

PLAYA CLARA, S.E.
MR. JUAN BENET, ADMINISTRATOR
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December 14, 2008

Regional Hearing Clerck
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th Floor
New York, N.Y. 10007-1866

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II
2008 JAN -5 AM 7:49
REGIONAL HEARING
CLERK

RE: Answer to Administrative Complaint

Gentlemen:

1. JURISDICTIONAL FINDINGS

We accept Jurisdictional Findings numbers 11, 12, 14, 15, 16, 17, but we cannot accept Items 13, 18, 19, 20 and 21 because of the following reasons:

Item 13: At the time of the Inspection Report of December 19, 2007 the clearing and grading excavation activities were already finished many months before such date, as the project concrete road has been duly completed. At that particular date there was no construction activity whatsoever.

Items 18, 19, 20 and 21: The NPDES Permit and the NOI Forms were submitted and mailed to the EPA in Washington, D.C. at the mailing address shown in the EPA Form 3510-9 by Certified Mail on November 16th 2006 under US Post Office receipt No. 7006 0810 0005 6693 0355. Unfortunately, the Certified Mail was not delivered by the Post Office for insufficient address and addressee not known on December 1st 2006. This is duly explained in our letter dated April 11, 2008 to Mr. Carl Axel P. Soderberg, Director EPA Caribbean Division in Puerto Rico.

It is very important to mention, that in spite that we invited the local EPA Office in Puerto Rico to make a joint physical inspection of the project to discuss with them our allegations but, they never answered our request, on the contrary they submitted an administrative complaint finding us in violation of the EPA rules with a proposed penalty of \$32,500.00 on December 2, 2008.

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2. FINDINGS OF VIOLATION

Item 22: Already commented and considered in Jurisdictional Findings above.

Item 23: We strongly believe that we should have been notified to be present when Mr. Jaime Lopez, EPA Environmental Scientist conducted the (“CEI”) at the site, but nevertheless, the physical inspection was performed without our presence. It is my impression that Mr. Lopez was directed to other places in Culebra other than our project. Who is the lady that appears on photos 5 and 8 submitted in the inspection report?

Item 24A: Denied, as we filed the Notice of Intent for storm water discharges associated with construction activities under and NPDS General Permit on November 16th of 2006.

Item 24B: Denied, because we submitted to the local Junta de Calidad Ambiental all the monthly progress reports of the construction since we started on May 2007 to date as instructed by our Environmental Consultant, Dr. Carlos Ayarza.

Item 24C: Denied. There is no Municipal Separate Storm Sewer System (MS4), in which we discharged polluted water into the Atlantic Ocean. In fact, our project is very far from the ocean and moreover there have been no water sewer that discharges into the Atlantic Ocean.

Item 25: Received.

Item 26: Upon EPA letter of April 2, 2008 we made a physical inspection of our project and found that there were a couple of lots entrances that required some adjustments and we completed them, but these were not significant at all, as we have previously installed fiber mesh, hay bales and slit fences.

Item 27: Yes, we reply on April 14, 2008.

Item 28: We did not violated any EPA Sections of the Act by discharging pollutants into a Municipal Separate Storm Sewer System (MS4) which discharges into the Atlantic Ocean, because the storm sewer does not exist in our project. The sewer as shown in photo #10 is not connected to any Municipal Separate Storm Sewer System. It was the intention to do so, but the construction of municipal sewer all over Culebra did not allow us to get connected. This will be eliminated and the rain waters will flow through the normal channels.

The alleged photos used to find us liable of this activity do not belong to our project, but to other projects by other contractors working in Culebra during the last few years

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constructing a new sewer system and other related construction activities. This was clearly explained in my letter dated April 11, 2008 to Mr. Soderberg. Quite honestly, I cannot imagine why these photos were used by Mr. Lopez in his report blaming us for circumstances that were not under our control and that does not have anything to do with our project. In summary and conclusion the report conducted by Mr. Lopez is not acceptable as it contains false information.

Item 29 A: We did apply for the MPDES Permit as required by the 40 C.F.R. We also filed a complete and accurate NOI Form prior to commencement of construction activities. (See copies enclosed)

Item 29 B: We never discharges pollutants (storm water) into waters of the United States without MPDES Permit Coverage. Consequently, we are not in violation of Section 301A of the Act, 33 U.S.C. and 1311 (A).

There have never been critical erosion conditions, excessive sedimentation as well as alleged discharges of pollutants waters into the Atlantic Ocean in our project.

Contrary to all the complaint allegations, we acted responsibly filing the MPDES Permits and NOI Forms way before starting our project on May 2007.

Again, we are inviting you to make a joint physical inspection of the project, to verify and confirm that all the fact that we have mentioned before are the truth, but nothing but the truth. Consequently, and because of the above mentioned, we are respectfully requesting your office to dismiss this complaint against us without prejudice.

Enclosed with this request you will find our previous correspondence and EPA Caribbean Division communications, particularly the photographs taken by Mr. Lopez, which do not belong to us. We expect you understand our position and we remain at your disposition and service for whatever questions or statements you may need from us.

Respectfully yours,

PLAYA CLARA, S.E.


Juan Benet

JB:meg

Encls.

cc: Mr. Pedro J. Nieves Miranda, Esq.
Regional Caribbean Office San Juan