

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2**

IN THE MATTER OF:

DOCKET NO. CWA-02-2009-3462

Desarrollos Altamira, Inc.

and

Proceedings Pursuant to Section 309(g) of the
Clean Water Act, 33 U.S.C. § 1319(g), to
Assess Class II Civil Penalty

Cidra Excavation, Inc.
P.O. Box 11218
Caparra Heights Station
San Juan, PR 00922

Hacienda Altamira Residential Development

NPDES PERMIT No. PRU201934,

Respondents.

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REGION 2
2009 DEC -9 PM 3:50
REGIONAL HEARING
CLERK

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

COME NOW, Desarrollos Altamira I, Inc. (DAI) and Las Quintas 957, Inc. (“Quintas”) through the undersigned attorney, and present their Answer to Complaint, Findings of Violation, Notice of Opportunity to Request a Hearing (“Complaint”) issued by the Environmental Protection Agency (“EPA”) on September 29th, 2009, and respectfully state, allege and pray as follows:

I. Statutory Authority

1. The first sentence of Paragraph 1 of the Complaint, is a statement of law that requires no admission, denial or explanation and, in the alternative, is denied. Respondent is

without knowledge or information sufficient to form a belief as to the truth of the allegations of the second sentence of Paragraph 1 of the Complaint and, on that basis, denies the allegations of the same.

2. Paragraph 2 of the Complaint is a statement of law and procedure, or of the application of law and procedure to facts, which requires no admission, denial or explanation and, in the alternative, is denied.

II. Statutory and Regulatory Background

3. Paragraphs 1 through 13 contain statements of law, of law and procedure or of the application of law and procedure to facts which, in general terms, describe the contents of the statutory and regulatory enactments therein cited, and that require no admission, denial or explanation and, in the alternative, are denied.

III. Findings of Violation

A. Findings of Fact

4. Paragraph 14 of the Complaint is directed to DAI and to a respondent other than DAI. DAI admits the allegations, insofar as these refer to DAI and as to Quintas¹, and believes that no response is necessary to those allegations directed to a respondent other than itself. To the extent that a response by DAI to those allegations directed to a respondent other than to itself is deemed necessary, DAI lacks sufficient knowledge or information to form a belief as to the truth of and, on that basis, denies the allegations of the same.

5. Paragraph 15 of the Complaint is directed to both DAI and to a respondent other than DAI. As to DAI, Paragraph 15 states conclusions of law that require no admission, denial or explanation and, in the alternative, are denied. As to the other respondent, DAI believes that

¹ The Complaint is addressed at Desarrollos Altamira I, Inc. Quintas joins in the answer because it purchased the affected parcel of land on December 13, 2006, and the development project at issue is its.

no response is necessary to allegations directed to a respondent other than itself. To the extent that a response by DAI to those allegations directed to a respondent other than to itself is deemed necessary, DAI understands that Paragraph 15 states conclusions of law that require no admission, denial or explanation and, in the alternative, are denied on that basis.

6. Paragraph 16 of the Complaint is directed to both DAI and to a respondent other than DAI. As to DAI, Paragraph 16 states conclusions of law that require no admission, denial or explanation and, in the alternative, are denied. As to the other respondent, DAI believes that no response is necessary to those allegations directed to a respondent other than itself. To the extent that a response by DAI to those allegations directed to a respondent other than itself is deemed necessary, DAI understands that Paragraph 16 states conclusions law that require no admission, denial or explanation and, in the alternative, are denied on that basis.

7. DAI and Quintas admit that Hacienda Altamira “is located at State Road PR-957, Km. 0.2, Hato Puerco Ward, in Canóvanas, Puerto Rico 00729, as alleged on Paragraph 17 of the Complaint.

8. Quintas admits the allegations of Paragraph 18, with the clarification that as of the date of the alleged acts, construction work had not yet commenced. DAI lacks sufficient information to aver.

9. Quintas and DAI admit that general contractors engaged in the construction of single-family houses are covered under Standard Industrial Classification 1521 and deny the remaining allegations of Paragraph 19. Quintas clarifies that as of the date of the imputed acts, house construction had not yet begun.

10. Quintas admits that activities at a construction project may, at different moments, entail those described in Paragraph 20, but as of the time of the imputed acts only land

disturbance, site preparation and utilities installation was being carried out. DAI lacks sufficient knowledge to aver.

11. Quintas and DAI admit the allegations of Paragraph 21.

12. Paragraph 22 of the Complaint is directed to both DAI and to a respondent other than DAI. As to DAI, respondent denies the allegations inasmuch as it is not the owner of the project. Quintas admits the allegations of Paragraph 22 of the Complaint. As to the other respondent, DAI and Quintas believe that no response is necessary to those allegations directed to a respondent other than itself.

13. Paragraph 23 of the Complaint states a conclusion of law that requires no admission, denial or explanation and, in the alternative, is denied.

14. Paragraph 24 of the Complaint states a conclusion of law that requires no admission, denial or explanation and, in the alternative, is denied.

15. Paragraph 25 of the Complaint states conclusions of law, or of the application of law to facts, that require no admission, denial or explanation and, in the alternative, are denied.

16. Paragraph 26 of the Complaint states a conclusion of law that requires no admission, denial or explanation and, in the alternative, is denied.

17. Paragraph 27 of the Complaint describes, in general terms, regulatory requirements appearing in 40 C.F.R. §122.26 (b)(14)(x), but its applicability to this case is denied.

18. Paragraph 28 of the Complaint states conclusions of law, or of the application of law to facts, that require no admission, denial or explanation and, in the alternative, are denied.

19. DAI and Quintas concur that Paragraph 29 of the Complaint describes, in general terms, regulatory requirements appearing in 40 C.F.R. § 122.21, as to time to apply requirements,

applicable to facilities described under 40 C.F.R. §122.26 (b) (14) (x), but denies its applicability to this case.

20. Paragraph 30 of the Complaint is directed to both DAI and to a respondent other than DAI. As to DAI, Paragraph 30 states conclusions of law that require no admission, denial or explanation and, in the alternative, are denied. As to the other respondent, DAI believes that no response is necessary to those allegations directed to a respondent other than itself. To the extent, that a response by DAI to those allegations directed to a respondent other than to itself is deemed necessary, DAI understands that Paragraph 30 states conclusions of law that require no admission, denial or explanation and, in the alternative, are denied on that basis.

21. DAI and Quintas are without information on knowledge to admit or deny the allegations made on Paragraphs 31 and 32 and therefore denies them.

22. DAI and Quintas concur that Paragraph 33 of the Complaint describes, in general terms, requirements contained in Section 2.3 A of the “NPDES General Permit for Storm Water Discharges from Construction Activities”, but denies its applicability to this case.

23. DAI and Quintas concur that Paragraph 34 of the Complaint describes, in general terms, requirements contained in Section 3.1 A of the “NPDES General Permit for Storm Water Discharges from Construction Activities”, but deny its applicability to this case.

24. DAI and Quintas concurs that Paragraph 35 of the Complaint describes, in general terms, requirements contained in Section 3.1 D of the “NPDES General Permit for Storm Water Discharges from Construction Activities”, but denies its applicability to this case.

25. Quintas, upon information and belief, admits, as stated in Paragraph 36, that inspections were performed by an EPA officer on the dates therein indicated. Quintas lacks

performed the inspection was, as alleged, “a duly authorized EPA enforcement officer” and, “likewise, as to whether or not the purpose of the inspector was “to determine Respondent’s compliance with the Act and the applicable NPDES regulations” and, therefore denies the same. DIA lacks sufficient information to aver.

26. In response to the allegations of Paragraph 37 of the Complaint, Quintas admits that a Water Compliance Inspection Report, dated September 27, 2007, exists but lacks knowledge or information sufficient to form a belief as to whether or not the “findings of the CEIS were included” therein and, therefore, denies the same. Respondent, furthermore, answers that the report speaks for itself. The rest of the allegations therein denied. DAI lacks sufficient information to aver.

27. DAI and Quintas lack knowledge or information sufficient to form a belief as to the averments of Paragraph 38 of the Complaint concerning whether an EPA official conducted a review of the EPA Natural Storm Water Processing Center database on the date therein indicated and as to what was revealed by that review and, therefore, deny the same.

28. In response to the allegations of Paragraph 39 of the Complaint, DAI and Quintas admit that Administrative Compliance Order, Docket Number CWA-02-2007-3070, dated September 27, 2007, was issued against Respondents, but lacks knowledge of information sufficient to form a belief as to whether the Order was issued “[b]ased on the observations made by EPA during the CEIS...” and, therefore deny the same, Respondents furthermore, answer that the Order speaks for itself.

29. Paragraph 40 of the Complaint is directed to both DAI and to a respondent other than DAI. DAI admits receiving the September 27, 2007, EPA Compliance Order but cannot admit or deny the date of its receipt, and therefore it. As to the other respondent, DAI believes

In response to this section, Respondent alleges that the proposed final order assessing administrative penalties in the amount of \$146,425.49, has no basis in law or in fact.

In addition, the proposed penalty assessment is excessive, unwarranted, burdensome, and fails to take into account the factors identified in Section 309 (g)(3) of the Clean Water Act, 33 U.S.C. §§ 1251 et seq., §1319 (G)(3).

Furthermore, the proposed penalty assessment fails to consider that respondents presented a timely application to EPA, that EPA has acknowledged it as complete, and that EPA failed to review it within 30 days.

Except as specifically admitted, all factual allegations contained in Part IV of the Complaint are denied.

V. Procedures Governing This Administrative Litigation

No response to the allegations of Part V is requested and, thus, none is proffered.

VI. Informal Settlement Conference

No response to the allegations of Part VI is requested and, thus, none is proffered.

VII. Resolution of this Proceeding Without Hearing or Conference

Respondents request a hearing.

VII. Filing of Documents

No response to the allegations of Part VIII is requested and, thus, none is proffered.

IX. General Provisions

No response to the allegations of Part IX is requested and, thus, none is proffered.

AFFIRMATIVE DEFENSES

1. The Complaint fails to state a claim upon which relief can be granted against Respondent

2. The Environmental Protection Agency lacks jurisdiction under the Clean Water Act. 33 U.S.C. §§ 1251 et seq.
3. As per clauses 7.14 and 7.16 of the Construction for Site, Temporary Pump Station, Sanitary Force Line and Water Distribution Off-Site contract between Quintas and Cidra, it was Cidra's duty to obtain the permit and it was Cidra's obligation not to proceed until it had obtained all approvals.
4. Cidra had the day to day operational control of the activities necessary to comply with the storm water pollution prevention plan for the site.
5. DAI submitted an NOI by certified mail in February 2006, receipt was acknowledged.
6. DAI again submitted an NOI in January 2007 by certified mail.
7. DAI submitted a third NOI, this time electronically in October 2007, this time on-line.
8. EPA was negligent by not reviewing the applications submitted in 2006 and 2007.
9. On April 24, 2007, Quintas provided the EPA enforcement officer who visited the site on April 20, 2007, with copies of the SWPPP and NOI, as well as copies of the contract with Cidra, the Hydrological-Hydraulic study, and SWPPP inspection reports, among other documents. These documents had been given to Cidra in January of 2007.
10. At all times herein relevant, storm waters from the Site which may have, without either so admitting or denying, gone beyond the Facility boundary, flowed onto terrain or land located between the Site and the "unnamed creek" described in the Complaint as a tributary of the "Río Canóvanas".

the hydrological or ecological functions and attributes of “waters of the United States”.

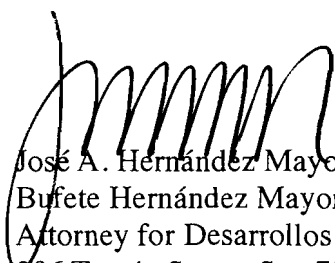
18. Any and all actions or omissions concerning compliance with “Clean Water Act” Sections 301 and 402, 33 U.S.C. §§1311,1342, have not resulted in any economic benefit to “Respondent”.
19. Respondents has, at all times, acted in good faith.
20. Respondents have caused no prejudice by initiating work a full year after the submittal of the first NOI.
21. Respondents reserves the right to amend these pleadings and to add such further affirmative defenses as discovery and development of the case should disclose.

WHEREFORE, it is respectfully requested that the Administrative Complaint in the instant case be dismissed.

CERTIFICATE OF SERVICE: This Answer to Administrative Complaint has been notified by certified mail, return receipt requested, to: Regional Hearing Clerk, U.S. EPA, Region II, 290 Broadway – 16th Floor, New York, New York 10007; copy was notified by fax and mail to: Mr. Roberto M. Durango, Office of Regional Counsel, U.S. Environmental Protection Agency – Region 2, 1492 Ponce de León Ave., Suite 417, San Juan, Puerto Rico 00907-4127; and attorneys José Raúl Cancio & Rodney W. Colón-Ortiz, Cancio, Covas & Santiago LLP, 255 Ponce de León Ave., Suite A-267, Hato Rey, PR 00917; and to Patricio Martínez-Lorenzo, Martinez-Lorenzo Law Offices, Union Plaza BUilding - Suite 1200, 416 Ponce de León Avenue, San Juan, Puerto Rico 00918-3424.

In San Juan, Puerto Rico, this 4 December 2009.

RESPECTFULLY SUBMITTED.



José A. Hernández Mayoral
Bufete Hernández Mayoral CSP
Attorney for Desarrollos Altamira I, Inc.
206 Tetuán Street, Ste. 702
San Juan, Puerto Rico 00901
Tel. 787-722-7782
Fax: 787-722-7786
jahm@mac.com