

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REGION 2
2009 APR -2 PM 1:37
REGIONAL HEARING
CLERK

IN THE MATTER OF:

Palmas Lakes, Inc.,
P.O. Box 191334
San Juan, Puerto Rico 00919

and

F&R Contractors Corporation
P.O. Box 9932
San Juan, Puerto Rico 00908

**Harbour Lakes Residential
Development
NPDES GCP Number PRR10B567**

Respondents.

Docket No. CWA-02-2007-3410
Proceeding Pursuant to Section 309(g) of
the Clean Water Act, 33 U.S.C. §1319(g)
to Assess Class II Civil Penalties

CONSENT AGREEMENT AND FINAL ORDER

Complainant, the United States Environmental Protection Agency (EPA), having issued the Complaint herein on April 3, 2007, against Respondents Palmas Lakes Inc., and F&R Contractors Corp. (jointly, the "Respondents"), and

Complainant and Respondents (together "the Parties") having agreed that settlement of this matter is in the public interest, and that entry of this Consent Agreement and Final Order (CA/FO) without further litigation is the most appropriate means of resolving this matter;

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

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

2. The Complaint alleges that Respondents violated the CWA by failing to comply with certain requirements of the National Pollutant Discharge Elimination System ("NPDES") storm water permit, the unlawful discharge of pollutants (storm water runoff associated with construction activities) into navigable waters and F&R's failure to timely apply for an NPDES permit.
3. EPA notified the Commonwealth of Puerto Rico regarding this action and offered an opportunity for the Commonwealth of Puerto Rico to confer with EPA on the proposed penalty assessment, pursuant to 40 CFR Part 22.
4. This action was public noticed. No public comment was received.
5. Respondents filed an Answer, presented affirmative defenses and requested a hearing in this matter.

II. TERMS OF SETTLEMENT

6. This CA/FO shall apply to and be binding upon Respondents, their officers, directors, employees, successors and assigns, including, but not limited to, subsequent purchasers other than individual or single unit purchasers of the Palmas Lakes/Harbour Lakes Residential Development.
7. Respondents stipulate that EPA has jurisdiction over the subject matter alleged in the Complaint and that the Complaint states a claim upon which relief can be granted against Respondents. Respondents waive any defenses they might have as to jurisdiction and venue, and, without admitting or denying the factual or legal allegations contained in the Complaint, consent to the terms of this Consent Agreement and Final Order.
8. In their interest to avoid the costs and burdens of continuing litigating the captioned matter, Respondents hereby waive their right to a judicial or administrative hearing or appeal on any issue of law or fact set forth in the Complaint.
9. Pursuant to Section 309(g) of the Clean Water Act, 33 U.S.C. § 1319(g), the nature of the violations alleged, the potential costs to the Parties of continuing with this case and other relevant factors, EPA and Respondents have jointly determined that an appropriate civil penalty to settle this action is in the amount of One Hundred Thousand Dollars (\$100,000.00).
10. For purposes of settlement, Respondents consent to the issuance of this Consent Agreement and to the payment of the civil penalty cited in the foregoing paragraph, without any admission of liability whatsoever.
11. The Respondents' acceptance of this CA/FO or the negotiations leading to this CA/FO shall not constitute and may not be interpreted as an admission of

any allegation contained in the Complaint, except those pertaining to jurisdiction over the subject matter.

III. Payment of Penalty

12. Respondents agree to pay the above stated amount in *eight equal payments*. The effective date of this CA/FO shall be the date the Regional Administrator signs the Final Order (due date) accompanying this Consent Agreement.
- a. An initial payment of Twelve Thousand Five Hundred Dollars (\$12,500.00) shall be made within forty-five (45) calendar days from the effective date of the CA/FO;
 - b. a second payment of Twelve Thousand Five Hundred Dollars (\$12,500.00) shall be made within one hundred thirty five-five (135) calendar days from the effective date of the CA/FO;
 - c. a third payment of Twelve Thousand Five Hundred Dollars (\$12,500.00) shall be made within two hundred and twenty-five (225) calendar days from the effective date of the CA/FO;
 - d. a fourth payment of Twelve Thousand Five Hundred Dollars (\$12,500.00) shall be made within three hundred and fifteen (315) calendar days from the effective date of the CA/FO;
 - e. a fifth payment of Twelve Thousand Five Hundred Dollars (\$12,500.00) shall be made within four hundred and five (405) calendar days from the effective date of the CA/FO;
 - f. a sixth payment of Twelve Thousand Five Hundred Dollars (\$12,500.00) shall be made within four hundred and ninety five (495) calendar days from the effective date of the CA/FO;
 - g. a seventh payment of Twelve Thousand Five Hundred Dollars (\$12,500.00) shall be made within five hundred and eighty five (585) calendar days from the effective date of the CA/FO; and
 - h. an eighth and final payment shall be made of Twelve Thousand Five Hundred Dollars (\$12,500.00) within six hundred and seventy five (675) calendar days from the effective date of the CA/FO.

13. Respondents shall pay each payment of the penalty of One Hundred Thousand Dollars (\$100,000.00) by cashiers' or certified checks, payable to the "Treasurer of the United States of America," identified with a notation of the name and docket number of this case, set forth in the caption on the first page of this document. Respondents shall perform payment pursuant to the following:

CHECK PAYMENTS:

US Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000

WIRE TRANSFERS:

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."

OVERNIGHT MAIL:

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

Respondents shall also send copies of this payment to each of the following:

Jaime López
Environmental Engineer
Multimedia Permits and Compliance Branch
Caribbean Environmental Protection Agency
U.S. Environmental Protection Agency Region 2
1492 Ponce de León Ave. – 4th Floor
San Juan, PR 00907-4127
Fax number: (787) 289-7104

and

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th Floor
New York, New York 10007

- a. Failure to pay the penalty in full according to the above provisions will result in a referral of this matter to the United States Department of Justice or the United States Department of the Treasury for collection;
 - b. further, if the payments are not received as set forth above, interest will be assessed at the annual rate established by the Secretary 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 \$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 6% per annum penalty also will be applied on any principal amount not paid within 90 days of the due date;
 - c. in addition, pursuant to Section 309(g)(9) of the Clean Water Act, 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 20% of the aggregate amount of penalties and quarterly nonpayment penalties which are unpaid as of the beginning of such quarter; and
 - d. Respondents also may be required to pay attorneys fees and costs for collection proceedings in connection with nonpayment.
14. The penalty to be paid is a civil penalty assessed by the EPA and shall not be deductible from the Respondents' federal or state taxes.

IV. General Provisions

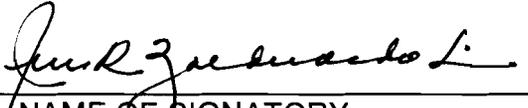
15. The Respondents waive any right they may have pursuant to 40 C.F.R. § 22.8 to be present during discussions with or to be served with and to reply to any memorandum or communication addressed to the Director or the Regional Administrator where the purpose of such discussion, memorandum, or communication 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.
16. Nothing in this 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 agreement or of the statutes and regulations upon which this agreement is based, or for Respondent's violation of any applicable provision of law not contemplated herein.

17. This CA/FO shall not relieve Respondents from their obligation to comply with all applicable provisions of federal, state or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit.
18. This CA/FO constitutes a settlement by EPA of all claims for civil penalties pursuant to the Clean Water Act for the violations alleged in the Complaint and the subsequent Administrative Compliance Order, Docket No. CWA 02-2007-3072.
19. Each undersigned representative of the Parties to this CA/FO 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.
20. Each party shall bear its own costs and attorney fees in connection with the action resolved by this CA/FO.

RESPONDENTS:
F&R CONTRACTORS CORP.

BY: 
JAIME FULLANA OLIVENCIA, P.E.
PRESIDENT

DATE: MAR. 24/09

Palmas Lakes and F&R
BY: 
NAME OF SIGNATORY
TITLE OF SIGNATORY
President

DATE: MAR 31, 09



COMPLAINANT:

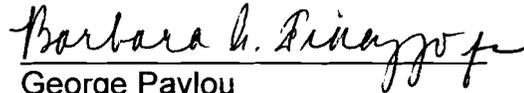
BY: 
Carl-Axel P. Soderberg, Director
Caribbean Environmental Protection Division
U.S. Environmental Protection Agency - Region 2
Centro Europa Building, Suite 417
1492 Ponce de León Avenue
San Juan, Puerto Rico 00907-4127

DATE: 03-17-09

III. FINAL ORDER

The Regional Administrator of the U.S. Environmental Protection Agency Region 2, ratifies the foregoing Consent Agreement. The Agreement entered into by the parties is hereby approved, incorporated herein, and issued as an Order. The effective date of this Order shall be the date of filing with the Regional Hearing Clerk, U.S. EPA Region 2, New York, NY.

March 27, 2009
Date


George Pavlou
Acting Regional Administrator
United States Environmental
Protection Agency-Region 2
290 Broadway
New York, NY 10007-1866

CERTIFICATE OF SERVICE

I hereby certify that the foregoing CA/FO was sent in the following manner to the addresses listed below:

Copy by Overnight and Facsimile:

Barbara A. Gunning
Administrative Law Judge
Office of Administrative Law Judges
U.S. Environmental Protection Agency
1099 14th Street, N.W. Suite 350
Franklin Court
Washington, D.C. 20005

Original and Copy by Overnight:

Karen Maples
Regional Hearing Clerk
U.S. Environmental Protection Agency,
Region II
290 Broadway, 16th Floor
New York, NY 10007-1866

Copy by Facsimile and Regular Mail to:

Hilda Quiñones Rivera
Attorney for F&R Contractors Corp.
P.O. Box 70294
San Juan, Puerto Rico 00936-8294

Ernesto F. Rodríguez Surís
Attorney for Palmas Lakes, Inc.
Suite 300, Tres Ríos Building
#27 González Giusti Ave.
Guaynabo, P.R. 00968

April 1, 2009
Date

Cileen Sanchez
Name