend the thirty (30) days by which you must file an Answer requesting a hearing. Any hearing held in this matter will be conducted in accordance with the CROP.

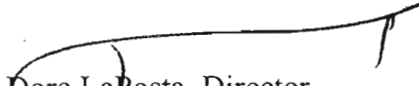
If you have any questions or wish to discuss a settlement of this matter with the EPA by an informal conference, please immediately contact:

Melva J. Hayden, Esq.
Office of Regional Counsel
U.S. Environmental Protection Agency- Region 2
290 Broadway, 16th Floor
New York, NY 10007-1866
Telephone (212) 637-3230
Fax: (212) 637-3202

For your information, I am enclosing an Information Sheet which may be helpful if you are a small business as defined at 13 C.F.R. §121.201, in obtaining compliance assistance or if you wish to comment on this action to the Small Business and Agriculture Regulatory Enforcement Ombudsman and Regional Fairness Board.

Should you have any questions concerning this matter, please feel free to contact Melva J. Hayden, Esq. at (212) 637-3230, or Henry Mazzucca, P.E., Compliance Section Chief, at (212) 637-4229.

Sincerely,


Dore LaPosta, Director
Division of Enforcement and Compliance Assistance

Enclosures

1. Complaint
2. CROP
3. EPA Supplemental Environmental Projects Policy
4. Information for Small Business

cc: Wanda E. Garcia Hernández, Director, Water Quality Area, EQB
Karen Maples, Regional Hearing Clerk (w/original complaint)

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 2

IN THE MATTER OF:

Del Mar Concrete, Inc.
P.O. Box 544
Aguada, PR 00602

NPDES Permit No. PRR05BI20
NPDES Tracking No. PRU304000

Respondent.

Proceeding pursuant to Section 309(g) of
the Clean Water Act, 33 U.S.C. §1319(g)

**PROCEEDING TO ASSESS A CLASS I
CIVIL PENALTY**

DOCKET NO. CWA-02-2010-3308

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II
2010 JUL 20 PM12:29
REGIONAL HEARING
CLERK

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

I. STATUTORY AND REGULATORY AUTHORITIES

1. This Administrative Complaint, Findings of Violation, Notice of Proposed Assessment of 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 Del Mar Concrete, Inc. (“Respondent”), as a result of Complainant’s determination that the Respondent violated Sections 301, 308, and 402 of the Act, 33 U.S.C. §1311, §1318, §1319 and §1342, respectively, for the unlawful discharge of pollutants into navigable waters, and failure to apply for or obtain a National Pollutant Discharge Elimination System (“NPDES”) permit in a timely manner.

3. Section 301(a) of the Act, 33 U.S.C. §1311(a), provides in part that "except 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 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, 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.
6. Section 402(a) requires that permit coverage be obtained for the discharge of pollutants. Section 402(p) of the Act, 33 U.S.C. §1342(p), requires a permit with respect to a discharge of storm water associated with industrial activity.
7. The Administrator of EPA has promulgated regulations at 40 CFR §122.26(a)(1)(ii) and §122.26(b)(14) which require operators to obtain a NPDES permit for stormwater discharges associated with industrial activity and construction activity.
8. The regulations at 40 CFR §122.26(b)(14)(ii) and (iii) regulate stormwater discharges associated with industrial activity which include SIC Code 3273.
9. In accordance with Section 402 of the Act, EPA issued the NPDES Multi Sector General Permit for Stormwater Discharges Associated with Industrial Activity (Permit Number PRR050000 in Puerto Rico) which became effective on September 15, 2000 ("MSGP" or "MSGP 2000") and was published in the Federal Register (65 FR 64746) on October 30, 2000. The applicable MSGP expired on October 30, 2005, but was administratively extended until it was reissued on September 29, 2008.
10. Operators regulated under 40 CFR §122.26(b)(14) may seek MSGP coverage by filing a Notice of Intent ("NOI") in accordance with the terms and conditions of Part 2 of the MSGP. When ownership of a facility is transferred from one operator to another, the new owner/operator must file an NOI at least two days prior to taking operational control of the facility in accordance with Part 11.1.1 of the MSGP. The former owner/operator must file a Notice of Termination within thirty (30) days after the new owner/operator has assumed responsibility for the facility.
11. The Act and its implementing regulations (and applicable NPDES permit in this case, if any), contain the following definitions:
 - a) "Navigable waters" means the waters of the United States and territorial seas, 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 (including intermittent 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).
- f) "Owner or operator" for the purpose of the MSGP means the owner or operator of any facility or activity subject to regulation under the NPDES program subject to regulation as defined in Appendix A of the MSGP.

II. JURISDICTIONAL FINDINGS

- 12. Del Mar Concrete, Inc. ("Respondent") is a person within the meaning of Section 502(5) of the CWA, 33 U.S.C. §1362(5).
- 13. At all relevant times, Respondent was the owner/operator of Del Mar Concrete, Inc., which was previously owned by Aguada Ready Mix. Del Mar Concrete, Inc. purchased and took operation control of Aguada Ready Mix on May 15, 2006.
- 14. The industrial facility is located at Carretera 115 Km. 26.3, Aguada, Puerto Rico (the "Facility" or "Site").
- 15. The facility is a ready mix concrete manufacturer, Standard Industrial Classification (SIC) code 3273.
- 16. Respondent's Site was and is, at all relevant times, a point source as defined in Section 502 (14) of the Act, 33 U.S.C. §1362(14).
- 17. Stormwater from the Site enters the Aguada Municipal Separate Storm Sewer System (MS4).

18. The Aguada MS4 discharges stormwater to the Rio Descalabrado.
19. Rio Descalabrado, a tributary of the Carribean Sea, is a water body of the United States.
20. The site was and is, at all relevant times, a point source.

III. FINDINGS OF VIOLATION

21. Complainant re-alleges Paragraphs 12 – 20 above.
22. On April 25, 2008, a duly authorized representative of EPA Region 2 conducted a NPDES Compliance Evaluation Inspection (“CEI”) at the site (the “Inspection”).
23. At the time of the April 25, 2008 inspection, the EPA inspector found that Respondent:
 - a. failed to submit a Notice of Intent (“NOI”), at the time operational control of the facility was transferred to Respondent (or May 15, 2006), as required by Part 1.3.1 of the MSGP (PRR050000) and Section 308 of the Clean Water Act; and
 - b. discharged stormwater without MSGP coverage since May 15, 2006 in violation of Sections 301 and 402 of the CWA.
24. On July 9, 2008, an Administrative Order (CWA-02-2008-3019) (“AO”) and Request for Information (“RFI”) under Section 308 of the CWA was issued to Respondent.
25. Administrative Order CWA-02-2008-3019 required Respondent to obtain MSGP coverage and to develop and implement a SWPPP.
26. On October 6, 2008, an overdue notice was issued to Respondent for failure to respond to the AO/RFI within thirty (30) days.
27. On October 24, 2008, EPA received a copy of Respondent’s SWPPP as well as documentation that Respondent submitted an NOI for MSGP coverage on or about October 22, 2008 under NPDES Tracking No. PRU304000.
28. On November 21, 2008, Respondent received MSGP coverage under NPDES Permit No. PRR05BI20.
29. Based on the Findings in Paragraphs 12 – 20 above, Respondent violated Sections 301 and 402 of the Act, 33 U.S.C. §1311 and §1342, by failing to adhere to relevant pollutant control requirements of this part of the Act and to apply for and/or obtain NPDES Permit coverage for its facility for the period starting on or before May 15, 2006 and extending until November 21, 2008.

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 Respondent assessing a penalty of \$19,000. 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 proposed penalty. Based on the Findings set forth above, the Respondent has been found to have violated the Act on 1,032 instances. EPA may issue the Final Order Assessing Administrative Penalties thirty (30) days after Respondent’s receipt of this Notice, unless within that time Respondent files an Answer to the Complaint and requests a Hearing on this Notice pursuant to the following section.

V. PROCEDURES GOVERNING THIS ADMINISTRATIVE ACTION

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 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, NY 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 the 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 intend 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 a 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 Answer to the Complaint [i.e. not in accordance with the 30-day period set forth in 40 CFR §22.15(a)], 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 §22.27(c). 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.

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 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 is believed to be 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:

Melva J. Hayden, Esq.
Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency- Region 2
290 Broadway, 16th Floor
New York, NY 10007-1866
Telephone (212) 637-3230
Fax: (212) 637-3202

The parties may engage in settlement discussions regardless of whether Respondent has requested a Hearing. 40 CFR §22.18(b)(1). Respondent's requesting a formal Hearing does not prevent Respondent 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 any right to contest the allegations in the Complaint and waive any 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).

Entering into a settlement through the signing of such Consent Agreement and complying with the terms and conditions set forth in such Consent Agreement and Final Order terminates this administrative litigation and these civil proceedings against Respondent (note that a new enforcement action may be initiated based on continued non-compliance). Entering into a settlement agreement 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. 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 (\$19,000) within 30 days after receipt of the Complaint, provided that Respondent files with the Regional Hearing Clerk, Region 2 (at the address noted above), a copy of the check or other instrument of payment. 40 CFR §22.18(a). A copy of the check or other instrument of payment should be provided to the EPA Attorney identified in Section VI 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:

U.S. Environmental Protection Agency
Fines and Penalties
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 be issued 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.

VIII. 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, NY 10007-1866

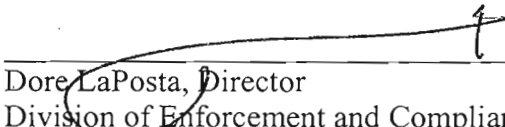
A copy of the Answer, any Hearing Request and all subsequent documents filed in this action shall be sent to:

Melva J. Hayden, Esq.
Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th Floor
New York, NY 10007-1866
Telephone (212) 637-3230
Fax: (212) 637-3202

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 there under, 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 15th DAY OF JULY, 2010.



Dore LaPosta, Director
Division of Enforcement and Compliance Assistance
U. S. Environmental Protection Agency - Region 2
290 Broadway
New York, New York 10007-1866

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION 2
WATER COMPLIANCE BRANCH

MEMORANDUM

DATE: JUL 15 2010

SUBJECT: Justification of a Clean Water Act Administrative Penalty
Case Name - Del Mar Concrete, Inc. (formerly Aguada Ready Mix)
Docket Number - CWA-02-2010-3308
NPDES Permit Tracking Numbers - PRU304000, PRR05BI20

FROM: Amy Lavoie, Environmental Scientist *aml*
Water Compliance Branch *6/22/10*

TO: Case File

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II
2010 JUL 20 PM 12:30
REGIONAL HEARING
CLERK

This memorandum serves to document support for an Administrative Penalty against the subject entity after taking into consideration the statutory factors in Section 309(g) of the Clean Water Act ("CWA" or the "Act").

(A) Facility Description

1. Facility - Del Mar Concrete, Inc.
2. NPDES Permit Number - PRR05BI20
3. Location - Carretera 155 Km. 26.3; Aguada, Puerto Rico 00602
4. Standard Industrial Classification (SIC) Code - SIC code 3273
5. Owner/Operator - Jose J. Cardona Crespo, President
6. Discharge point - Outfalls 1 and 2 to Aguada MS4
7. Receiving water - Rio Descalabrado

We have determined an appropriate proposed penalty for assessment against Del Mar Concrete, Inc. ("Respondent") for violations of the CWA for permit condition violations associate with discharges/industrial activities at Carretera 155 Km. 26.3, Aguada, Puerto Rico 00602. Respondent owns and operates Del Mar Concrete, Inc. (the "Site" or "Facility") which discharges stormwater into the Rio Descalabrado. Respondent began industrial activity on May 15, 2006 without applying for coverage under the National Pollutant Discharge Elimination System ("NPDES") Multi-Sector General Permit for Storm Water Discharges Associated with Industrial Activities ("MSGP"). In addition, Respondent discharged stormwater without MSGP coverage in violation of Sections 301 and 402 of the CWA. The previous owner, Aguada Ready Mix, obtained MSGP coverage for the 1.95-acre Site on April 27, 2001. The proposed penalty was determined using the following application of the statutory factors in §309(g) of the Act.

(B) Nature, Circumstances, Extent and Gravity of the Violation

Nature

EPA conducted a Compliance Evaluation Inspection (CEI) on April 25, 2008 that documented noncompliance with the MSGP. The CEI documented, among other violations, failure to submit a Notice of Intent (NOI) for coverage under the MSGP.

EPA's April 25, 2008 inspection also documented that stormwater discharges from the site flow north onto Carretera 115 then east along the road to a creek tributary to the Rio Descalabrado, which flows into the Carribean Sea.

Circumstances

The Complaint documents two distinct violations of the Act, one of which has continued for eight hundred and ninety-one (891) days, by Respondent's failure to obtain coverage under the MSGP as required by Sections 301 and 402 of the Clean Water Act.

Documentation of this violation comes from EPA's April 25, 2008 CEI, EPA's July 9, 2008 Request for Information and Administrative Order (RFI/AO) and Del Mar Concrete's responses to the AO/RFI dated October 18, 2008.

Extent

The table of violations (Table 1) documents Del Mar Concrete's failure to obtain MSGP coverage between the start date industrial activity, May 15, 2006, and the date of NOI submittal, October 22, 2008. Del Mar Concrete also discharged stormwater on at least 141 days (rainfall greater than 0.5") during the period that it lacked permit coverage. In total, at least 1,032 days of violation were identified.

Table 1: Table of Violations for Del Mar Concrete, Aguada, PR

From	To	Violation Description	Permit Citation	Days of Violations
5/15/2006	10/22/2008	Del Mar Concrete (new owner/operator) began operations and failed to obtain coverage under the MSGP	CWA Section 308	891
5/15/2006	10/22/2008	Stormwater discharges without a permit (rainfall > 0.5")	CWA Section 301 and 402	141
			Total Days of Violation	1,032

Gravity (Seriousness of the Violation)

Failure to comply with the CWA and its NPDES regulations hinders the implementation of the NPDES program and negates the benefits of this program, such as protecting the water quality of the Rio Descalabrado. Respondent's violations were serious and had an indirect effect on human health and the environment. EPA's requirement that construction sites install and maintain their stormwater erosion controls to prevent the discharge of pollutants

which impair or degrade the water quality of receiving waters is crucial to protection of water quality and aquatic life.

Stormwater can wash nutrients, metals, oils, and other substances associated with industrial activities into surface waters. The concentration of contaminants in this runoff depends on the extent of the source, the type of contaminant, the intensity and duration of a storm, and the timing between storms. Highest contaminant concentrations are generally found in the first flush of runoff that is generated at the beginning of a storm. This could increase the loadings of pollutants at the receiving water. High suspended solids in streams can disturb nesting sites for fish and aquatic invertebrates, increase turbidity and limit the growth of aquatic plants.

Stormwater runoff becomes polluted by picking up soil particles and other pollutants as it flows over surfaces where industrial activities are occurring. Requiring certain industries to apply for NPDES stormwater permits provides a way for States and EPA Regions to monitor and manage these discharges, and reduce or ultimately eliminate the amount of pollutants present in them. Thus, Respondent's failure to obtain a Permit caused potential harm to the Aguada Municipal Separate Storm Sewer System and, subsequently, to the Rio Descalabrado and Caribbean Sea.

Proposed Gravity Component

Based upon the above findings, threats to successful implementation of EPA's Industrial Stormwater program and threats to the receiving water, in our professional experience, a penalty is necessary to deter Respondent and others from violating the Act in the future. We have applied the statutory factors set forth in Section 309(g)(3) of the Act, 33 U.S.C. §1319(g)(3) and have determined that a gravity penalty component of \$10,800 is appropriate, taking into consideration the lengths of the violations, the threats to the receiving waters and human health, the importance of compliance and seriousness of the violations.

(C) Prior History of Such Violations

The violations for which Del Mar Concrete is being penalized began on the date that the facility was acquired from its previous owner, Aguada Ready Mix; therefore, there are no previous violations at Del Mar Concrete under the current owner.

(D) Degree of Culpability

Del Mar Concrete should have known that the Owner or Operator of a ready-mix concrete facility is required to comply with the requirements of the CGP.

(E) Economic Benefit

An economic benefit of non-compliance of \$2,241 was incurred as a result of Respondent's failure to submit an NOI for MSGP coverage (Table 2).

Table 2: Summary of Economic Benefit Calculations

Penalty Payment Date June 30, 2010					
Description of Project	Capital	One Time	Annual	Noncompliance Date	Compliance Date
	SWPPP, Site Map & NOI	\$0	\$1,000	\$0	5/15/2006
BMP Implementation	\$2,000	\$0	\$0	5/15/2006	10/22/2008
Site Inspections, Maintenance & Monitoring	\$0	\$0	\$1,000	5/15/2006	10/22/2008
BEN Result					\$2,241

Information that was used to calculate this penalty was EPA's April 25, 2008, Compliance Evaluation Inspection, Del Mar Concrete's response letter October 18, 2008 in response to AO/RFI CWA-02-2008-3019. Dates of non-compliance were based upon EPA's April 25, 2008 CEI, and costs were based on best professional judgment. The compliance date is October 22, 2008, when a complete site specific SWPPP and NOI acknowledgement form was received by EPA. The Penalty Payment date used in the BEN Model is assumed to be June 30, 2010. Economic Benefit calculations were run with BEN 4.5.1, and the state entered was Puerto Rico.

(F) Litigation Considerations

A ten percent reduction, totaling \$1,080, will be applied to the gravity component for quick settlement.

(G) Ability to Pay

Presently, EPA possesses no information related to Respondent inability to pay.

(H) Recommendations

In conclusion, the application of the statutory factors in §309(g) fully supports the proposed penalty of \$19,000.

bcc: Karen Maples, Regional Hearing Clerk, ORC
Doughlas McKenna, Branch Chief, DECA-WCB
Henry Mazzucca, DECA-WCB
Amy Lavoie, DECA-WCB

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**CLEAN WATER ACT
ADMINISTRATIVE PENALTY SETTLEMENT WORK SHEET**

FOR USE IN ALL ADMINISTRATIVE ENFORCEMENT ACTIONS
INVOLVING BOTH MUNICIPAL AND INDUSTRIAL
DISCHARGERS SUBJECT TO SECTION 402 OF THE
CLEAN WATER ACT

CASE NAME: Del Mar Concrete, Inc. (formerly Aguada Ready Mix)
Docket No. CWA-02-2010-3308

PREPARED BY: Amy Lavoie, DECA-WCB, (212) 637-4245

BACKGROUND

The Respondent, Del Mar Concrete, Inc., operates a ready mix concrete facility encompassing 1.95 acres in Aguada, Puerto Rico.

The violations that serve as the basis for this action were Findings from EPA's Compliance Evaluation Inspection ("CEI") conducted on April 25, 2008. On July 9, 2008, EPA issued an Administrative Compliance Order ("AO") and Request for Information ("RFI"), CWA-02-2008-3019, which required Del Mar Concrete to submit information and obtain permit coverage. Respondent replied to the AO by correspondence dated October 18, 2008. Respondent developed and implemented a Storm Water Pollution Prevention Plan ("SWPPP"), and ultimately obtained MSGP coverage by submitting a Notice of Intent ("NOI") on October 22, 2008.

Industrial activity (ready mix concrete operations) at the site began under a previous owner, Aguada Ready Mix. The former owner submitted an NOI for coverage under the MSGP on April 27, 2001. Del Mar Concrete took ownership of the facility on May 15, 2006, but did not apply for coverage under the MSGP at that time.

The Site was therefore in violation of Sections 301, 308 and 402 of the Act, 33 U.S.C. §1311, §1318 and §1342, respectively beginning on May 15, 2006. The violations are failure to apply for and obtain a Permit and discharging stormwater without a Permit.

CALCULATIONS AND SOURCES OF DATA

The violations listed in the Complaint form the basis for the calculation of the penalty. The bottom-line cash settlement penalty was calculated using the Settlement Penalty Calculation Worksheet Supplemental Guidance to the 1995 Interim Clean Water Act Settlement Penalty Policy for Violations of the Industrial Stormwater Requirements Pilot Draft dated September 17, 2008. This penalty might be adjusted if: 1) a SEP is offered, 2) litigation considerations so warrant or 3) Respondent presents additional information to justify adjusting the penalty amount.

Information that was used to calculate this penalty were the inspection reports and correspondence listed in the background section.

TO: CALCULATE THE MAXIMUM PENALTY FOR WHICH THE DEFENDANT WOULD BE LIABLE UNDER THE ACT. THIS FIGURE IS THE LARGEST PENALTY THAT COULD BE ASSESSED (THE MAXIMUM PENALTY INCLUDES \$11,000 PER VIOLATION PER DAY FOR ADMINISTRATIVE CASES, OR \$32,500 PER

VIOLATION PER DAY FOR JUDICIAL CASES UP TO JANUARY 12, 2009).

STATUTORY MAXIMUM

Del Mar Concrete's violations were related to its failure to obtain permit coverage from May 15, 2006 to October 22, 2008. Violations were identified in the CEI and correspondence from Del Mar Concrete. The facility violated Sections 308, 301 and 402 of the CWA. The statutory maximum for administrative cases is \$11,000 Per Day per Violation (however, for a Class I APO the statutory maximum is \$32,500). (See Attached Table for Statutory Maximum Calculations). This Complaint covers 1,032 days of violations from May 15, 2006 to October 22, 2008 (when permit coverage was received).

ENTER ON SUMMARY WORK SHEET LINE (1), \$11,352,000; however the Statutory Maximum for a Class I APO for violations prior to January 12, 2009 is \$32,500.

ECONOMIC BENEFIT OF NON COMPLIANCE

Economic Benefit Calculations are included in this penalty calculation. BEN costs are based on Best Professional Judgment. Information that was used to calculate this penalty was EPA's April 25, 2008 Compliance Evaluation Inspection and Del Mar Concrete's letter of October 18, 2008 in response to AO/RFI CWA-02-2008-3019. Dates of non-compliance were based upon EPA's April 25, 2008 CEI, and costs were based on best professional judgment. The compliance date is October 22, 2008, when a complete site-specific SWPPP and NOI acknowledgement form were received by EPA. The Penalty Payment date used in the BEN Model is assumed to be June 30, 2010. Economic Benefit calculations were run with BEN 4.5.1, and the state entered was Puerto Rico.

Table 3: Summary of Economic Benefit Calculations

Penalty Payment Date June 30, 2010					
Description of Project				Noncompliance Date	Compliance Date
	Capital	One Time	Annual		
SWPPP, Site Map & NOI	\$0	\$1,000	\$0	5/15/2006	10/22/2008
BMP Implementation	\$2,000	\$0	\$0	5/15/2006	10/22/2008
Site Inspections, Maintenance & Monitoring	\$0	\$0	\$1,000	5/15/2006	10/22/2008
BEN Result					\$2,241

GRAVITY CALCULATIONS

Del Mar Concrete is a ready mix concrete operation which falls under Sector E of the MSGP and is therefore considered a high priority facility under the Supplemental Guidance to the 1995 Interim Clean Water Act Settlement Policy for Violations of the Industrial Stormwater Requirements Pilot Draft dated September 17, 2008 (Pilot Industrial Stormwater Settlement Policy of 2008).

B FACTOR – ENVIRONMENTAL HARM

Process wastewater and stormwater can wash nutrients, metals, oils, high pH wastewater and sediment into the receiving stream. This could increase the loadings of pollutants to the receiving water. High suspended solids in streams can disturb nesting sites for fish and aquatic invertebrates, increase turbidity and limit the growth of aquatic plants.

Water Body Classification

The receiving waters were designated in EPA’s Watershed Assessment, Tracking and Environmental Results (“WATERS”) database as Impaired. The water quality is listed as Good for Aquatic Life, but Impaired for Primary and Secondary Contact Recreation as well as for Public Water Supply. Therefore, the waterbody is considered a medium priority.

Impact on Aquatic Environment

Based upon potential impact on the aquatic environment associated with the stormwater discharges and a medium water body classification, a B Factor range of 0.3 to 19 is authorized by the Industrial Stormwater Policy. We assessed a B Factor of 0.3 for Respondent’s unpermitted storm water discharges each month that received 0.5” or more of rain in a single day.

B FACTOR MATRICES: SELECT ONE OF THE FOLLOWING THREE (3) MATRICES TO DETERMINE A “B” FACTOR

<i>WATER BODY CLASSIFICATION</i>	<i>High</i>	<i>Medium</i>	<i>Low</i>
RAINFALL AMOUNT AND INTENSITY			
Actual Impact on Human Health	6 – 50	5 – 40	4 - 30
Actual Impact on the Aquatic Environment	6 – 50	5 – 40	4 – 30
Potential Impacts resulting from one or more single rain events of 0.5” or more	0.5 – 21	0.3 – 19	0.1– 17
Potential Impacts based on rainfall but no single event of 0.5” or more	0 – 19	0 – 17	0 - 15

D FACTOR – NON-EFFLUENT VIOLATIONS

We assessed a D Factor of 0.1 for this facility for the period from May 15, 2006, when Del Mar Concrete began operating at the site, to October 22, 2008, when Del Mar Concrete obtained MSGP coverage. See the two Matrices below:

D Factor Matrix for Industrial Stormwater Penalty Policy

TYPE AND CATEGORY OF VIOLATION	RANGE OF VALUES
1. PERMIT VIOLATIONS:	
a. NO SWPPP or SWPPP NOT IN COMPLIANCE WITH PERMIT REQUIREMENTS	
(i) No SWPPP developed	0.1 – 15
(ii) No SWPPP on site	0.1 – 3
(iii) Failure to include, or adequately describe, required SWPPP elements (including failure to update SWPPP as required)	0.1 – 12
b. FAILURE TO IMPLEMENT ADEQUATE CONTROL MEASURES	
(i) Missing control measures	0.1 – 15
(ii) Control Measures not Properly Designed, Implemented, Operated or Maintained	0.1 – 10
(iii) Other Control Measure Deficiencies,	0.1 – 8
c. FAILURE TO CONDUCT OR REPORT COMPLIANCE, VISUAL, OR BENCHMARK MONITORING	
(i) Failure to conduct, or properly conduct, compliance (effluent limit) monitoring, visual monitoring, benchmark monitoring, or other required analytical monitoring	0.1 – 10
(ii) Failure to maintain adequate sampling records	0.1 – 3
(iii) Failure to submit timely DMRs, or other required compliance reports (e.g., reports of unauthorized discharges)	0.1 – 5
(iv) Failure to certify inspection reports, DMRs, annual report, or other submittals	0.1 – 2
d. FAILURE TO INSPECT OR DOCUMENT INSPECTIONS	
(i) Routine inspections	0.1 – 10
(ii) Comprehensive Site Evaluation	0.1 – 10
e. FAILURE TO TAKE REQUIRED CORRECTIVE ACTION	
Failure to reassess control measures following benchmark exceedance	0.1 – 8
2. NO PERMIT:	0.1 – 70

Below is the Gravity calculation table for Del Mar Concrete.

Del Mar Concrete Gravity Calculations

Date	D Factor (Failure to Obtain a Permit)	B Factor (High Priority Industry and Medium Water Body Classification, Potential For Harm)	Total
May-06	0.1	0.3	0.4
June-06	0.1	0.3	0.4
July-06	0.1	0.3	0.4
August-06	0.1	0.3	0.4
September-06	0.1	0.3	0.4
October-06	0.1	0.3	0.4
November-06	0.1	0.3	0.4
December-06	0.1	0.3	0.4
January-07	0.1	0	0.1
February-07	0.1	0.3	0.4
March-07	0.1	0.3	0.4
April-07	0.1	0.3	0.4
May-07	0.1	0.3	0.4
June-07	0.1	0.3	0.4
July-07	0.1	0.3	0.4
August-07	0.1	0.3	0.4
September-07	0.1	0.3	0.4
October-07	0.1	0.3	0.4
November-07	0.1	0.3	0.4
December-07	0.1	0.3	0.4
January-08	0.1	0	0.1
February-08	0.1	0	0.1
March-08	0.1	0	0.1
April-08	0.1	0.3	0.4
May-08	0.1	0.3	0.4
June-08	0.1	0.3	0.4
July-08	0.1	0.3	0.4
August-08	0.1	0.3	0.4
September-08	0.1	0.3	0.4
October-08	0.1	0.3	0.4
TOTAL	3	7.8	\$10,800

FLOW REDUCTION FACTOR

- Not applicable for stormwater violations

HISTORY OF RECALCITRANCE

The "recalcitrance" factor is used to increase the penalty based on a violator's bad faith, or unjustified delay in preventing, mitigating or remedying the violation. Recalcitrance is also present if a violator failed to comply with an EPA issued administrative compliance order or a §308 information request, or with a prior state or local enforcement order. This factor is applied by multiplying the total gravity component by a percentage between 0 and 150. In administrative penalty actions, violations of administrative compliance orders are not included in the recalcitrance calculation (because EPA lacks the authority to seek penalties in the administrative forum for violations of administrative compliance orders).

A minimum recalcitrance factor of 10 percent is generally appropriate for each instance in which a violator fails to substantially comply in a timely manner with an administrative compliance order ("AO"), a §308 information request, or a state enforcement order. Thus, if a particular discharger violated 3 AOs, a minimum recalcitrance factor of 30 percent is generally appropriate. If a violator completely fails to comply with an AO or §308 request, a recalcitrance factor of 20 percent may be appropriate for that failure, while if there were only minor violations of the AO or request, a recalcitrance factor of 5 percent may be appropriate for that violation.

- Del Mar Concrete has been responsive and is therefore not recalcitrant.

5c. QUICK SETTLEMENT REDUCTION (0 or 10%)

In order to provide an extra incentive for violators to negotiate quickly and reasonably, and in recognition of a violator's cooperativeness, EPA may reduce the gravity amount by 10 percent if EPA expects the violator to settle quickly. For purposes of this reduction factor, in Administrative enforcement actions, a quick settlement is when the violator signs an administrative consent order resolving the violations within four months of the date the complaint was issued or within four months of when the government first sent the violator a written offer to settle the case, whichever date is earlier. In Class II administrative enforcement actions and judicial cases, the controlling time period is 6 and 12 months, respectively. If the violator is not able to sign the consent order within this time period, this adjustment does not apply.

- A 10% quick settlement reduction is recommended if the case settles within four (4) months of the date the Complaint is issued.

6. PARAGRAPH LEFT BLANK

7. LITIGATION CONSIDERATIONS REDUCTION

The Government should evaluate every penalty with a view toward the potential for protracted litigation and attempt to ascertain the maximum civil penalty the court is likely to award if the case proceeds to trial or hearing. Many enforcement cases may have mitigating factors, weaknesses or equitable problems that could be expected to persuade a court to assess a penalty less than the statutory maximum amount. The simple existence of a weakness in a case, however, should not automatically result in a litigation consideration reduction of the preliminary bottom-line settlement penalty amount

(economic benefit + gravity + gravity adjustment factors). The government may reduce the amount of the civil penalty it will accept at settlement to reflect weaknesses in its case where the facts demonstrate a substantial likelihood that the government will not achieve a higher penalty at trial.

- EPA is not aware of any litigation considerations at this time.

8. ABILITY TO PAY REDUCTION (to decrease preliminary penalty amount)

The Agency typically does not request settlement penalties, which combined with the cost of the necessary injunctive relief, that are clearly beyond the financial capability of the violator. This means EPA should not seek a penalty that would seriously jeopardize the violator's ability to continue operations and achieve compliance; unless the violator's behavior has been exceptionally culpable, recalcitrant, threatening to human health or the environment, or if the violator refuses to comply.

The adjustment for ability-to-pay may be used to reduce the settlement penalty to the highest amount that the violator can reasonably pay and still comply with the CWA. The violator must submit the necessary information demonstrating actual inability to pay as opposed to unwillingness to pay. Further, the claim of inability to pay should not be confused with a violator's aversion to make certain adjustments in its operations in order to pay the penalty.

If the violator is unwilling to cooperate in demonstrating its inability to pay the penalty, this adjustment should not be considered in the penalty calculation, because, without the cooperation of the violator, the Agency will generally not have adequate information to determine accurately the financial position of the violator. In some cases, the Agency may need to consult a financial expert to properly evaluate a violator's claim of inability to pay.

- EPA is not aware of any ability to pay issues at this time.

IF APPLICABLE, ENTER THIS AMOUNT ON LINE (8) OF THE SUMMARY WORK SHEET.

9. SUPPLEMENTAL ENVIRONMENTAL PROJECTS

Supplemental Environmental Projects (SEPs) are defined by EPA as environmentally beneficial projects which a violator undertakes voluntarily, but is not otherwise legally required to perform, in exchange for favorable penalty consideration in settlement of an enforcement action. In order for a violator to receive a settlement penalty reduction in exchange for performing such a project, the project must conform with the EPA's SEP Policy, or be approved in advance by the Regional Administrator. A SEP may be allowed in a municipal case, even if the cash penalty is less than the economic benefit, provided the cash penalty is no less than 60 percent of the amount provided in section IV.D.7 below. Use of SEPs in a particular case is entirely within the discretion of EPA, and the Department of Justice in Judicial cases.

- EPA would be receptive to a SEP, such as land conservation, green buildings, green roofs, rain gardens, etc.

10. NATIONAL MUNICIPAL LITIGATION CONSIDERATION.

- Not applicable, Del Mar Concrete is a private corporation.

Del Mar Concrete Penalty Summary Worksheet

STEP		AMOUNT
1	Calculate Statutory Maximum Penalty (period of violations from 5/15/06 to 10/22/08) 1,032 violations @ \$11,000 per day per violation, however Class I Max = \$32,500	\$11,352,000
2	Economic Benefit (attach BEN printouts, with explanations for calculations)	\$2,241.00
3	Total of Monthly Gravity Amounts	\$10,800.00
4	Economic Benefit & Gravity (Line 2 + Line 3)	\$13,041.00
5	Gravity Adjustments	
	a. Flow Reduction Factor = (0% to 50%) X line 3 0%	\$0
	b. Recalcitrance Factor = (0% to 150%) X line 3 0%	\$0
	c. Quick Settlement Reduction = (0% or 10%) X line 3 10%	\$1,080
	d. Total Gravity Adjustments (negative amount if net gravity reduction) [lines 5.b-5.c-5.a]	-\$1,080
6	Preliminary Penalty Amount [Line 4-Line 5.d]	\$11,961.00
7	Litigation Considerations Reduction (if any)	\$0
8	Ability to pay reduction (if any)	\$0
9	Reduction for Supplemental Environmental Projects (if any)	\$0
10	Bottom-Line Cash Settlement Penalty [Line 6 less lines 7,8, and 9. Or, if applicable, amount calculated by national municipal litigation consideration in Section IV.D.6, less no more than 40% of that amount for appropriate SEPs)	\$11,961.00

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 2

IN THE MATTER OF:

Del Mar Concrete, Inc.
P.O. Box 544
Aguada, PR 00602

NPDES Permit No. PRR05BI20
NPDES Tracking No. PRU304000

Respondent.

Proceeding pursuant to Section 309(g) of
the Clean Water Act, 33 U.S.C. §1319(g)

**PROCEEDING TO ASSESS A CLASS I
CIVIL PENALTY
DOCKET NO. CWA-02-2010-3308**

CERTIFICATE OF SERVICE

I certify that on JUL 19 2010, 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:

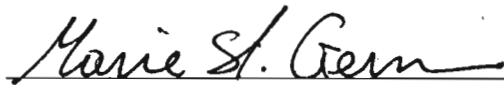
Original and One Copy
By Hand:

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:

Mr. Jose J. Cardona Crespo, President
Del Mar Concrete, Inc.
P.O. Box 544
Aguada, PR 00602

Dated: 7/19/10


Secretary
New York, New York

