

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. 2
2009 APR -9 PM 3:18
REGIONAL HEARING
CLERK

IN THE MATTER OF:

Quality Engineers and Contractors, Inc.

and

Cidra Excavation, Inc.

RESPONDENTS

DOCKET NUMBER CWA-02-2007-349

MOTION

**Informative Motion Regarding Progress Made in Filing an Executed
Consent Agreement and Final Order and
Request for Extension of Time to File**

COMES NOW Complainant, the U.S. Environmental Protection Agency (EPA) through the undersigned attorney, and respectfully alleges, prays and requests as follows:

Pursuant to the February 24, 2009 Order issued by the Honorable Barbara A. Gunning, Administrative Law Judge, Complainant and Respondents Quality Engineers and Contractors, Inc., and Cidra Excavation (together, the "Parties") had until March 31, 2009, to file the fully executed Consent Agreement and Final Order (CA/FO) settling all matters asserted in the Administrative Complaint, including a penalty. In the alternative, if the CA/FO was not filed by such date, Complainant was required to file its Prehearing Exchange by April 10, 2009.

On March 31, 2009 (due date to file the executed CA/FO), Respondents' legal representation, Patricio Martínez-Lorenzo, Esq., informed the undersigned attorney that his clients finally agreed to the language of the CA/FO as proposed by Complainant and that during the following days he would be getting his clients' signatures. The last of the Respondents' required signatures was received by Complainant on April 2, 2009.

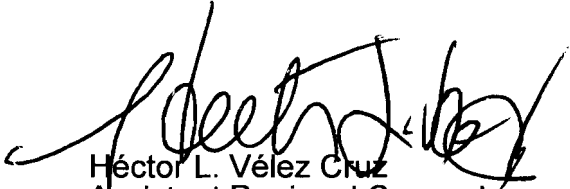
As informed previously, the CA/FO's concurrence process involves the approval of several EPA officers in Region 2's San Juan and New York offices for their review, concurrence and signatures. The concurrence process has finalized in the San Juan office (see **Attachments 1** and **2**) and has been sent to Region 2's New York offices for their review and concurrence. Also, in order to file a duly executed CA/FO, the signature of the Regional Administrator is required. Once this process concludes, the fully executed CA/FO will immediately be filed.

This Motion has been filed today in order to have the Administrative Law Judge, Honorable Barbara A. Gunning, take notice of the progress made in the approval process to file a fully executed CA/FO.

In light of the above, the Complainant requests the Honorable Administrative Law Judge stay the February 24, 2009 Order which requires Complainant to file its prehearing exchange by April 10, 2009, and to grant the Parties twenty (20) additional days from today, until April 28, 2009, in order to file the duly executed CA/FO and notify its execution to the Presiding Officer.

Today, April 8, 2009, I attempted to contact Respondents' attorney, Patricio Martínez-Lorenzo, Esq., before filing this motion with no success (I left him a voice mail at 787-756-5005).

Respectfully submitted, in San Juan, Puerto Rico, this 8th day of April, 2009.



Héctor L. Vélez Cruz
Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency, Region II
Centro Europa Bldg., Suite 207
1492 Ponce de León Ave.
San Juan, PR 00907-4127
(787) 977-5850 (office)
(787) 729-7748 (fax)
velez.hector@epamail.epa.gov

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region 2**

IN THE MATTER OF:

Quality Engineers and Contractors, Inc.

and

Cidra Excavation, Inc.

RESPONDENTS

DOCKET NUMBER CWA-02-2007-3411

MOTION

Certificate of Service

I certify that I have this day caused to be sent the foregoing *Informative Motion Regarding Progress Made in Filing an Executed Consent Agreement and Final Order and Request for Extension of Time to File*, dated April 8, 2009, and bearing the above-referenced docket number, in the following manner to the respective addressees below:

Original and copy by facsimile, **Overnight Mail** to:

Karen Maples
Regional Hearing Clerk
Region II
U.S. Environmental Protection Agency
290 Broadway, 16th Floor
New York, NY 10007-1866
Fax (212) 637-3202.

Copy by facsimile, **Regular Mail** to:

Attorney for Respondents:
Patricio Martínez-Lorenzo, Esq.
Martínez-Lorenzo Law Offices
Union Plaza Building, Suite 1200
416 Ponce de León Avenue.
Hato Rey, P.R. 00918-3424
Tel: (787) 756-5005
Fax: (787) 641-5007.

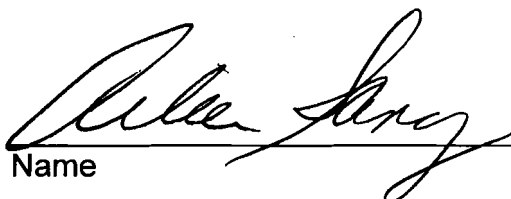
Copy by facsimile, **Overnight Mail** to:

Administrative Law Judge:
Honorable Barbara A. Gunning
Office of Administrative Law Judges
U.S. Environmental Protection Agency
1099 14th Street, N.W., Suite 350
Washington, D.C. 20005
Fax (202) 565-0044.

Date

April 8, 2009

Name



**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
Region 2**



IN THE MATTER OF:

**QUALITY ENGINEERS AND
CONTRACTORS, INC.,**

and,

CIDRA EXCAVATION, INC.,

RESPONDENTS.

**CONSENT AGREEMENT
AND
FINAL ORDER**

DOCKET NUMBER CWA-02-2007-3411

NPDES TRACKING NO. PRR10BC80

CONSENT AGREEMENT AND FINAL ORDER

Complainant, the United States Environmental Protection Agency ("EPA"), having issued the Complaint herein on June 7, 2007, against Quality Engineers and Contractors, Inc., ("Quality") and Cidra Excavation ("Cidra") (jointly referred to as "Respondents"), and

Complainant and Respondents (together the "Parties") having agreed that settlement of this matter is in the public interest, and that entry of this Consent Agreement and Final Order (CA/FO) without further litigation is the most appropriate means of resolving this matter;

NOW, THEREFORE, before the taking of any testimony, upon the pleadings, without adjudication of any issue of fact or law, and upon consent and agreement of the Parties, it is hereby agreed, and ordered as follows:

I. PRELIMINARY STATEMENT

1. EPA initiated this proceeding for the assessment of a civil penalty, pursuant to Section 309 of the Clean Water Act, 33 U.S.C. § 1319 (the "Act").
2. The Complaint alleges that Respondents:
 - a. did not prepare a complete Storm Water Pollution Prevention Plan (SWPPP) for the Serena Residential Development (the "Project") as required by Part 3 of EPA's July 1, 2003 NPDES General Permit for Discharges from Large and Small Construction Activities" (the "Construction Permit");

CONCURRENCES									
Name:	H. Vélez		Init:	HV		Date:	04/07/2009		Filename:
Symbol	CEPD/MPCB	CEPD/MPCB	ORC - CT	ORC - CT	CEPD - D	ORC	AD-RA	A-RA	
Surname	H. Ortiz	J. Rodriguez	[Signature]	S. Carreza	C. Soderberg	E. Schaaf	B. Finazzo	G. Pavlou	
Date	04/07/09	04/07/09	4/07/09	4/07/09	4/07/09				

- b. failed to implement the SWPPP at the Project as required by Part 3 of the Construction Permit;
 - c. failed to conduct inspections at the Project as required by Section 3.10.E of the Construction Permit; and
 - d. failed to timely comply with Administrative Order CWA-02-2007-3011 as required by Section 309 of the Act.
3. EPA notified the Commonwealth of Puerto Rico regarding this action and offered an opportunity for the Commonwealth of Puerto Rico to confer with EPA on the proposed penalty assessment, pursuant to 40 CFR Part 22.
 4. This action was public noticed. No public comment was received.
 5. In September, 2007, Respondents filed their respective answers to the Complaint, denying certain facts, admitting others, raising affirmative defenses and requesting that a hearing be held in the captioned matter.

II. TERMS OF SETTLEMENT

6. This CA/FO shall apply to and be binding upon Respondents, their officers, directors, employees, successors and assigns, including, but not limited to, subsequent purchasers.
7. For purposes of settlement, Respondents stipulate that EPA has jurisdiction over the subject matter alleged in the Complaint and that the Complaint states a claim upon which relief can be granted against Respondents. Respondents waive any defenses they might have as to jurisdiction and venue, and, without admitting or denying the factual or legal allegations contained in the Complaint, consent to the terms of this Consent Agreement and Final Order.
8. Respondents hereby waive their right to a judicial or administrative hearing or appeal on any issue of law or fact set forth in the Complaint.
9. Pursuant to Section 309(g) of the Clean Water Act, 33 U.S.C. § 1319(g), the nature of the violations and other relevant factors, EPA has determined that an appropriate civil penalty to settle this action is in the amount of TWELVE THOUSAND DOLLARS (\$12,000.00).
10. For purposes of settlement, Respondents consent to the issuance of this Consent Agreement and consent to the payment of the civil penalty cited in the foregoing Paragraph.

III. Payment of Penalty

11. Respondents agree to pay the above stated amount in *two payments*. The effective date of this Consent Agreement shall be the date the Regional Administrator signs the Final Order (due date) accompanying this Consent Agreement.
 - a. An initial payment of SIX THOUSAND DOLLARS (\$6,000.00) shall be made within forty-five (45) calendar days from the effective date of the Consent Agreement; and
 - b. a second and final payment shall be made within two hundred twenty-five (225) calendar days from the effective date of the Consent Agreement in the amount of SIX THOUSAND DOLLARS (\$6,000.00).

12. Respondents shall pay the penalty of TWELVE THOUSAND DOLLARS (\$12,000.00) by cashiers' or certified checks, payable to the "Treasurer of the United States of America," identified with a notation of the name and docket number of this case, set forth in the caption on the first page of this document. Respondent shall perform payment pursuant to the following:

CHECK PAYMENTS:

US Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000.

WIRE TRANSFERS:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York NY 10045.

Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency."

OVERNIGHT MAIL:
U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
ATTN Box 979077
St. Louis, MO 63101
Contact: Natalie Pearson
314-418-4087.

Respondents shall also send copies of this payment to each of the following:

Héctor Ortíz
Environmental Engineer
Multimedia, Permits and Compliance Branch
Caribbean Environmental Protection Agency
U.S. Environmental Protection Agency Region 2
1492 Ponce de León Ave. – 4th Floor
San Juan, PR 00907-4127
Fax number: (787) 289-7104,

Héctor L. Vélez Cruz, Esq.
Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 2
1492 Ponce de León Ave., Suite 417
San Juan, PR 00907-4127
Fax number: (787) 729-7748,

and

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th Floor
New York, New York 10007.

13. The first payment must be received at the above address no later than forty-five (45) calendar days after the date of signature of the Final Order (at the end of this document). The date by which payment must be received shall hereafter be referred to as the "due date".
- a. Failure to pay the penalty in full according to the above provisions will result in a referral of this matter to the United States Department of Justice or the United States Department of the Treasury for collection.
 - b. Further, if the payment is not received on or before the due date, interest will be assessed at the annual rate established by the Secretary of Treasury

pursuant to the Debt Collection Act, 31 U.S.C. § 3717, on the overdue amount from the due date through the date of payment. In addition, a late payment handling charge of \$15.00 will be assessed for each 30 day period (or any portion thereof) following the due date in which the balance remains unpaid. A 6% per annum penalty also will be applied on any principal amount not paid within 90 days of the due date.

- c. In addition, pursuant to Section 309(g)(9) of the Clean Water Act, 33 U.S.C. § 1319(g)(9), if payment is not received by the due date, a quarterly nonpayment penalty will be imposed for each calendar quarter during which such nonpayment persists. The quarterly nonpayment penalty is 20% of the aggregate amount of penalties and quarterly nonpayment penalties which are unpaid as of the beginning of such quarter.
 - d. Respondents also may be required to pay attorneys fees and costs for collection proceedings in connection with nonpayment.
14. The penalty to be paid is a civil penalty assessed by the EPA and shall not be deductible from the Respondents' federal or state taxes.

IV. General Provisions

15. The Respondents waive any right they may have pursuant to 40 C.F.R. § 22.8 to be present during discussions with or to be served with and to reply to any memorandum or communication addressed to the Director or the Regional Administrator where the purpose of such discussion, memorandum, or communication is to discuss a proposed settlement of this matter or to recommend that such official accept this Consent Agreement and issue the accompanying Final Order.
16. Nothing in this agreement shall be construed as prohibiting, altering or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondents' violation of this agreement or of the statutes and regulations upon which this agreement is based, or for Respondents' violation of any applicable provision of law.
17. This Consent Agreement and Order shall not relieve Respondents of their obligation to comply with all applicable provisions of federal, state or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit, nor shall it be construed to constitute EPA approval of the equipment or technology installed by Respondents, if any, in connection with the SEP undertaken pursuant to this Agreement, if any.

18. This CA/FO constitutes a settlement by EPA of all claims for civil penalties pursuant to the Clean Water Act for the violations alleged in the Complaint. Nothing in this CA/FO is intended to nor shall be construed to operate in any way to resolve any criminal liability of the Respondents. Compliance with this CA/FO shall not be a defense to any actions subsequently commenced pursuant to Federal laws and regulations administered by EPA, and it is the responsibility of Respondents to comply with such laws and regulations.
19. Each undersigned representative of the Parties to this Consent Agreement certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this Consent Agreement and to execute and legally bind that party to it.
20. Each party shall bear its own costs and attorney fees in connection with the action resolved by this CA/FO.

Carla Harris, Quality Engineers and
Contractors, Inc., and Citra Excavation

2


NAME OF SIGNATORY
TITLE OF SIGNATORY
Carlos Lujan
General Counsel

BY: 

DATE: _____

RESPONDENT QUALITY ENGINEERS AND CONTRACTORS, INC.:

RESPONDENT CIDRA EXCAVATION, INC.:

BY: 
NAME OF SIGNATORY
TITLE OF SIGNATORY

DATE: 1-AB17-09

COMPLAINANT:

for BY: *Irene Rodriguez*
Carl-Axel P. Soderberg, Director
Caribbean Environmental Protection Division
U.S. Environmental Protection Agency - Region 2
Centra Europa Building, Suite 417
1492 Ponce de León Avenue
San Juan, Puerto Rico 00907-4127

DATE: *04/07/09*

III. FINAL ORDER

The Regional Administrator of the U.S. Environmental Protection Agency Region 2, ratifies the foregoing Consent Agreement. The Agreement entered into by the parties is hereby approved, incorporated herein, and issued as an Order. The effective date of this Order shall be the date of filing with the Regional Hearing Clerk, U.S. EPA Region 2, New York, NY.

Date

George Pavlou
Acting Regional Administrator
United States Environmental
Protection Agency-Region 2
290 Broadway
New York, NY 10007-1866

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region 2

IN THE MATTER OF:

Quality Engineers and Contractors, Inc.

and

Cidra Excavation, Inc.

RESPONDENTS

DOCKET NUMBER CWA-02-2007-3411

**CONSENT AGREEMENT
AND FINAL ORDER**

Certificate of Service

I certify that I have this day caused to be sent the foregoing *Consent Agreement and Final Order*, dated April _____, 2009, and bearing the above-referenced docket number, in the following manner to the respective addressees below:

Original and copy by **Hand Delivery** to:

Karen Maples
Regional Hearing Clerk
Region II
U.S. Environmental Protection Agency
290 Broadway, 16th Floor
New York, NY 10007-1866
Fax (212) 637-3202.

Copy by facsimile, **Regular Mail** to:

Attorney for Respondents:
Patricio Martinez-Lorenzo, Esq.
Martinez-Lorenzo Law Offices
Union Plaza Building, Suite 1200
416 Ponce de León Avenue
Hato Rey, P.R. 00918-3424
Tel: (787) 756-5005
Fax: (787) 641-5007

Copy by facsimile, **Overnight Mail** to:

Administrative Law Judge.
Honorable Barbara A. Gunning
Office of Administrative Law Judges
U.S. Environmental Protection Agency
1099 14th Street, N.W., Suite 350
Washington, D.C. 20005
Fax (202) 565-0044



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2**

DATE: April 7, 2009

SUBJECT: In The Matter of Quality Engineers and Contractors, Inc. and Cidra Excavation
Docket No. CWA-02-2007-3411

FROM: Eric Schaaf Regional Counsel
Carl-Axel P. Soderberg, Director
Caribbean Environmental Protection Division

TO: George Pavlou
Acting Regional Administrator

The following pertains to a settlement between the Environmental Protection Agency (EPA) and Respondents Quality Engineers and Contractors, Inc. (Quality Engineers) and Cidra Excavation (Cidra) of a Class II Administrative Penalty Order (Complaint) pursuant to Section 309(g) of the Clean Water Act (the "Act" or "CWA"). Attached for your review and signature is a Consent Agreement and Final Order (CAFO), which assesses administrative penalties and resolves all matters asserted in the Complaint of the matter referenced above. This CAFO will resolve the action referenced above.

Highlights of the Order

- Penalty: Respondents will pay an administrative penalty of \$12,000.00 for past violations of the CWA.

Background

On June 7, 2008, a Complaint was issued in this matter, alleging violations of the CWA and of EPA's July 1, 2003 NPDES General Permit for Discharges from Large and Small Construction Activities" (the "Construction Permit").

Respondent Quality Engineers is the owner and Respondent Cidra is the operator of a residential construction project on a site of approximately 36.75 acres located at the intersection of State Roads # 861 and # 862, Km 1.0, Pájaros Ward, Bayamón, Puerto Rico (the "Project"). On August 8, 2006, earth movement activities involving clearing, grading, and excavation began at the Project. The construction site

CONCURRENCES


Name: H. Vélez	Init: HV	Date: 04/07/2009	Filename:					
Symbol	CEPDMPCB	CEPDMPCB	ORC - CT	ORC - CT	CEPD - D	ORC	AD-RA	A-RA
Surname	H. Ortiz	Rodriguez	S. Carrero	Soderberg	E. Schaaf	B. Finazzo	G. Pavlou	
Date	04/07/09	04/07/09	4/07/09	4/07/09	04/07/09			

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2**

DATE: April 7, 2009

SUBJECT: In The Matter of Quality Engineers and
Contractors, Inc. and Cidra Excavation
Docket No. CWA-02-2007-3411

FROM: Eric Schaaf
Regional Counsel


Carl-Axel P. Soderberg, Director
Caribbean Environmental Protection
Division

TO: George Pavlou
Acting Regional Administrator

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