

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II

2008 JUL 22 AM 10:51
REGIONAL HEARING
CLERK

IN THE MATTER OF:

**QUALITY ENGINEERS AND
CONTRACTORS, INC.**

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 PRR10B942

DOCKET NUMBER CWA-02-2007-3411

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

**MOTION REQUESTING LEAVE TO WITHDRAW COMPLAINT WITHOUT
PREJUDICE PURSUANT TO THE CONSOLIDATED RULES OF PRACTICE
§22.14(d) AND STAY OF THE PREHEARING EXCHANGE ORDER**

1. On June 7, 2007, the Director, Caribbean Environmental Protection Division ("CEPD") of EPA, Region 2 ("Complainant") issued an "Administrative Complaint, Findings of Violation, Notice of Proposed Assessment of a Civil Penalty, and Notice of Opportunity to Request a Hearing" ("Complaint") against Quality Engineers and Contractors, Inc., and Cidra Excavation, Inc., (hereinafter, the "Respondents").
2. The Complaint alleged, in summary, that Respondents failed to implement a Storm Water Pollution Prevention Plan ("SWPPP") as required in the National Pollutant

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Discharge Elimination System ("NPDES") permit for the Respondent's project, in violation of Section 301(a) of the Act, 33 U.S.C. § 1311.

3. Complainant conducted two Compliance Evaluation Inspections at the Site on October 26, 2006 and February 2, 2007, among other administrative processes that culminated with the issuance of the Complaint.
4. On June 27, 2008, EPA began and ended the first portion of an Enforcement Case Support Inspection (ECSI) of the Project. The second and final portion of the ECSI was conducted on July 2, 2008.
5. During the above mentioned inspections, EPA identified new violations and continuing violations previously included in the Complaint, against one or more of the Respondents. In addition, based on the information provided by Respondents in their responses to requests for information, it is possible that there may be additional responsible parties in this case.
6. EPA is currently in the process of promptly and fully enforcement prosecutorial discretion, which due to the extent of the violations, may include pursuing this matter as part of a civil action in Federal District Court pursuant to Section 309(b) of the Clean Water Act, 33 U.S.C. § 1319(b).
7. The information available to Complainant through Respondents' answers to the Complaint and requests for information has established, without limitation, that: 1) there may be additional parties to this case; and 2) continuing with the proceedings at this time may affect Complainant's ability to timely and justly prosecute the case.

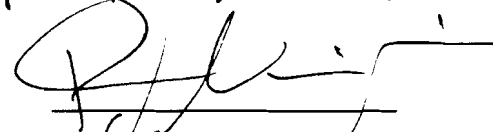
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8. Complainant understands that withdrawal of the Complaint without prejudice should be granted on account of judicial economy and that the amount of the proposed penalty may exceed the statutory maximum allowed to be adjudicated administratively.

9. Based on the foregoing, Complainant hereby moves to request leave to withdraw without prejudice the Complaint against Respondents. This action is taken pursuant to 40 C.F.R. §22.14(d).

10. Given the above, Complainant further requests the Honorable Court to stay the Prehearing Exchange required under the Prehearing Order dated March 14, 2008.

Respectfully Submitted,



Pedro J. Nieves-Miranda
US Environmental Protection Agency
Region 2, ORC-Caribbean Team
Centro Europa Building, 407
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San Juan, PR 00907
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CERTIFICATE OF SERVICE

I certify that the foregoing "Motion Requesting Leave to Withdraw Complaint Without Prejudice Pursuant to the Consolidate Rules of Practice §22.14(d) and Stay of the Prehearing Exchange Order" was sent to the following persons, in the manner specified, on the date below:

Copy by Overnight and
Facsimile:

Barbara A. Gunning
Administrative Law Judge
Office of Administrative Law Judges
1099 14th Street, N.W. , Suite 350, Franklin
Court, Washington, D.C. 20005
(202) 565-0044

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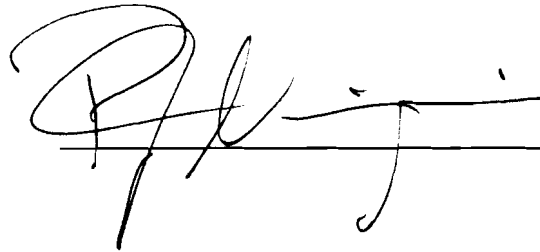
Original and Copy for
Filing by Fed Ex:

Karen Maples
Regional Hearing Clerk
U.S. Environmental Protection Agency
Region II
290 Broadway – 16th Floor
New York, NY 10007-1866

Copy by Certified Mail
Return Receipt Requested

Mr. Patricio Martínez-Lorenzo
Attorney at Law
Martínez-Lorenzo Law Offices
Union Plaza Building – Suite 1200
416 Ponce de León Ave.
Hato Rey, PR 00918-3424

Dated: July 17, 2008

A handwritten signature in black ink, appearing to read 'Patricio', is written over a horizontal line. The signature is stylized and cursive.