

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

March 27, 2023 @ 12:12 pm
USEPA – Region II
Regional Hearing Clerk

IN THE MATTER OF:

HACIENDA MIRAMAR, INC.
P. O. Box 781
Hormigueros, Puerto Rico 00676

AND

KARIMAR CONSTRUCTION, INC.
P. O. Box 8000
Aguada, Puerto Rico 00602

Construction Project
**MIRADOR DE SOL RESIDENTIAL
DEVELOPMENT**
PR-102 Road, Km. 16.5
Cabo Rojo, Puerto Rico

RESPONDENTS

**CONSENT AGREEMENT AND
FINAL ORDER**

**DOCKET NUMBER
CWA-02-2022-3451**

CONSENT AGREEMENT AND FINAL ORDER

Complainant, the United States Environmental Protection Agency (“EPA” or “Complainant”), having issued the Complaint referenced herein on September 30, 2022, against Hacienda Miramar, Inc. (“Respondent Hacienda Miramar”) and Karimar Construction, Inc. (“Respondent Karimar”) (hereinafter referred collectively as “Respondents”), and

Complainant and Respondents having agreed that settlement of this matter is in the public interest, and that entry of this Consent Agreement and Final Order (“Consent Agreement”) without further litigation is the most appropriate means of resolving this matter;

a/c
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

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1. EPA initiated this proceeding for the assessment of a civil penalty pursuant to Section 309(g)(2)(B) of the Clean Water Act (“CWA” or “the Act”), 33 U.S.C. § 1319(g)(2)(B).

2. In the Complaint, EPA alleges that Respondents violated Sections 301(a) and 402(p) of the Act, 33 U.S.C. §§ 1311(a) and 1342(p), for failure to apply for and obtain National Pollutant Discharge Elimination System (“NPDES”) permit coverage for the discharge of pollutants (stormwater runoff associated with small construction activity) from the Mirador del Sol Residential Project (the “Project”) located in Cabo Rojo, Puerto Rico, and for the discharges of pollutants (stormwater runoff associated with small construction activities) from such Project into waters of the United States without NPDES permit coverage. EPA sought an administrative penalty of \$108,139 for these violations.
3. On September 30, 2022, EPA notified the Commonwealth of Puerto Rico about this action and offered an opportunity to confer with EPA on the proposed administrative penalty assessment, pursuant to 40 C.F.R. Part 22. The Commonwealth of Puerto Rico did not submit any comments.
4. On November 1, 2022, Respondents filed a letter aimed to answer the Complaint.
5. On November 12, 2022, EPA published a public notice on the proposed administrative penalty assessment. EPA did not receive public comments.
6. Complainant and Respondents held informal settlement conference meetings on November 23, 2022, and December 6, 2022, during which Respondents presented new information which altered EPA’s views on certain allegations in the Complaint. These discussions led to this Consent Agreement without any formal amendment of the Complaint.
7. Complainant and Respondents agree, by entering into this Consent Agreement, that settlement of all allegations contained in the Complaint upon the terms set forth in this Consent Agreement is an appropriate means of resolving this case without further litigation.
8. Respondents admit the jurisdictional allegations of the Complaint.
9. Respondents neither admits nor denies specific factual allegations contained in the Complaint.
10. Respondents waive any right to contest the allegations and their right to appeal the proposed Final Order accompanying this Consent Agreement.

II. Terms of Settlement

11. Pursuant to Section 309(g) of the Act, 33 U.S.C. § 1319(g), the nature of the violations and other relevant factors, EPA and Respondents agreed to settle this action for **forty-five thousand dollars (\$45,000)**.
12. For purposes of settlement, Respondents consent to the issuance of this Consent Agreement and consent to the payment of the civil penalty cited in Paragraph 11, above.

III. Payment of Civil Penalty

13. Respondents shall pay a civil penalty in the amount of **\$45,000** within thirty (30) days of the Effective Date of this Consent Agreement.

14. Pursuant to Part V of this Consent Agreement, the Effective Date of the Final Order shall be the date of filing with the Regional Hearing Clerk, U.S. EPA Region 2, New York, New York.
15. All payments shall be made by cashier's or certified check payable to the *Treasurer of the United States of America*, by electronic transfer (i.e. wire or automated clearinghouse), or online payment, as provided below:
- (a) If Respondents choose to pay the civil penalty by cashiers' or certified check, either type of check shall be mailed to:

BY U.S. POSTAL SERVICE

U.S Environmental Protection Agency
 Fines and Penalties
 Cincinnati Finance Center
 P. O. Box 979077
 St. Louis, MO 63197-9000

BY OVERNIGHT MAIL

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

- (b) If Respondents choose to pay the civil penalty by wire transfer, the transfer shall be made to:

BY WIRE TRANSFER:

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."

BY AUTOMATED CLEARINGHOUSE (ACH) (also known as REX or remittance express):

ACH for receiving US currency
 PNC Bank
 808 17th Street, NW
 Washington, DC 20074
 ABA = 051036706
 Transaction Code 22 - checking
 Environmental Protection Agency
 Account 310006—CTX Format
 Contact: Jesse White
 Tel.: (301) 887-6548.

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(c) An online payment option is available through the United States Department of Treasury. This payment option can be accessed through WWW.PAY.GOV. If Respondents choose to pay the civil penalty using the online payment option, Respondent shall: enter sfo 1.1 in the search field; open the electronic form; and complete required fields.

(d) Respondents shall clearly identify, regardless of the form of payment, the name and docket number of the case, as follow:

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16. Respondents shall send proof of payment by electronic mail to each of the following EPA officials:

Jaime López
Senior Enforcement Officer
Clean Water Act Team
Multimedia Permits and Compliance Branch
Caribbean Environmental Protection Agency
United States Environmental Protection Agency Region 2
lopez.jaime@epa.gov

Suzette M. Meléndez-Colón, Esq.
Assistant Regional Counsel
Office of Regional Counsel, Caribbean Team
United States Environmental Protection Agency, Region 2
melendez-colon.suzette@epa.gov

and

Karen Maples
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
maples.karen@epa.gov

17. Failure to pay the civil penalty in full according to the above provisions may result in referral of this matter to the United States Department of Justice or the United States Department of the Treasury for collection.

18. 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 the United States Department 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 fifteen dollars (\$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 six percent (6%) per annum penalty also will be applied on any principal amount not paid within ninety (90) calendar days of the due date.

19. In addition, pursuant to Section 309(g)(9) of the CWA, 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 twenty percent (20%) of the aggregate amount of penalties and quarterly nonpayment penalties, which are unpaid as of the beginning of such quarter. Respondents may also be required to pay attorney's fees and costs for collection proceedings in connection with nonpayment.

20. The penalty to be paid is a civil penalty assessed by the EPA and shall not be deductible from Respondents' federal or Commonwealth of Puerto Rico taxes.

IV. General Provisions

21. The provisions of this Consent Agreement shall be binding upon Respondents, their officers, directors, agents, servants, authorized representatives and successors or assigns, including but not limited to, subsequent purchasers. No transfer of ownership or operation shall relieve Respondents of their obligation to comply with this Consent Agreement.
22. Respondents waive any right it 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 of the EPA Region 2 Caribbean Environmental Protection Division or the EPA Region 2 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.
23. Nothing in this Consent 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 Consent Agreement or of the statutes and regulations upon which this Consent Agreement is based, or for Respondents' violation of any applicable provision of law.
24. This Consent Agreement shall not relieve Respondents of their obligation to comply with all applicable provisions of the CWA and the regulations implementing it, nor shall it be construed as the issuance of a permit or a ruling on, or determination of, any issues related to any federal, state or local law, regulation or permit.
25. Full payment of the civil penalty shall only resolve Respondents' liability for federal civil penalties for the violations and facts alleged in the Complaint. Full payment of this penalty shall not in any case affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.
26. *EMC* 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.
27. *MM* Each party shall bear its own costs and attorney's fees in connection with the action resolved by this Consent Agreement. *CRG*