

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION II

In the Matter of

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

and

F&R Contractors Corp.
PO Box 9932
San Juan, Puerto Rico 00908

**Harbour Lakes Residential
Development**

RESPONDENTS

Prehearing Exchange

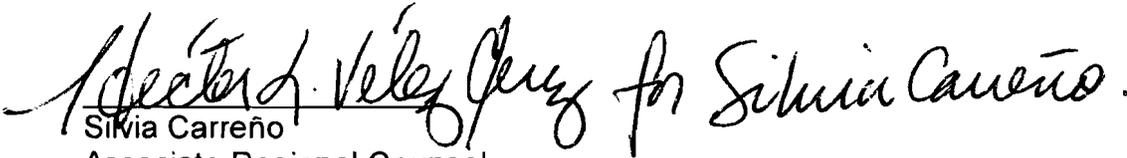
CWA-02-2007-3410

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG.II
2008 JUL -1 AM 8:01
REGIONAL HEARING
CLERK

COMPLAINANT'S INITIALPREHEARING EXCHANGE

Pursuant to the Order Setting Prehearing Procedures, dated March 14, 2008, the Complainant in the above captioned matter hereby files its Initial Prehearing Exchange for the above captioned matter.

Respectfully submitted, in San Juan, Puerto Rico this 27th day of June 2008.


Silvia Carreño

Associate Regional Counsel
U.S. Environmental Protection Agency, Region 2
Office of Regional Counsel – Caribbean Team
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- 1. Pursuant to Section 22.19(a) of the Rules, each party shall file with the Regional hearing Clerk and shall serve on the opposing party and on the Presiding Judge:**
 - a. The names of any expert or other witnesses it intends to call at the hearing, together with a brief narrative summary of each witness' expected testimony, or a statement that no witnesses will be called;**

Complainant expects to call the following persons as witnesses at the hearing:

- i. Jaime López**
Multimedia Permit and Compliance Branch
U.S. Environmental Protection Agency
Caribbean Environmental Protection Division
Storm Water Program Specialist

Mr. Jaime López has been working with EPA, Region 2, CEPD since August 2, 1998, as an Environmental Scientist handling NPDES inspections in the Multimedia Permit and Compliance Branch. Mr. López has a Bachelor in Science Degree from Kansas State University where he graduated in 1990. Mr. López has worked in the Puerto Rico Environmental Quality Board as an Environmental Science Specialist under the Superfund and Emergency Response Program.

Mr. López will testify about the NPDES storm water permit application regulations, the NPDES Construction General Permit (CGP) requirements and how it applies to Respondent's facility. He will also testify about the: Compliance Evaluation Inspections (CEIs) performed on September 8, 2006, June 19, August 7, and December 7, 2007, which addressed compliance by Respondents' facility with the NPDES storm water permit regulations; factual and legal aspects of this case, among other things, the violations of the Clean Water Act (the "Act" or "CWA") and the pertinent regulations; and the calculation of the assessed penalty included in the complaint (which he performed), the reasoning behind the calculation of said assessed penalty and the appropriateness of the penalty.

Mr. López will also testify about the: Administrative Compliance Order (ACO), Docket No. CWA-02-2007-3072, issued by EPA on August 24, 2007, to Respondents, ordering Respondents to comply with the storm water discharge permit regulations; visits he performed at the facility and communications held with Respondents' representatives regarding its compliance/non-compliance with the AOC, the CWA and the NPDES storm water permit regulations.

- ii. **José A. Rivera, EIT (expert)**
Environmental Engineer
Multimedia Permit and Compliance Branch
U.S. Environmental Protection Agency
Caribbean Environmental Protection Division
Regional Storm Water Program Specialist

Mr. José Rivera has been working with the U.S. Environmental Protection Agency since September 9, 1990, where he started as an Environmental Engineer in the Water Permit and Compliance Branch, Water Management Division, Region 2. Mr. Rivera currently is the NPDES Regional Storm Water Program Specialist with office located at the Caribbean Environmental Protection Division, EPA, Region 2, in San Juan, Puerto Rico. Mr. Rivera holds a B.S. in Civil Engineering from the University of Puerto Rico where he graduated in 1990.

Mr. Rivera will testify about the NPDES storm water permit application regulations and the NPDES Construction General Permit requirements and how it applies to Respondents' facility.

Mr. Rivera will testify about the factual and legal aspects of this case, among other things, the violations of the CWA and the pertinent regulations, and development and implementation of Stormwater Pollution Prevention Plans at construction sites. Mr. Rivera will also testify as to his experience as enforcement officer under the CWA and his experience handling administrative penalty orders. Mr. Rivera will also testify about the different outreach efforts conducted by EPA, in order to keep the regulated community informed of the NPDES storm water permit regulations and changes.

Complainant reserves the right, and nothing herein is intended or is to be construed to prejudice or waive any such right, to call or not to call any of the aforementioned potential witnesses, and to expand or otherwise modify the scope, extent and/or areas of the testimony of any of the above-named potential witnesses, where appropriate. In addition, Complainant reserves the right to list and to call additional potential hearing witnesses, including expert witnesses, to answer and/or rebut evidence (testimonial or documentary) listed by Respondent in its prehearing exchange or on matters arising as a consequence of such evidence.

- b. **Copies of all documents and exhibits intended to be introduced into evidence at the hearing. The exhibits should include curriculum vitae or resume for each proposed expert witness. If photographs are submitted, the photographs must be actual unretouched photographs.**
- i. ***Complainant's Exhibit 1 - Administrative Complaint***, Docket No. CWA-02-2007-3410, dated April 3, 2007, with letters addressed to Mr. Juan R. Zalduondo, President, Palmas Lakes, Inc. and Mr. Jaime Fullana dated April 4, 2007, ***Complainant's Exhibit 1a.***, and with Certified Mail Receipt, ***Complainant's Exhibit 1b.***
 - ii. ***Complainant's Exhibit 2 - Respondents' Answer to the Administrative Complaint and Request for Hearing***, dated June 18, 2007, with attachments.
 - iii. ***Complainant's Exhibit 3 - Letter addressed to Wanda Garcia, Director of the Water Quality Bureau, PR Environmental Quality Board (EQB), dated April 4, 2007, with Certified Mail Receipt.***
 - iv. ***Complainant's Exhibit 4 - Memorandum dated March 20, 2007***, prepared by Mr. Jaime López.
 - v. ***Complainant's Exhibit 5 - EPA August 28, 2008 letter addressed to Mr. Juan R. Zalduondo, President of Palmas Lakes, Inc., and to Mr. Jaime Fullana, president of F&R Contractors Corp., notifying violations of the CWA, with Certified Mail Receipt, and with the Administrative Compliance Order, Docket Number CWA-02-2007-3072, *Complainant's Exhibit 5a.****
 - vi. ***Complainant's Exhibit 6 - EPA Water Compliance Inspection Report, dated November 22, 2006***, regarding the September 18, 2006 EPA Site Inspection (including photos of the facility taken during the inspection); ***Complainant's Exhibit 6a. - EPA Water Compliance Inspection Report, dated August 16, 2007***, regarding the June 19, 2007 EPA Site Inspection (including photos of the facility taken during the inspection); ***Complainant's Exhibit 6b. - EPA Water Compliance Inspection Report, dated August 16, 2007***, regarding the August 7, 2006 EPA Site Inspection (including photos of the facility taken during the inspection); and ***Complainant's Exhibit 6c. - EPA Water Compliance Inspection Report regarding the December 7, 2007, EPA Site Inspection.***

- vii. **Complainant's Exhibit 7 - Respondent's (F&R) September 19, 2007 letter to EPA; Complainant's Exhibit 7a. - Respondent's (F&R) September 21, 2007 response to EPA's Administrative Compliance Order; and Complainant's Exhibit 7b. - Respondent's (F&R) September 25, 2007 letter to EPA.**
- viii. **Complainant's Exhibit 8 - Respondent's (Palmas Lakes) October 3, 2007 letter to EPA in response to the Administrative Compliance Order; and Complainant's Exhibit 8a. - Respondent's (Palmas Lakes) October 3, 2007 letter to EPA.**
- ix. **Complainant's Exhibit 9 - Notice of Intent form for Storm Water Discharges Associated with Construction Activity Under an NPDES General Permit signed by Mr. Juan R. Zalduondo, President of Palmas Lakes, Inc. on September 2, 2004.**
- x. **Complainant's Exhibit 10 - Notice of Intent form for storm Water Discharges Associated with Construction Activity Under an NPDES General Permit signed by Mr. Edris Mendez from F&R Contractors. Corp. on November 19, 2007.**
- xi. **Complainant's Exhibit 11 - EPA's "Final NPDES General Permit for Storm Water Discharges from Construction Activities", issued on July 1, 2003, and published in the Federal Register (68 FR 39087).**
- xii. **Complainant's Exhibit 12 - Copy of EPA's NPDES NOI Application Search Results for the city of Humacao, Puerto Rico, printed on August 30, 2006, from EPA's National Storm Water Processing Center Database by Mr. Jaime Lopez.**
- xiii. **Complainant's Exhibit 13 - Copy of EPA's NPDES NOI Application Detail for Palmas Lakes, Inc., printed on August 30, 2006, from EPA's website by Mr. Jaime Lopez.**
- xiv. **Complainant's Exhibit 14 - Copy of EPA's NPDES NOI Application Detail for F&R Contractors Corp., printed on June 17, 2008, from EPA's website by Mr. Jaime Lopez.**
- xv. **Complainant's Exhibit 15 - EPA letter addressed to Respondent Palmas Lakes, Inc., dated December 14, 2007**

- xvi. **Complainant's Exhibit 16 – EPA letter addressed to Respondent Palmas Lakes, Inc., dated December 28, 2007.**
- xvii. **Complainant's Exhibit 17 - Mr. Jaime López's Information.**
- xviii. **Complainant's Exhibit 18 - Mr. José A. Rivera's Information.**

Complainant reserves the right, and nothing herein is intended or should be construed to prejudice such right, to supplement or add, subject to notice to the Court and Respondent, documentary evidence to Complainant's prehearing exchange submission in order to respond to and/or rebut, or otherwise to address an issue arising as a consequence of, evidence Respondent submits in its prehearing exchange or otherwise to update this prehearing exchange.

- c. **A statement expressing its view as to the place for the hearing and the estimated amount of time needed to present its direct case.**

Pursuant to 40 CFR §§ 22.21(d) and 22.19(d), the hearing should be held in the county where the Respondent conducts business which the hearing concerns, in the city in which the relevant Environmental Protection Agency Regional office is located, or in Washington, D.C. Complainant requests that the hearing be held in San Juan, where the relevant Environmental Protection Agency Regional office is located. This location is convenient for both parties and witnesses than the Municipality where the events that gave rise to this action occurred. The Complainant can assist by providing the Regional Hearing Clerk with information on facilities which may be available for purposes of holding the hearing. Complainant estimates it will need one day to present its direct case.

- 2. **In addition, the Complainant shall submit a statement explaining in detail how the proposed penalty was determined, including a description of how the specific provisions of any Agency penalty or enforcement policies and/or guidelines were applied in calculating the penalty.**

The proposed civil penalty for this case has been determined after taking into account the applicable factors identified at Section 309(g)(3) of the Act, 33 U.S.C. § 1319(g)(3). EPA has taken into account the nature, circumstances, extent and gravity of the violations, and Respondents' prior history of violations, degree of culpability, economic benefit or savings accruing to Respondents by virtue of the violations, and Respondents' ability to pay the proposed penalty. EPA has also taken into account the particular facts and circumstances of this case. The particular facts and circumstances of this case are based on a series of compliance evaluation inspections performed on September 8, 2006, June 19, August 7, and December 7, 2007.

The Complainant proposes, subject to receipt and evaluation of further relevant information from the Respondents, that the Respondents are assessed a civil penalty in the amount of \$157,500 for the violations alleged in the Complaint. A penalty memorandum and narrative explanation supporting the penalty figure for the violations cited in the Complaint is included in **Complainant's Exhibit 4**.

3. **Complainant shall submit a statement regarding whether the Paperwork Reduction Act of 1980 (PRA), 44 U.S.C. §3501 et seq., applies to this proceeding, whether there is a current Office of Management and Budget Control number involved herein and whether the provisions of Section 3512 of the PRA are applicable in this case.**

Complainant believes that the Paperwork Reduction Act (PRA) does not apply to the alleged violations in this proceeding. The requirements of Sections 301 and 308(a) of the Act, 33 U.S.C. §§ 1311 and 1318(a), are statutorily imposed and independently enforceable regardless of the PRA. Section 3512, the public protection provision of the PRA, does not preclude the Agency from seeking enforcement directed at statutory mandates. See 5 C.F.R. § 1320.6(e)(1997).

Courts construing the PRA have held that it does not apply to requirements imposed by statute. See Gossner Foods, Inc. v. EPA, 918 F. Supp. 359 (D. Utah 1996). The violations in this matter, failure to timely apply for a storm water permit, pursuant to Section 308(a) of the Act, and discharging pollutants through a point source to the waters of the United States without a NPDES permit pursuant to Section 301 of the Act are statutorily mandated. The NOI Form OMB Number is 2040-0086 and the Water compliance Inspection report has an OMB No. 2040-0057.

Respectfully submitted. In San Juan, Puerto Rico, June 27, 2008.



Silvia Carreño
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**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
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In the Matter of

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

and

F&R Contractors Corp.
PO Box 9932
San Juan, Puerto Rico 00908

Harbour Lakes Residential Development

RESPONDENTS

Prehearing Exchange

CWA-02-2007-3410

CERTIFICATE OF SERVICE

I certify that I have this day caused to be sent the foregoing **Prehearing Exchange**, dated June 27, 2008, and bearing the above-referenced docket number, in the following manner to the respective addressees below:

Original and copy by facsimile, **Federal Express** to:

Karen Maples
Regional Hearing Clerk
Region II
U.S. Environmental Protection Agency
290 Broadway, 16th Floor
New York, NY 10007-1866.
Fax (212) 637-3202

Copy by facsimile, **Federal Express** to:

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Fax (787) 756-9010

Copy by facsimile, **Federal Express** to:

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Franklin Court
Washington, D.C. 20005
Ph: 202.564.6255 / Fax (202) 565-0044

6/27/08
Date

Hilda Quiñones-Rivera
Name