



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2

290 BROADWAY

NEW YORK, NY 10007-1868

DEC 15 2008

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

**Article Number: 7005 3110 0000 5928 9181**

Mr. Zoilo Méndez, President  
Plaza Madrid Development Corp.  
Condominio Parque San Ramon  
3415 Ave. Alejandrino. Apt. 906  
Guaynabo, Puerto Rico 00959-4957

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REGION 2

RE: Notice of Proposed Assessment of a Civil Penalty Class I  
Plaza Madrid, Juncos, Puerto Rico  
Docket No. CWA-02-2009-3302  
Plaza Madrid Development Corp.  
NPDES Permit Number PRR10BB24

Dear Mr. Méndez:

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 Plaza Madrid Development Corp. (Respondent) as a result of our determination that the Respondent violated Sections 301, 308 and 402 of the Clean Water Act (Act), 33 U.S.C. §1311, §1318 and §1342 and EPA's National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges From Construction Activities (CGP or Construction General Permit). This Complaint is filed pursuant to the authority contained in §309(g) of the Act, 33 U.S.C. §1319(g). The Complaint proposes that a penalty of \$32,500.00 be assessed against the Respondent for the violations.

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

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

If the Respondent does not file an Answer within thirty (30) days of receipt of this Complaint, the Respondent 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 the Respondent requests a formal hearing, the Respondent 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 settlement conference with the Agency. The EPA also encourages the use of Supplemental Environmental Projects (SEPs), 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.

A Respondent 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. An attorney from the Agency's Office of Regional Counsel will normally be present at any informal conference. Please note that a request for an informal conference does not substitute for a written Answer or affect what a Respondent may choose to say in an Answer, nor does it extend the thirty (30) days by which a Respondent 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:

**Henry Mazzucca, P.E., Chief  
Compliance Section  
U.S. Environmental Protection Agency, Region 2  
290 Broadway, 20th Floor  
New York, NY 10007-1866  
(212) 637-4229**

For your information, I am enclosing an Information Sheet which may be helpful if you are a small business as defined at 13 CFR §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 Henry Mazzucca at (212) 637-4229.

Sincerely,

A handwritten signature in black ink, appearing to read 'D. LaPosta', with a long horizontal flourish extending to the right.

*la* Dore LaPosta, Director  
Division of Enforcement and Compliance Assistance

Enclosures

1. Complaint
2. Consolidated Rules of Practice
3. Supplemental Environmental Projects
4. Information for Small Business

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



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

DEC 15 2008

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

**Article Number: 7005 3110 0000 5928 9174**

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

RE: Notice of Proposed Assessment of a Civil Penalty Class I  
Plaza Madrid, Juncos, Puerto Rico  
Docket No. CWA-02-2009-3302  
Plaza Madrid Development Corp.  
NPDES Permit Number PRR10BB24

Dear Mrs. Garcia:

Enclosed is a copy of the "Administrative Complaint, Findings of Violation, Notice of Proposed Assessment of a Civil Penalty, and Notice of Opportunity to Request a Hearing Thereon", hereinafter referred to as the "Complaint", which the United States Environmental Protection Agency (EPA) has issued to Plaza Madrid Development Corp., pursuant to §309(g) of the Clean Water Act (Act), 33 U.S.C. §1319(g). EPA has issued the Complaint to begin the process to assess administratively a Class I civil penalty of **\$32,500.00** against Respondent for violations of the Act. Because the violations have occurred in the Commonwealth of Puerto Rico, EPA is offering an opportunity for you to confer with us regarding the proposed assessment.

You may confer with me at (212) 637-4000. A copy of the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits" (CROP)(40 C.F.R. Part 22), is enclosed for your reference.

Sincerely,

A handwritten signature in black ink, appearing to read "D. LaPosta".

Doré LaPosta, Director  
Division of Enforcement and Compliance Assistance

Enclosures

**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 2**

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REGION 2

**IN THE MATTER OF:**

Plaza Madrid Development Corp.  
Condominio Parque San Ramón  
3415 Ave. Alejandrino, Apt. 906  
Guaynabo, Puerto Rico 00959-4957

Respondent

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

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

**DOCKET NO.  
CWA-02-2009-3302**

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

**I. Statutory Authority and Jurisdiction**

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" or "USEPA") 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 Plaza Madrid Development Corp. ("Respondent"), as a result of Complainant's determination that the Respondent has failed to comply with conditions of EPA's National Pollutant Discharge Elimination System- Construction General Permit and with a request for information made pursuant to Section 308 of the CWA, and is, therefore in violation of Sections 301, 308 and 402 of the Act, 33 U.S.C. §1311, §1318 and §1342.

3. Section 301(a) of the Act, 33 U.S.C. §1311(a), provides in part that it is unlawful for any person to discharge any pollutant except as in compliance with, *inter alia*, Section 402 of the CWA, 33 U.S.C. §1342.
4. Section 308 of the Act, 33 U.S.C. §1318, provides, in relevant part, that the Administrator of EPA may require the owner or operator of any point source to, among other things; maintain such records; make such reports; install, use and monitor such equipment; sample such effluents; and provide such other information as may reasonably be required in order to carry out Section 402 of the Act, 33 U.S.C. §1342.
5. Section 402 of the Act, 33 U.S.C. §1342, provides that the Administrator may, after opportunity for public hearing, issue a permit for the discharge of any pollutant, or combination of pollutants, subject to certain requirements of the Act and such conditions as the Administrator determines are necessary.
6. "National Pollutant Discharge Elimination System" ("NPDES") under Section 402 of the Act, 33 U.S.C. §1342, means the national program for, among other things, issuing and enforcing permits. See 40 CFR §122.2.
7. The Administrator of EPA has promulgated regulations, 40 CFR §122.26(a)(1)(ii) and §122.26(b)(14), which require operators to obtain a NPDES permit for storm water discharges associated with industrial activity.
8. The regulations at 40 CFR §122.26(b)(14)(x) regulate industrial storm water discharges associated with construction activities including clearing, grading and excavation that result in land disturbance of five (5) or more acres.
9. EPA issued the "NPDES General Permit for Discharges from Large and Small Construction Activities" ("CGP" or "Permit") which became effective on July 1, 2003, and expired on July 1, 2008. The general permit number for this CGP in Puerto Rico is PRR100000. The CGP-2003 remained in effect until the issuance of the CGP-2008 on June 31, 2008.
10. Part 3.1 of the CGP requires that a Storm Water Pollution Prevention Plan ("SWPPP") must be prepared prior to the submission of the Notice of Intent ("NOI"). Part 6 of the CGP requires that a copy of the SWPPP be retained for 3 years from the date that permit coverage expires or is terminated.
11. Part 3.12 of the CGP requires that the SWPPP be retained at the construction site.
12. The Act and its implementing regulations and applicable NPDES permit contain the following definitions:
  - a) "Navigable waters" means the waters of the United States pursuant to Section 502(7) of the Act, 33 U.S.C. §1362(7). "Waters of the United States" means, but are not limited to, waters which are currently used or may be susceptible to

use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide and including wetlands, rivers, streams (40 CFR §122.2).

- b) "Pollutant" means, but is not limited to, solid waste, dredged spoil, rock, sand, cellar dirt, sewage, sewage sludge, and industrial, municipal and agricultural waste discharged into water, pursuant to Section 502(6) of the Act, 33 U.S.C. §1362(6).
- c) "Point source" means any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged, pursuant to Section 502(14) of the Act, 33 U.S.C. §1362(14).
- d) "Discharge of a pollutant" means any addition of any pollutant to navigable waters from any point source, pursuant to Section 502(12) of the Act, 33 U.S.C. §1362(12).
- e) "Person" means, but is not limited to, an individual, corporation, partnership or association, pursuant to Section 502(5) of the Act, 33 U.S.C. §1362(5).
- f) "Commencement of construction activities" means the initial disturbance of soils associated with clearing, grading, excavation activities or other construction activities. See Appendix A of the CGP.
- g) "Operator," for the purpose of the NPDES storm water general permit for construction activities and in the context of storm water associated with construction activity, is defined at Appendix A of the CGP to mean any party associated with a construction project that meets either of the following two (2) criteria:
  - i. The party has operational control over construction plans and specifications including the ability to make modifications to those plans and specifications; or
  - ii. The party has day-to-day operational control of those activities at a project which are necessary to ensure compliance with a storm water pollution prevention plan for the site or other permit conditions. See Appendix A of the CGP.

## **II. Findings of Violation**

13. Respondent Plaza Madrid Development Corp. is a person within the meaning of Section 502(5) of the CWA, 33 U.S.C. §1362(5).

14. Storm water runoff from the site at or near Int. PR9919 and PR-189, Mamey Ward in Juncos, Puerto Rico, discharges to an unnamed tributary of the Rio Gurabo, which is a waterbody of the United States.
15. Respondent, Plaza Madrid Development Corp. is the operator (as defined above at 12.(g)ii.) of the site, which is a commercial development construction project at Int. PR9919 and PR-189, Mamey Ward in Juncos, Puerto Rico ("Plaza Madrid Development Construction Project" or "the site") which disturbed approximately 7 acres of land.
16. At all relevant times, the construction activity at Respondent's site included earth clearing, grading and excavation which resulted in the disturbance of no less than five acres of total land area.
17. The Plaza Madrid Development Construction Project was, at all relevant times, a point source as defined in Section 502(14) of the Act, 33 U.S.C. §1362(14).
18. On December 2, 2005, a representative of the EPA Region 2 conducted a Compliance Evaluation Inspection ("CEI") at the site. Based on the CEI, it was determined that the construction activities at the Respondent's site started on November 1, 2005. At the time of the CEI, the site did not have coverage under the required EPA CGP.

**Claim I – Failure to Obtain a Construction General Permit (CGP)**

19. EPA re-alleges and incorporates herein by reference the Findings and Violations contained in the above paragraphs, 13-18.
20. Respondent began construction activity on November 1, 2005. Respondent failed to apply for and obtain a Construction General Permit by November 1, 2005. Coverage under the CGP was obtained by Respondent's contractor on June 28, 2006.
21. Respondent's failure to obtain the CGP as required for the period of November 1, 2005 through June 27, 2006 constitutes 238 violations of 40 C.F.R §122.26 and Section 402 of the Clean Water Act.
22. Therefore based on the above Findings of Violation, EPA finds that Respondent, Plaza Madrid Development Corp. is in violation of Sections 301, 308 and Section 402 of the Act, 33 U.S.C. §1311, §1318 and §1342, respectively, for failure to apply for and obtain EPA's Construction General Permit by November 1, 2005, for the construction of the Plaza Madrid Development Project, at Int. PR9919 and PR-189, Mamey Ward in Juncos, Puerto Rico, as required pursuant to Sections 301, 308 and 402 of the CWA.



## **Claim II – Failure to Submit Information Requested.**

23. EPA re-alleges and incorporates herein by reference the Findings and Violations contained in the above paragraphs, 13-18.
24. A Request for Information (“RFI”) (CWA-IR-08-015) was issued to Respondent Plaza Madrid Development Corp. under Section 308 of the CWA, requiring the facility to develop and implement a Storm Water Pollution Prevention Plan (“SWPPP”), and to submit additional information. Respondent received the RFI on April 8, 2008, and returned a signed copy by April 15, 2008.
25. However, Respondent did not comply with the Request for Information by failing to:
  - a) Develop, implement, submit and certify implementation of a SWPPP required by paragraph 4 of the RFI;
  - b) Provide all of the information required by paragraphs 5, 6 and 7 of the RFI, as follows:
    1. Submit a list of sites greater or equal to 1 acre owned or operated by Plaza Madrid Development Corp. that are under construction, have not undergone final stabilization, or are under contract for construction in Puerto Rico. In addition, for each construction site identified, submit a copy of the individual permit application and/or NOI form, and a copy of the SWPPP developed pursuant to the requirements of the CGP (Paragraph 5 of the RFI).
    2. Regarding the Plaza Madrid Development site, submit a report indicating the current status of construction activities at the site, and whether final stabilization has been accomplished; amount of time and associated cost which were required to: prepare the site map; provide temporary and final stabilization to the Plaza Madrid Development site; develops and fully implements the SWPPP; conduct inspections and prepare corresponding reports; and prepare and submit the NOI forms. (Paragraph 6 of the RFI)
    3. Any documents to be submitted by Plaza Madrid Development Corp. shall include the following certification: “I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.” (Paragraph 7 of the RFI)

26. RFI required Respondent to submit information within 30 days of receipt. The RFI was received on April 8, 2008. Information required in the RFI and specified in paragraphs 24 and 25 above has not been received by EPA.
27. Based upon the Findings 23-26, Respondent has violated Section 308 of the CWA by failing to submit information required in the RFI received on May 8, 2008, constituting 1 violation of the CWA.
28. Based on the above Findings of Violation, EPA finds that Respondent Plaza Madrid Development Corp. is in violation of Section 308 of the Act, 33 U.S.C. §1318, for failure to submit information requested pursuant Section 308 of the CWA.

### **III. Notice of Proposed Order Assessing a Civil Penalty**

Based on the foregoing Findings of Violation, and pursuant to the authority of Section 309(g) of the Act, 33 U.S.C. §1319(g), and the Debt Collection Improvement Act of 1996, EPA, Region 2 hereby proposes to issue a Final Order Assessing Administrative Penalties ("Final Order") to Respondent assessing a penalty of **\$32,500.00**. 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 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 in two hundred thirty nine (239) instances. EPA may issue the Final Order Assessing Administrative Penalties thirty (30) days after Respondent's receipt of this Notice, unless Respondent within that time file an Answer to the Complaint and request a hearing on this notice pursuant to the following section.

### **IV. Procedures Governing This Administrative Litigation**

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

#### **A. Answering The Complaint**

Where Respondent intends to contest any material fact upon which the Complaint is based, to contend that the proposed penalty is inappropriate or to contend that Respondent is entitled to judgment as a matter of law, Respondent must file with the Regional Hearing Clerk of EPA, Region 2, both an original and one copy of a written Answer to the Complaint, and such Answer must be filed within thirty (30) days after service of the Complaint. 40 CFR §22.15(a). The address of the Regional Hearing Clerk of EPA, Region 2, is:

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

Respondent shall also then serve one copy of the Answer to the Complaint upon Complainant and any other party to the action. 40 CFR §22.15(a). Respondent's Answer to the Complaint must clearly and directly admit, deny, or explain each of the factual allegations that are contained in the Complaint and with regard to which the Respondent has any knowledge. 40 CFR §22.15(b). Where Respondent lacks knowledge of a particular factual allegation and so states in it's answer, the allegation is deemed denied. 40 CFR §22.15(b). The Answer shall also set forth: (1) the circumstances or arguments that are alleged to constitute the grounds of defense, (2) the facts that Respondent disputes (and thus intends to place at issue in the proceeding), (3) the basis for opposing the proposed relief and (4) whether Respondent requests a hearing. 40 CFR §22.15(b).

Respondent's failure affirmatively to raise in the Answer facts that constitute or that might constitute the grounds of their defense may preclude Respondent, at a subsequent stage in this proceeding, from raising such facts and/or from having such facts admitted into evidence at a hearing.

**B. Opportunity To Request A Hearing**

If requested by Respondent in the Answer, a Hearing upon the issues raised by the Complaint and Answer may be held. 40 CFR §22.15(c). If, however, Respondent does not request a hearing, the Presiding Officer (as defined in 40 CFR §22.3) may hold a Hearing if the Answer raises issues appropriate for adjudication. 40 CFR §22.15(c).

Any Hearing in this proceeding will be held at a location determined in accordance with 40 CFR §22.21(d). A Hearing of this matter will be conducted in accordance with the applicable provisions of the Administrative Procedure Act, 5 U.S.C. §§551-59, and the procedures set forth in Subpart D of 40 CFR Part 22.

Should Respondent request a Hearing on this proposed penalty assessment, members of the public, to whom EPA is obligated to give notice of this proposed action, will have a right under Section 309(g)(4)(B) of the Act, 33 U.S.C. §1319(g)(4)(B), to be heard and to present evidence on the appropriateness of the penalty assessment. Should Respondent not request a Hearing, EPA will issue a Final Order, and only members of the public who submit timely comment on this proposal will have an additional thirty (30) days to petition EPA to set aside the Final Order and to hold a Hearing thereon. EPA will grant the petition and will hold a Hearing only if the petitioner's evidence is material and was not considered by EPA in the issuance of the Final Order.

**C. Failure To Answer**

If Respondent fails in any Answer to admit, deny, or explain any material factual allegation contained in the Complaint, such failure constitutes an admission of the allegation. 40 CFR §22.15(d). If Respondent fails to file a timely [i.e. in accordance with the 30-day period set forth in 40 CFR §22.15(a)] Answer to the Complaint, Respondent may be found in default upon motion. 40 CFR §22.17(a). Default by Respondent constitutes, for purposes of the pending proceeding only, an admission of all facts alleged in the Complaint and a waiver of Respondent's right to contest such factual allegations. 40 CFR §22.17(a). Following a default by Respondent for a failure to timely file an Answer to the Complaint, any order issued therefore shall be issued pursuant to 40 CFR §22.17(c).

Pursuant to 40 CFR §22.17(d), 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). If necessary, EPA may then seek to enforce such Final Order of Default against Respondent, and to collect the assessed penalty amount, in Federal court.

#### **V. Informal Settlement Conference**

Whether or not Respondent requests a formal Hearing, EPA encourages settlement of this proceeding consistent with the provisions of the Act and its applicable regulations. 40 CFR §22.18(b). At an informal conference with a representative(s) of Complainant, Respondent may comment on the charges made in this complaint and Respondent may also provide whatever additional information that they believe is relevant to the disposition of this matter, including: (1) actions Respondent has taken to correct any or all of the violations herein alleged, (2) any information relevant to Complainant's calculation of the proposed penalty, (3) the effect the proposed penalty would have on Respondent's ability to continue in business and/or (4) any other special facts or circumstances Respondent wishes to raise.

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

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

Diane T. Gomes  
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) 637-3235  
Fax: (212) 637-3202  
Email: [Gomes.Diane@epa.gov](mailto:Gomes.Diane@epa.gov)

Or

Henry Mazzucca, P.E., Chief  
Compliance Section  
Water Compliance Branch  
Division of Enforcement and Compliance Assistance  
290 Broadway, 20<sup>th</sup> Floor  
New York, NY 10007-1866  
Telephone (212) 637-4229  
Fax (212) 637-3953  
Email: [Mazzucca.Henry@epa.gov](mailto:Mazzucca.Henry@epa.gov)

The parties may engage in settlement discussions irrespective of whether Respondent has requested a Hearing. 40 CFR §22.18(b)(1). Respondent's request for a formal hearing does not prevent them from also requesting an informal settlement conference; the informal conference procedure may be pursued simultaneously with the formal adjudicatory hearing procedure. A request for an informal settlement conference constitutes neither an admission nor a denial of any of the matters alleged in the Complaint. Complainant does not deem a request for an informal settlement conference as a request for a hearing as specified in 40 CFR §22.15(c).

A request for an informal settlement conference does not affect Respondent's obligation to file a timely Answer to the Complaint pursuant to 40 CFR §22.15. No penalty reduction, however, will be made simply because an informal settlement conference is held.

Any settlement that may be reached as a result of an informal settlement conference shall be embodied in a written Consent Agreement. 40 CFR §22.18(b)(2). In accepting the Consent Agreement, Respondent waives his right to contest the allegations in the Complaint and waive their right to appeal the Final Order that is to accompany the Consent Agreement. 40 CFR §22.18(b)(2). In order to conclude the proceeding, a Final Order ratifying the parties' agreement to settle will be executed. 40 CFR §22.18(b)(3).

Respondent is entering into a settlement through the signing of such Consent Agreement and its complying with the terms and conditions set forth in such Consent Agreement and Final Order terminates this administrative litigation and the civil proceedings arising out of the allegations made in the Complaint. Respondent's entering into a settlement does not extinguish, waive, satisfy or otherwise affect their obligation and responsibility to comply with all applicable statutory and regulatory requirements, and to maintain such compliance.

## **VI. Resolution of this Proceeding Without Hearing or Conference**

Instead of filing an Answer, Respondent may choose to pay the total amount of the proposed penalty (**\$32,500.00**) within thirty (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 Chief, Compliance Section, identified on the previous page. 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  
PO Box 979077  
St. Louis, MO 64197-9000

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.

## **VII. Filing of Documents**

The Answer and any Hearing Request and all subsequent documents filed in this action shall be sent to:

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

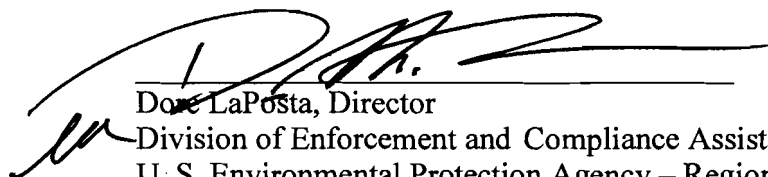
A copy of the Answer, any Hearing Request and all subsequent documents filed in this action shall be sent to:

Diane T. Gomes  
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) 637-3235  
Fax: (212) 637-3202  
Email: Gomes.Diane@epa.gov

### **VIII. General Provisions**

1. Respondent has a right to be represented by an attorney at any stage of these proceedings.
2. This Complaint does not constitute a waiver, suspension or modification of the requirements of the Act, regulations promulgated thereunder, or any applicable permit.
3. Neither assessment nor payment of an administrative civil penalty pursuant to Section 309(g) of the Act will affect Respondent's continuing obligation to comply with the Act, 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 13<sup>th</sup> DAY OF December, 2008.

  
\_\_\_\_\_  
Dave 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**

**IN THE MATTER OF:**

Plaza Madrid Development Corp.  
Condominio Parque San Ramon  
3415 Ave. Alejandrino Apt. 906  
Guaynabo, PR 00959-4957

NPDES Permit Number PRR10BB24

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

Respondent

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

**DOCKET NO.  
CWA-02-2009-3302**

**CERTIFICATE OF SERVICE**

DEC 15 2008

I certify that on \_\_\_\_\_, 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. Zoilo Mendez, President  
Plaza Madrid Development Corp.  
Condominio Parque San Ramon  
3415 Ave. Alejandrino, Apt. 906  
Guaynabo, PR 00959-4957

Copy by Certified Mail  
Return Receipt Requested:

Wanda E. Garcia, Director,  
Water Quality Area  
Environmental Quality Board  
P.O. Box 11488  
Santurce, Puerto Rico 00910

Dated: 12/15/08 *Marie St. Germain*  
New York, New York

G:\USER\SHARE\DECADIV\DECA-WCB\COMPLIANCE SECTION\2007 Administrative Orders\Administrative Penalty Orders\Herminio\_Cotto\_Madrid Plaza\Herminio\_Madrid\_APO\_Letter.Doc