

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2**

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REG. II  
2009 JUL 14 AM 8:13  
REGIONAL HEARING  
CLERK

In the Matter of:

**CARAM CONSTRUCTION, INC.**  
1316 Fernández Juncos Ave.  
San Juan, PR 00910

**PROCEEDING TO ASSESS A CLASS II  
CIVIL PENALTY**

RESPONDENT

**LA ALBORADA RESIDENTIAL  
DEVELOPMENT**

Proceeding pursuant to Section 309(g) of  
the Clean Water Act, 33 U.S.C. §1319(g)

NPDES Permit Number PRR10BB83

**Docket No.: CWA-02-2009-3452**

**ANSWER TO ADMINISTRATIVE COMPLAINT**

**TO THE U.S. ENVIRONMENTAL PROTECTION AGENCY:**

NOW COME, Respondent through the undersigned attorney and very respectfully states and prays as follows:

**I. STATUTORY AND REGULATORY AUTHORITIES**

1. Paragraphs 1 through 11 of this Section assert legal conclusions and to this extent no response is required, but, in any other respect, they are otherwise denied.

**II. JURISDICTIONAL FINDINGS**

1. Paragraphs 12 through 19 of this Section are admitted.
2. Paragraph 20 of this Section is denied.
3. Paragraphs 21 and 22 of this Section assert legal conclusions and to this extent no response is required, but, in any other respect, they are

otherwise denied.

4. Paragraph 23 of this Section is admitted.

### **III. FINDINGS OF VIOLATION**

1. Complainant re-alleges answers to Paragraphs 12-23 of the Complaint.
2. Paragraph 25 of this Section is admitted in part and denied in part. Respondent admits that on April 12, 2007, Mr. Héctor Ortiz of the Environmental Protection Agency performed a Compliance Evaluation Inspection ("CEI") of the Alborada Residential Project. The rest of the Paragraph is denied for lack of sufficient information to form a belief.
3. Paragraph 26 of this Section is denied for lack of sufficient information to form a belief.
4. Paragraph 27 of this Section is denied for lack of sufficient information to form a belief.
5. Paragraphs 28 and 29 of this Section are admitted.
6. Paragraph 30 of this Section asserts legal conclusions and to this extent no response is required, but, in any other respect, it is otherwise denied.

### **IV. NOTICE OF PROPOSED ORDER ASSESSING A CIVIL PENALTY**

Respondent questions the adequacy of the proposed fine given the alleged facts of this Complaint. Therefore, Respondent asserts its right to request additional information regarding the use of penalty policies, methodologies or calculations and their application to the alleged facts of this case and to raise any applicable defenses arising from this discovery.

Respondent further alleges that it has already spent \$500,000.00 in the

implementation of its amended SWPPP; that it does not have a prior history of violations under the NPDES program; that even if the allegations contained in the Complaint are considered to be true, the violations posed no real risks to human health and/or the environment; that some of the allegations are documentation ("paper") violations, which were quickly corrected by Respondent; that Respondent was diligent in taking the appropriate corrective measures ordered by the EPA (Administrative Compliance Order CWA-02-2007-3047) on August of 2007; that no economic benefit or savings resulted from the alleged violations; that some of the alleged violations (such as collapsed silt fences) are not attributable to Respondent; and that at the time of inspection, temporary catch basins had been removed due to the pending completion of storm sewer systems.

Furthermore, since the commencement of the project, run-on water has been identified from the neighboring residences, mainly wash-water, for which curbs and gutters had to be constructed along State Road PR-155, to impede its access into the site.

#### **OTHER AFFIRMATIVE DEFENSES**

1. The proposed penalty assessment is arbitrary and capricious, and/or it is not based on measurable data obtained through a valid statutory policy, procedure or methodology.
2. Claims towards Respondent are barred for lack of jurisdiction.
3. Claims towards Respondent are barred by statutes of limitation.
4. The EPA is estopped from making any claims against Respondent.
5. The Complaint fails to state a claim upon which relief may be granted.
6. The claims towards Respondent are obstinate, vexatious and temeritous for which

the EPA is liable for costs, expenses and attorney fees.

7. The conclusions of the EPA are not based on scientific and/or measurable data obtained through a valid statutory procedure or methodology.
8. Respondent does not hereby waive any affirmative defenses, reserving the right to raise those which may arise during the course of the proceedings in this case.

#### **V. PROCEDURES GOVERNING THIS ADMINISTRATIVE ACTION**

Pursuant to Section 22.15(c) of the Consolidated Rules of Practice Governing the Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (CROP), 40 CFR, Part 22, Respondent hereby requests a hearing in which to present evidence to adequately contest the issues raised by the complaint. Respondent, in particular, wishes to contest the proposed penalty assessment.

#### **VI. INFORMAL SETTLEMENT CONFERENCE**

Respondent's attorney has already contacted Complainant's attorney regarding possible settlement proceedings. It is expected that we will conduct an informal settlement conference during the course of this month.

#### **VII. RESOLUTION OF THIS PROCEEDING WITHOUT HEARING OR CONFERENCE**

Respondent waives its right to pay the total amount of the proposed penalty and will exercise its right to request a Hearing and/or Settlement Conference.

#### **VIII. FILING OF DOCUMENTS**

Respondent understands that no response is required for this Section of the Complaint.

This Section asserts legal conclusions and to this extent no response is required, but, in any event it is otherwise denied.

Respondent has elected to be represented by the undersigned counsel and any and all correspondence related to this case should be mailed and/or e-mailed to the addresses stated below.

**WHEREFORE**, it is respectfully requested that the U.S. Environmental Protection Agency **DENY AND DISMISS** the Complaint and/or holds in abeyance the present claim pending the outcome of the requested Hearing and/or Informal Settlement Conference.

I **HEREBY CERTIFY** that on June 6, 2009, I filed the foregoing with the **Regional Hearing Clerk**, U.S. Environmental Protection Agency, Region 2, 290 Broadway, 16<sup>th</sup> Floor, New York, New York, 10007-1866, via certified mail; and sent a copy to **Lourdes del Carmen Rodriguez, Esq.**, Office of Regional Counsel, U.S. Environmental Protection Agency, Region 2, 1492 Ponce De León Ave., Suite 417, San Juan, Puerto Rico 00907-4127.

**RESPECTFULLY SUBMITTED**, this 6<sup>th</sup> day of June, 2009.



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