

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

In the Matter of:	*	Docket Number: CWA02-2008-3457
INMOBILIARIA UNIBON, Inc.	*	NPDES Permit: PRU-202005
Box 9065983		
San Juan, P.R. 00906	*	Proceeding Pursuant to Section
		309(G) of the Clean Water Act
Respondent		33 U.S.C. §1319(G)-Civil Penalty
* * * * *		

U.S. ENVIRONMENTAL PROTECTION AGENCY
REGIONAL HEARING CLERK
2008 NOV -6 PM 1:17

RESPONDENT PREHEARING EXCHANGE

BEFORE this Honorable Forum:

Comes now the Respondent party, pursuant to the ORDER of Prehearing Procedures. Respondent appear by documentary evidence, most of them is in the EPA files.

A. The Respondent will not call any expert or any witness due to insolvency. Respondent can't contract legal representation for the same reason. Photograph are actual unretouched.

B. Respondent Documents and Exhibits:

1. Respondent's exhibit #1: Answers to the Findings of Fact dated June 13, 2008.
2. Respondent's exhibit #2: Memorandum dated May 29, 2008, subscribed by Andrew Bonilla, Environmental Consultant accompanied by photograph.
3. Respondent's exhibit #3: Letter dated June 9, 2008, subscribed by Andrew Bonilla, Environmental Consultant, containing, (a) Report Letter dated October 10, 2006, Letter acknowledges of submitted a complete NOI, dated December 4, 2006, by EPA Processing Center; Return receipt of NOI from USEPA Notice Center; first page acknowledges receipt of Storm Water Pollutions Prevention Plan, dated October 18, 2006, subscribed by Andrew Bonilla, Environmental Consultant
4. Respondent's exhibit #4: Letter dated July 7, 2008, notifying Mrs. Whiting Beale that we accept the process to settle the dispute.
5. Respondent's exhibit #5: Letter dated July 9, 2008 address to Mr. Héctor Vélez, Esq. about the information he requested with their exhibits.
6. Respondent's exhibit #6: Joint Status Report dated July 16, 2008 subscribed by Complainant and Respondent.

7. Respondent's exhibit #7: Letter dated July 29, 2008 addressed to Mr. Héctor Vélez, Esq. notifying the enclosed of copies of Income Tax Return for the purpose of settlement.

RESPONDENT STATEMENT

Memorandum from Mr. Héctor Vélez, dated May 8, 2008.

1. Gravity: Nature and Circumstances.

As soon as Respondent knew that the development need a permit with EPA, contacted Mr. Florencio Vázquez, Eng with P.R. license to comply with the requirements of Law and Regulations to prepare the necessary documents. Mr. Vázquez met with Mr. Héctor Ortiz. He prepared and submitted a NOI. (Respondent's exhibit #8).

Mr. Ortiz notified the Respondent that this NOI didn't meet EPA guidelines. That means that Mr. Vázquez didn't know how to prepare EPA documents. Mr. Vázquez talks to us that he never knew why NOI was incomplete.

Immediately, we contacted Mr. José Longo, another Consultant to help us and prepare the permits required by EPA. Mr. Longo submitted several documents to EPA and on June 30, 2006 he sent a letter to EPA informing that the PLAN he prepared was according EPA guidelines and specifically indicated that the NOI was submitted on September 2005. (That's Vazquez, NOI).

(Respondent's exhibit #9).

Another document's dated August 10, 2006 was filed by Mr. Longo as a supplemental of the PLAN. (Respondent's exhibit #10, the date of Certification is mistaken, probably late 2006). Mr. Ortiz advised us that this document did not comply with EPA guidelines.

We called various consultant, but they were not

interested in prepare the EPA documents, because this is a small development and they were interested in greater developments.

Finally we "DISCOVERED" Mr. Andrew Bonilla, who prepared and filed the correspondent documents. Mr. Bonilla sent a letter to Mr. Ortiz, dated October 10, 2006 notifying the filing of PLAN. (Respondent's exhibit #11). Another version of NOI was filed. (Respondent's exhibit #12). A letter by EPA notified that this was a completed NOI. (Respondent's exhibit #13). Cover letter of Storm Water Pollution Plan, dated October 18, 2006. (Respondent exhibit #14).

Proposed penalty of \$101,200.00 fails to comply with Order of July 27, 2008, page 2, item #2 in which Judge Barbara A. Gunning requires a detail determination.

a. Extent:

In first place, Mr. Ortiz departs from April 30, 2004 to compute damages that allegedly remain until March 18, 2008. This statement is incorrect since the first NOI was submitted on September 2005, and the latter on November 27, 2006. Thus, length stays at month number 31. Complainant fails to recognize that the NOI was filed. Please notice an arithmetical error. Also, the development fully comply with Sate Cest Plan. Enclose satisfactory inspection report by local inspector, dated August 24, 2004, date when Mr. Ortiz allege that Riberas de Unibón do not have any Plan and maintenance. (Respondent exhibit #15).

Also, he does not recognize that the Respondent fully comply with the Plan. (see exhibit #16 - photographs, waste disposal truck).

b. Seriousness of Violations:

Complainants fails to demonstrate how, when and why the alledged negative environmental effects to the receiving water of Unibón River really occur. Complainant only mention possibilities. Possibilities that were attended by the Respondent. The State Plan was implemented very carefully and diligently. We sent to Mr. Ortiz, evidence that show sediments and debris reaching Unibón River, but NOT from the development, instead from houses of adjacent Riberas del Río. (Respondent photograph exhibit #17).

Therefore, the possibilities of all damage reduces to a minimum. In general is very difficult to discuss this matter when the Complainant's basic premise for determining damage is a possibility. No evidence. Riberas de Unibón have the dust control measures and have the water tank equipment and also the sediments measures with silk fence to prevent sediment to reach a river. (Respondent photograph exhibit #18).

c. Degree of Culpability:

There is no culpability, therefore no degree of culpability can be estimated. However, Mr. Ortiz knows that if any damage was cause, it was cause by a Third Party (the State Department of Public Works and the Municipality of Morovis). Both would be part of this procedures and penalties.

The State Department of Public Works been aware of the damage created by the illegal discharge of the storm water from Road #159, has caused a severe damage to the Riberas de Unibón development. The uncontrolled water flowing thru the project is a total responsibility of the State and Municipality Agencies, because the development has no control from the point of

the origin of this offsite storm water of do their best to control that event. Actually, the Department began to divert this storm water to the Unibón River and began to install several new pipes to discharge the offsite waters to the river. (Respondent photograph exhibit #19).

d. Penalty:

The amount of \$40,000.00 assigned to compliance Plan is assumed, we see no foundation for subject. In fact, Respondent did not benefit from alleges no compliance.

Complainant assumes benefit of interest at 7% from an assume cost of Plan of \$40,000.00 to arrive at \$50,266.00 penalty. Simultaneously, computes benefit per month \$909.09- which is a denial of the basic assumption of holding \$40,000.00 needed to received interest. Both can not be correct at the same time. The Respondent performed in accordance with Puerto Rico CEST Plan which provides erosion control measures. (Respondent exhibit #15).

e. Ability to pay:

Payment of interest of \$512,000.00 after ORDER to CEASE and CEASE issued by EPA plus the improvement to community has eroded the liquidity of development. This amount exceeds penalty more then three times. Riberas de Unibón residential development is in a "de facto" bankruptcy. Penalty impose, unjustly, will provoke a "de jure" bankruptcy.

This project is design to provide homes for LOW INCOME families. The increase in price of oil and other materials has inflated cost of materials by an additional 30%. This project may luckily if working with the most efficiency, end of even, no profit. See carefully the Income Tax Return for 3 years of Riberas

de Unibón. (Respondent exhibit #7).

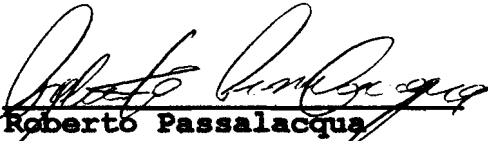
The Respondent request an informal settlement conference prior to any hearing to resolve the controversy.

RESPONDENT respectfully request the DISMISS of this all charges and submit this case by documentary evidence.

RESPECTFULLY SUBMITTED.

CERTIFICATION: I certify that on this date a copy of this document was send to EPA Regional Counsel: Héctor L. Vélez Cruz, Esq. at his local office; Karen Maples, Regional Hearing Clerk; and Barbara A. Gunning, Administrative Law Judge at their at their addresses.

In San Juan, Puerto Rico, on October 31, 2008.


Roberto Passalacqua
President
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