

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

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In the Matter of :
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A.B.E.F. Development Corp. and :
Herminio Cotto Construction, Inc. :
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Respondents : Docket No. CWA-02-2010-3465
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ORDER REQUIRING RESPONDENT A.B.E.F. DEVELOPMENT CORPORATION TO FILE ANSWER AND REQUIRING COMPLAINANT TO FILE MOTIONS FOR DEFAULT

The Undersigned issued an *Order Directing Parties to File a Joint Status Report*, dated July 20, 2015, directing the parties to file said report no later than August 10, 2015. In response to a request for extension of the deadline for filing a report, an extension through August 17, 2015 was granted by electronic mail dated August 11, 2015.

By *Motion in Compliance with Order to File Status Report* filed on August 18, 2015, Complainant's Attorney explained that her further attempts to communicate with Respondents in this matter were unsuccessful. Complainant's Attorney also reaffirmed her intention to file a Motion for Default as to Liability and Penalty against Respondent A.B.E.F. Development Corporation (ABEF) and a Motion for Default as to Penalty against Respondent Herminio Cotto Construction, Inc. (Cotto Construction) no later than 60 days from the date of her *Motion*.

Complainant's Attorney had represented, by a March 31, 2015 *Informative Motion* that she intended to file these Motions for Default no later than April 30, 2015. No answer has been filed to date by Respondent ABEF, nor has Respondent ABEF responded to orders issued by the Undersigned directing the parties to file a Joint

Status Report. Complainant's attorney has not filed a Motion for Default as to Liability and Penalty against Respondent ABEF, as provided in 40 C.F.R. § 22.17. The Presiding Office cannot, sua sponte, find Respondent in default for failing to file an answer. The Complainant must file a motion for a default order against Respondent for failure to answer. 40 C.F.R. § 22.17(a).

In addition, the Complainant's attorney has not filed a Motion for Default as to Penalty against Respondent Cotto Construction. Despite the fact that an Order of Default as to Liability has been issued against Cotto Construction, the Undersigned cannot issue an Initial Decision resolving all outstanding issues and claims without additional penalty information from Complainant's attorney and resolution of the status of the case against Respondent ABEF. 40 C.F.R. §§ 22.17(b) and (c).

ORDER

Therefore, it is hereby ordered that the Respondent ABEF shall file an answer, pursuant to 40 C.F.R. § 22.15 by September 18, 2015.

If Respondent ABEF does not file an answer by that date, it is further ordered that the Complainant file a Motion for Default as to Liability and Penalty against Respondent ABEF no later than October 23, 2015. Failure to file such a motion may result in the Complaint being dismissed against ABEF with prejudice. 40 C.F.R. § 22.17(a).

Regardless of whether ABEF files an answer, it is further ORDERED that Complainant file a Motion for Default as to Penalty against Respondent Cotto Construction no later than October 23, 2015. Failure to file such a motion may result in the Complaint being dismissed against Cotto Construction with prejudice. 40 C.F.R. § 22.17(a).

The Respondent shall file its response to the motion(s) for default within fifteen (15) days of service of the Complainant's motion.

Date: August 31, 2015



Helen Ferrara
Presiding Officer

CERTIFICATE OF SERVICE

I hereby certify that the **Order Requiring Respondent A.B.E.F. Development Corporation To File Answer And Requiring Complainant To File Motions For Default** by Regional Judicial Officer Helen Ferrara in the matter of **A.B.E.F. Development Corp. And Herminio Cotto Construction, Inc., Docket No. CWA-02-2010-3465**, was served on the parties as indicated below:

First Class Mail -

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A.B.E.F. Development Corp.
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Caguas, Puerto Rico 00725-3757



Karen Maples
Regional Hearing Clerk
USEPA - Region II

Dated: September 4, 2015