

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

IN THE MATTER OF:

Marina PDR Operations, LLC.
4900 State Road PR-3
Fajardo, PR 00738-4067

Marina Puerto Del Rey
NPDES MSGP Tracking Number
PRR053171

RESPONDENT

DOCKET NUMBER CWA-02-2017-3452

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

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REGIONAL HEARING
CLERK
U.S. Environmental
Protection Agency-Reg 2

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

I. Statutory and Regulatory Authorities

1. This Administrative Complaint, Findings of Violation, Notice of Proposed Assessment of a Civil Penalty, and Notice of Opportunity to Request a Hearing ("Complaint") is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA") by Section 309(g)(2)(B) of the Clean Water Act ("CWA" or the "Act"), 33 U.S.C. § 1319(g)(2)(B). The Administrator has delegated this authority to the Regional Administrator of EPA, Region 2, who in turn has delegated it to the Director, Caribbean Environmental Protection Division ("CEPD") of EPA, Region 2 ("Complainant").
2. Pursuant to Section 309(g)(2)(B) of the Act, and in accordance with the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits" ("CROP"), 40 Code of Federal Regulations ("C.F.R.") Part 22, a copy of which is attached, Complainant hereby requests that Regional Administrator assess a civil penalty against Marina PDR Operations, LLC. ("Respondent"), as a result of Complainant's determination that the Respondent is in violation of Sections 301 and 402 of the Act, 33 U.S.C. §§ 1311 and 1342, for its failure to apply for and obtain a National Pollutant Discharge Elimination System ("NPDES") permit coverage for its storm water discharges associated with industrial activity from the Marina Puerto Del Rey located in Fajardo, Puerto Rico, and for its discharges of pollutants (storm

water runoff associated with industrial activities) from this facility into waters of the United States without NPDES permit coverage.

3. Section 301(a) of the Act, provides in part that "[e]xcept as in compliance with this section and sections ... [402, and 404] of [the Act], the discharge of any pollutant by any person shall be unlawful."
4. Section 308(a)(A) of the Act, establishes that whenever required to carry out the objective of the Act, the Administrator shall require the owner or operator of any point source to:
 - a. establish and maintain such records;
 - b. make such reports;
 - c. install, use and maintain such monitoring equipment or methods;
 - d. sample such effluents; and
 - e. provide such other information as may be required.
5. Section 402 of the Act, defines the National Pollutant Discharge Elimination System as the national program for, among other things, issuing and enforcing permits.
6. Section 402 of the Act, authorizes the Administrator to issue a NPDES permit for the discharge of any pollutant, or combination of pollutants, subject to certain requirements of the Act and such conditions as the Administrator determines are necessary.
7. Section 402 of the Act authorizes the Administrator to promulgate regulations for the implementation of the NPDES requirements.
8. Section 402(p)(2)(B) of the Act, requires a permit with respect to a discharge associated with industrial activity.
9. Pursuant to the Act, on April 1, 1983, EPA promulgated regulations to implement the NPDES program, under EPA Administered Permit Programs: the National Pollutant Discharge Elimination System, at 40 C.F.R. Part 122, as amended.
10. Pursuant to the NPDES regulations at 40 C.F.R. § 122.1(b), the NPDES program requires permits for the discharge of any pollutant from any point source into waters of the United States.

11. Pursuant to the NPDES regulations at 40 C.F.R. §§ 122.26(a)(1)(ii) and 122.26(b)(14), operators are required to obtain a NPDES permit for stormwater discharges associated with industrial activity.
12. The Act and its implementing regulations and applicable NPDES permit contain the following definitions:
 - a. "discharge of a pollutant" as any addition of any pollutant to navigable waters and/or waters of the United States from any point source. Section 502(12) of the Act, 33 U.S.C. § 1362(12), and 40 C.F.R. § 122.2;
 - b. "facility" or "activity" as any NPDES point source or any other facility or activity (including land or appurtenances thereto) that is subject to the regulations of the NPDES program. 40 C.F.R. § 122.2;
 - c. "industrial activity" as the 10 categories of industrial activities included in the definition of "storm water discharges associated with industrial activity" as defined in 40 C.F.R. §§ 122.26(b)(14)(i)-(ix) and (xi);
 - d. "navigable waters" as the waters of the United States, including the territorial seas. Section 502(7) of the CWA, 33 U.S.C. § 1362(7); "waters of the United States" means all waters such as lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, among others, and their tributaries. 40 C.F.R. § 122.2;
 - e. "owner" or "operator" as the owner or operator of any facility or activity subject to regulation under the NPDES program. 40 C.F.R. § 122.2;
 - f. "operator" as any entity with a stormwater discharge associated with industrial activity that meets either of the following two criteria as defined in Appendix A of the 2008 NPDES Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity :
 - i. the entity has operational control over industrial activities, including the ability to modify those activities; or
 - ii. the entity has day-to-day operational control of activities at a facility necessary to ensure compliance with the permit (e.g., the entity is authorized to direct workers at a facility to carry out activities required by the permit).
 - g. "person" as an individual, corporation, partnership or association. Section 502(5) of the CWA, 33 U.S.C. § 1362(5), and 40 C.F.R. § 122.2;
 - h. "point source" as any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well,

discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged. Section 502(14) of the Act, 33 U.S.C. § 1362(14), and 40 C.F.R. § 122.2;

- i. "pollutant" as including, among others, solid waste, dredged spoil, rock, sand, cellar dirt, sewage, sewage sludge and industrial, municipal and agricultural waste discharged into water. Section 502(6) of the CWA, 33 U.S.C. § 1362(6), and 40 C.F.R. § 122.2; and
 - j. "storm water associated with industrial activity" means the discharge from any conveyance which is used for collecting and conveying storm water and which is directly related to manufacturing, processing or raw materials storage areas at an industrial plant. 40 C.F.R. §§ 122.2 and 122.26(b)(14).
13. On October 30, 2000, EPA issued the NPDES Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity (the "2000 MSGP") pursuant to Section 402 of the Act, 33 U.S.C. § 1342. The 2000 MSGP became effective on October 30, 2000 and expired on October 30, 2005 but was administratively continued in accordance with the Administrative Procedures Act and remained in force until September 2008.
 14. On September 29, 2008, EPA re-issued the Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity (the "2008 MSGP"). The 2008 MSGP became effective on September 29, 2008, and expired on September 29, 2013, but was administratively continued in accordance with 40 C.F.R. § 122.6 and remained in force until June 4, 2015.
 15. The 2008 MSGP required owners and/or operators of regulated facilities to submit a complete Notice of Intent ("NOI") form in order to obtain authorization to discharge stormwater associated with their industrial activity.
 16. Table 1-2 of Part 1.3.1 of the 2008 MSGP has NOI submittal deadlines. It required owners and/or operators of regulated facilities that had been in operation prior to October 2005, but not covered under the 2000 MSGP or another NPDES permit to immediately submit the NOI form, to minimize the time discharges from the "facility" will continue to be unauthorized.
 17. Also, the 2008 MSGP established, among others, preparation of a Stormwater Pollution Prevention Plan ("SWPPP"), inspections, monitoring, record-keeping, reporting, and other special and general conditions.
 18. Part 2.1 of the 2008 MSPG requires the operator to select, design, install, and implement control measures (including best management practices "BMPs") to, among others, meet the non-numeric technology-based effluent limits.

19. Part 2.1.1 of the 2008 MSPG requires the operator to consider the factors listed therein when selecting and designing control measures.
20. Part 2.1.2.5 of the 2008 MSPG requires the operator to establish erosion and sediment control measures.
21. Part 2.1.2.6 of the 2008 MSPG requires the operator to establish runoff control measures.
22. Part 3.1 of the 2008 MSPG requires the operator to review and revise the implemented control measures after any of the conditions listed therein occurs to ensure that the condition is eliminated and will not be repeated in the future.
23. Part 4.1 of the 2008 MSPG requires the operator to conduct routine facility inspections of all areas of the facility where industrial materials or activities are exposed to stormwater, and of all stormwater control measures used to comply with the effluent limits contained in the permit.
24. Part 4.2 of the 2008 MSPG requires the operator to conduct quarterly visual assessment of stormwater discharges.
25. Part 4.3 of the 2008 MSGP requires the operator to conduct comprehensive site inspections.
26. Part 5 of the 2008 MSGP requires the operator to prepare a SWPPP for the facility before submitting the NOI for permit coverage.
27. Part 5.1.3.4 of the 2008 MSGP requires the operator to evaluate and document the presence of non-stormwater discharges and to eliminate unauthorized discharges.
28. Part 6.2.1 of the 2008 MSGP requires the operator to benchmark sampling for specific industrial sector facilities.
29. Part 7.2 of the 2008 MSPG requires the operator to submit an annual report to EPA that includes the findings of the comprehensive site inspection and documentation on any corrective action implemented.
30. Part 8.Q.6 the 2008 MSGP requires the operator to perform specific benchmark sampling for water transportation facilities, such a marina.
31. On June 4, 2015, EPA re-issued the Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity (the "2015 MSGP"). The 2015 MSGP became effective on the same day of its issuance, and expires on June 4, 2020.

32. Table 1-2 of Part 1.2.1.3 of the 2015 MSGP provides deadlines for operators for submitting a NOI. Specifically, it required operators of industrial activities that commenced discharging prior to September 2, 2015, but not covered under the 2008 MSGP or another NPDES permit and not operating consistent with EPA's no action assurance for the NPDES Stormwater Multi-Sector General Permit for Industrial Activities, to immediately submit a NOI to minimize the time discharges from the facility to be unauthorized.

II. Jurisdictional Statements

33. The Marina PDR Operations, LLC ("Respondent") is a Foreign for Profit Limited Liability Company organized and created under the laws of Delaware on May 22, 2013.
34. Respondent was duly authorized to do business in the Commonwealth of Puerto Rico as a Foreign Corporation on September 5, 2013 (Register Number 329948).
35. Respondent is a person within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5).
36. Respondent owns and operates the Marina Puerto del Rey ("MPR"). The MPR is located at State Road # 3, Km. 51.4, Emajagua Ward, Fajardo, Puerto Rico.
37. Respondent began operations at the MPR in or about May 2013.
38. At the time Respondent began to operate the MPR, the 2008 MSGP had not expired. Therefore, pursuant to Part 1.3.1 of the 2008 MSGP, Respondent was required to immediately submit the NOI form, to minimize the time discharges from the MPR would continue to be unauthorized by a permit.
39. At all relevant times to this Order, Respondent was the owner/operator of the MPR.
40. The industrial activities conducted by Respondent at the MPR consist of managing and operating a marina.
41. The Primary Standard Industrial Classification ("SIC") Code that best described MPR is 4493. SIC Code 4493 covers facilities primarily engaged in operating marinas.
42. Marinas are establishments mainly engaged in renting boat slips and storing boats, and generally perform a range of other services including cleaning and incidental boat repair. They frequently sell food, fuel, and fishing supplies, and may sell boats.

43. Respondent's operations at the MPR are classified as an "industrial activity" and includes those facilities identified with SIC 4493 as defined in 40 C.F.R. § 122.26(b)(14)(viii).
44. MPR is a "point source" pursuant to Section 502(14) of the Act, 33 U.S.C. § 1362(14).
45. The Caribbean Sea is a water of the United States, pursuant to Section 502(7) of the Act, 33 U.S.C. § 1362(7), and 40 C.F.R. § 122.2.
46. Storm water runoff associated with industrial activity from the MPR flows into the Caribbean Sea.
47. Respondent is the owner and operator of the MPR, a "facility" as defined in 40 C.F.R. § 122.2. Respondent is subject to the provisions of the Act, 33 U.S.C. § 1251, *et seq.*, and the applicable NPDES permit application regulations found at 40 C.F.R. Part 122.
48. Respondent was required to apply for and obtain NPDES permit coverage for the discharges of "pollutants" (storm water associated with industrial activity) from the MPR into waters of the United States pursuant to Section 402(a)(1) of the Act, 33 U.S.C. § 1342(a)(1).

III. Findings of Violations

49. Complainant re-alleges Paragraphs 33 - 48 above.
50. On March 25, 2014, a duly-authorized EPA representative conducted a site inspection at the MPR (hereinafter referred as the "Inspection"). The purpose of the Inspection was to determine Respondent's compliance with the Act, the applicable NPDES regulations, and the 2008 MSGP.
51. The findings of the Inspection are summarized in the NPDES Water Compliance Inspection Report (the "Report"), dated March 24, 2015.
52. The findings of the Inspection revealed, among other things, the following:
 - a. Respondent did not prepare the SWPPP for the MPR as required by Part 5 of the 2008 MSGP;
 - b. comprehensive site evaluations were not conducted as required by Part 4.3 of the 2008 MSGP;
 - c. benchmark monitoring was not performed as required by Parts 6.2.1 and 8.Q.6 of the 2008 MSGP;

- d. routine facility inspections were not performed as required by Part 4.1 of the 2008 MSGP;
 - e. quarterly visual assessments were not performed as required by Part 4.2 of the 2008 MSGP;
 - f. selection, design, installation, and implementation of control measures (including best management practices) to address the non-numeric technology based effluent limits were not implemented as required by Part 2.1 of the 2008 MSGP;
 - g. an evaluation for the presence of non-storm water discharges and for the elimination of all unauthorized discharges had not been performed as required by Part 5.1.3.4 of the 2008 MSGP;
 - h. annual reports were not submitted to EPA as required by Part 7.2 of the 2008 MSGP;
 - i. corrective actions were not taken after a triggering condition occurred as required by Part 3.1 of the 2008 MSGP;
 - j. the Respondent did not implement the minimum requirements for erosion and sediment control and runoff management as required by Parts 2.1.2.5 and 2.1.2.6 of the 2008 MSGP;
 - k. BMPs had not been selected, installed, and maintained as required by Part 2.1.1 of the 2008 MSGP;
 - l. structural BMPs to manage runoff were not observed as required by Part 2.1.2.6 of the 2008 MSGP;
 - m. evidence of stagnant water with colored paint residue on drainage culverts and storm water conveyances was observed; and
 - n. industrial activities like pressure washing, blasting and painting, engine maintenance and repair, and dry dock activities were being conducted at the MPR without proper BMPs' implementation as required by Part 8.Q.3.1 of the 2008 MSGP.
53. On September 23, 2014, an EPA official reviewed EPA's Storm Water NOI Processing Center database and EPA's files located at the Caribbean Environmental Protection Division (the "Review") in order to determine if Respondent had obtained NPDES coverage for the Facility.

54. The Review revealed that:
- a. Respondent did not file a NOI seeking coverage under the 2008 MSGP for its discharges of pollutants from the MPR into waters of the United States; and
 - b. Respondent did not file an individual NPDES permit application for its discharges of pollutants from the MPR into waters of the United States.
55. Based on the observations made by EPA during the Inspection, EPA issued the Administrative Compliance Order (“ACO”), Docket No. CWA-02-2015-3104, dated June 24, 2015, against Respondent to address the findings of violations mentioned in paragraphs 52 and 54 above. The ACO incorporated the findings of violations, and required Respondent to, among other things:
- a. cease and desist the discharge of pollutants through stormwater runoff into waters of the United States;
 - b. conduct a complete evaluation of the MPR to identify all unauthorized and unpermitted discharges; and
 - c. submit a Work Plan to bring the MPR into compliance with the Act and the 2015 MSGP.
56. On July 2, 2015, Respondent received the ACO.
57. On August 3 and 14, 2015, Respondent submitted its answers to the ACO.
58. During a meeting held on August 4, 2015, Respondent informed EPA that the evaluation required in the ACO was completed and implementation of BMPs and control measures were ongoing.
59. On September 2, 2015, Respondent submitted the NOI form seeking coverage under the 2015 MSGP.
60. On September 15, 2015, EPA issued a notification acknowledging receipt of Respondent’s submittal of the NOI, assigning NPDES ID PRR053171, and notifying permit coverage at the conclusion of a 30-day waiting period.
61. On September 13, 2016, an EPA official reviewed the National Oceanic and Atmospheric Administration’s National Weather Service online meteorological database (the “NOAA-NSW Review”) to learn about the storm events that had occurred in the vicinity of the MPR since the Respondent acquired it. The EPA official specifically reviewed the precipitation data of the Rio Blanco Lower Rain Gauge Station.

62. The NOAA-NSW Review revealed that on at least 116 instances, measurable storm events were recorded at the Rio Blanco Lower Rain Gauge Station during the period of May 22, 2013 (the date when Respondent became the owner and operator of the MPR) to September 15, 2015 (date when Respondent submitted a complete and accurate NOI form seeking coverage under the 2015 MSGP).
63. As of the date of issuance of this Complaint, Respondent has addressed the requirements of the ACO, has obtained coverage under the 2015 MSGP for its stormwater discharges from the MPR into waters of the United States, and is in compliance with the Act.
64. Based on the findings on paragraphs 50-63 above, Respondent is liable for the violations of Sections 301 and 402 of the Act, 33 U.S.C. §§ 1311 and 1342, as specified below:
- a. **Claim 1 - Failure to apply for and obtain NPDES permit coverage:** Respondent did not submit an individual NPDES permit application, as required by 40 C.F.R. § 122.21, nor did it file a complete and accurate NOI form seeking coverage under the 2008 MSGP from May 22, 2013 (the date when Respondent became the owner and operator of the MPR) to September 15, 2015 (date when Respondent submitted a complete and accurate NOI form seeking coverage under the 2015 MSGP). Therefore, the number of days that Respondent operated the MPR without the required NPDES permit coverage was **846 days**.
 - b. **Claim 2 - Illegal discharges of pollutants (storm water associated with its industrial activities) into waters of the United States without NPDES permit coverage:** Measurable storm events occurred on at least 116 instances during the period of May 22, 2013 (the date when Respondent became the owner and operator of the MPR) to September 15, 2015 (date when Respondent submitted a complete and accurate NOI form seeking coverage under the 2015 MSGP). Therefore, the number of days on which Respondent discharged pollutants from the MPR into water of the United States without a NPDES permit coverage was **116 days**.
65. The EPA will notify the Commonwealth of Puerto Rico regarding this proposed action by mailing a copy of this Complaint and Notice and offering an opportunity for the Commonwealth to confer with EPA on the proposed penalty assessment.

IV. Notice of Proposed Order Assessing a Civil Penalty

Based on the foregoing Findings of Violations, and pursuant to the authority of Section 309(g) of the Act, 33 U.S.C. § 1319(g), EPA, Region 2 hereby proposes to issue a Final Order Assessing Administrative Penalties ("Final Order") to Respondent assessing a penalty of **\$177,500.00**. The proposed penalty has been determined in accordance with the applicable factors under Section 309(g)(3) of the Act, 33 U.S.C. § 1319(g)(3). EPA

is required to take in consideration the nature, circumstances, extent and gravity of the violation (or violations), and 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. EPA has also taken in consideration the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended through 2015, which prescribes a formula for adjusting statutory civil penalties to reflect inflation, maintain the deterrent effect of statutory civil penalties, and promote compliance with the law.

Based on the Findings set forth above, Respondent has been found to have violated the NPDES regulations and the Act. Respondent failed to timely apply for NPDES permit coverage immediately after starting to operate the MPR, as required by Part 1.3.1 the 2008 MSGP. Respondent is culpable for the violations alleged in this Complaint. EPA took into account Respondent's knowledge of the NPDES regulations, the 2008 MSGP, and the risks to human health and the environment posed by the uncontrolled discharges of stormwater runoff from the MPR into the Caribbean Sea, a water of the United States.

The violations discussed in this Complaint are serious since Respondent's failure to update and implement stormwater pollution prevention at the MPR and its discharges of pollutants into waters of the United States caused a potential amount of pollutants to reach surface water that could cause direct and indirect negative effects on human health and the environment. Respondent knew of its obligations under the NPDES regulations, Multi-sector General Permit, and the Act. Respondent does not have a prior history of violations under the NPDES program. EPA may issue a Final Order Assessing Administrative Penalties thirty (30) days after Respondent's receipt of this Notice, unless Respondent, within that time files an answer to the Complaint and, requests a hearing on this Notice pursuant to the following section.

V. Procedures Governing This Administrative Litigation

The rules of procedure governing this civil administrative litigation have been set forth in the CROP, which have been codified at 40 C.F.R. Part 22. A copy of these rules accompanies this Complaint.

A. Answering the Complaint

Where Respondent intend 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 C.F.R. § 22.15(a). The address of the Regional Hearing Clerk of EPA, Region 2, is:

**Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
290 Broadway, 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 C.F.R. § 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 Respondent has any knowledge. 40 C.F.R. § 22.15(b). Where Respondent lacks knowledge of a particular factual allegation and so states in its Answer, the allegation is deemed denied. 40 C.F.R. § 22.15(b). The Answer shall also set forth: (1) the circumstances or arguments that are alleged to constitute the grounds of defense, (2) the facts that Respondent dispute (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 C.F.R. § 22.15(b).

Respondent's failure to affirmatively raise in the Answer facts that constitute or that might constitute the grounds of its 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 C.F.R. § 22.15(c). If, however, Respondent does not request a hearing, the Presiding Officer (as defined in 40 C.F.R. § 22.3) may hold a hearing if the Answer raises issues appropriate for adjudication. 40 C.F.R. § 22.15(c).

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

Should 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, 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 the Answer to admit, deny, or explain any material factual allegation contained in the Complaint, such failure constitutes an admission of the allegation. 40 C.F.R. § 22.15(d). If Respondent fails to file a timely [i.e., in accordance with the 30-day period set forth in 40 C.F.R. § 22.15(a)] Answer to the Complaint, Respondent may be found in default upon motion. 40 C.F.R. § 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 C.F.R. § 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 C.F.R. § 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 C.F.R. § 22.27(c). 40 C.F.R. § 22.17(d). If necessary, EPA may then seek to enforce such Final Order of Default against 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 C.F.R. § 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 it believes 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 C.F.R. § 22.18.

Any request for an informal conference or any questions that Respondent may have regarding this Complaint should be directed to the EPA attorney named in Section VIII, Paragraph 2, below.

The parties may engage in settlement discussions irrespective of whether Respondent has requested a hearing. 40 C.F.R. § 22.18(b)(1). Respondent's requesting a formal

hearing do not prevent him from also requesting an informal settlement conference; the informal conference procedure may be pursued simultaneously with the formal adjudicatory hearing procedure. A request for an informal settlement conference constitutes neither an admission nor a denial of any of the matters alleged in the Complaint. Complainant does not deem a request for an informal settlement conference as a request for a hearing as specified in 40 C.F.R. § 22.15(c).

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

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

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

VII. Resolution of this Proceeding Without Hearing or Conference

Instead of filing an Answer, Respondent may choose to pay the total amount of the proposed penalty, **\$177,500.00**, within 30 days after receipt of the Complaint, provided that Respondent files with the Regional Hearing Clerk, Region 2 (at the address noted in part V.A above), a copy of the check or other instrument of payment. 40 C.F.R. § 22.18(a).

A copy of the check or other instrument of payment should be provided to the EPA Assistant Regional Counsel identified on Section VIII, paragraph 2. Payment of the penalty assessed should be made by sending a cashier's or certified check payable to the "**Treasurer, United States of America**", in the full amount of the penalty assessed in this complaint to the following addressee:

**United States Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P. O. Box 979077
St. Louis, MO 63197-9000
Docket No. CWA-02-2017-3452**

Pursuant to 40 C.F.R. § 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 C.F.R. § 22.18(a)(3). In accordance with 40 C.F.R. § 22.45(c)(3), no Final Order shall issue until at least ten (10) days after the close of the comment period on this Complaint. Issuance of a Final Order terminates this administrative litigation and the civil proceedings arising out of the allegations made in the Complaint. Further, pursuant to 40 C.F.R. § 22.18(a)(3), the making of such payment by 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

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

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

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

**Evelyn Rivera-Ocasio, Esq.
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 2
City View Plaza II, Suite 7000
Guaynabo, Puerto Rico 00968
Telephone: (787) 977-5859**

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 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 12 DAY OF OCTOBER, 2016.



Carmen R. Guerrero-Pérez, Director
Caribbean Environmental Protection Division
United States Environmental Protection Agency - Region 2

To: **Mr. Jeremy Griffiths**
Vice-Chairman
Marina PDR Operations, LLC.
P.O. Box 1186
Fajardo, Puerto Rico 00738

cc: **Mrs. Wanda Garcia**
Director
Water Quality Area
PR Environmental Quality Board
P. O. Box 11488
San Juan, PR 00910

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

IN THE MATTER OF:

Marina PDR Operations, LLC.
4900 State Road PR-3
Fajardo, PR 00738-4067

Marina Puerto Del Rey
NPDES MSGP Tracking Number
PRR053171

DOCKET NUMBER CWA-02-2017-3452

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

RESPONDENT

CERTIFICATE OF SERVICE

I certify that, on the date noted below, I caused to be mailed, by certified mail, return receipt requested, a copy of the foregoing "ADMINISTRATIVE COMPLAINT" and a copy of the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits", 40 C.F.R. Part 22, to the following person at the address listed below:

Mr. Jeremy Griffiths
Vice-Chairman
Marina PDR Operations, LLC.
4900 State Road PR-3
Fajardo, PR 00738-4067

I sent the original and a copy of the foregoing Complaint for filing, to:

Karen Maples
Regional Hearing Clerk
U.S. Environmental Protection Agency, R 2
290 Broadway, 16th Floor
New York, NY 10007-1866.

Date:

October 13, 2016
Guaynabo, Puerto Rico

Aileen Sánchez
Aileen Sánchez