

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

2007 MAY 16 AM 8:49

REGIONAL HEARING
CLERK

IN THE MATTER OF:

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

and

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

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

Harbour Lakes Residencial Development
NPDES GCP Number PRR10B567

ANSWER TO COMPLAINT AND REQUEST FOR HEARING

TO: Regional Hearing Clerk
U.S. EPA Region 2
290 Broadway, 17th Floor
New York, New York 10007-1866

COMES NOW Respondent F&R Construction Corporation (hereinafter F&R) through its undersigned representative and respectfully alleges, states and prays as follows:

1. On April 13th, 2007, F&R received notification of the subject Complaint, Finding of Violation, Notice of Proposed Assessment of a Civil Penalty, and Notice of Opportunity to request a Hearing.
2. Within 30 days after receipt of the subject Complaint, and pursuant to 40 C.F.R. §22.15, F&R hereby files an Answer to the Complaint contesting the material facts upon which the complaint is based and contends that the proposed penalty is inappropriate.
3. Respondent, F&R, without submitting to the jurisdictional authority regarding subject matter of the Regional Administrator of Region 2, EPA and/or the

Director of the Caribbean Environmental Protection Division, region 2, EPA, to issue the subject administrative Complaint, hereby responds to the allegations contained therein:

Allegations

1. F&R admits paragraph number 1 of the section titled Findings of Violation of the subject Complaint.

2. To the best of its knowledge, F&R admits that paragraph number 2 of the Findings of Violation of the subject Complaint.

3. F&R admits paragraph number 3 of the section titled Findings of Violation of the subject Complaint.

4. F&R denies as drafted paragraph number 4 of the section titled Findings of Violation of the subject Complaint, since it is not a point source within the meaning of Section 502(14) of the Clean Water Act, as amended, 33 U.S.C. §1362(14).

5. F&R admits paragraphs number 5, 6, 7, 8 and 9 of the section titled Findings of Violation of the subject Complaint.

6. F&R denies as drafted paragraph number 10 of the section titled Findings of Violation of the subject Complaint, since the discharge is covered by a NPDES permit pursuant to 40 C.F.R. §122.26(a)(1)(ii) and §122.26(b)(14)(x).

7. F&R denies as drafted paragraph number 11 of the section titled Findings of Violation of the subject Complaint since one officer inspected the development and it was not a legal inspection.

8. F&R denies the allegations contained in paragraph number 12 of the section titled Findings of Violation of the subject Complaint. To the best of its knowledge, F&R and/or Palmas Lakes performed inspections in compliance with Part 3.10 of the NPDES General Permit for Discharge from Large and Small Construction Activities (68 Fed Reg 39087), complied with the Storm Water Pollution Prevention Plan (SWP3) requirements in its Part 3.1, provided stabilization practices as required in its Part 3.13D, provided storm water run-on and run-off management, provided sediment and erosion control measures in the project and posted a sign on the project.

9. F&R admits paragraph number 13 of the section titled Findings of Violation of the subject Complaint.

10. F&R denies paragraph number 14 of the section titled Findings of Violation of the subject Complaint.

11. F&R denies paragraph number 15 of the section titled Findings of Violation of the subject Complaint since Palmas Lakes and/or F&R have complied with the permit requirements, have not unlawfully discharged pollutants into navigable waters of the U.S. and have filed for a NPDES storm water permit for the project site.

12. F&R does not deny nor admit for lack of knowledge the allegations contained in paragraph number 16 of the section titled Findings of Violation of the subject Complaint since it is not aware about the communications between the two government agencies.

Affirmative Defenses

13. Respondent F&R at all times acted in good faith to comply with the requirements of the Act.

14. Respondent F&R complied with all applicable requirements under the Act.

15. EPA received, accepted and processed all information F&R submitted in compliance with applicable requirements.

16. This administrative action is time-barred and/or the delay in the preparation of the Complaint by Complainant from the time of the site inspection to the time of the service of the Complaint, i.e. approximately 8 months afterward, has caused the Respondent, F&R, to be in an unjust position, where evidence that could have been available is no longer available, thus violating due process of law, both substantive and procedural. The delay caused by EPA is unjustified.

17. F&R reserves the right to use and raise other affirmative defenses, such as that of laches, violation of due process, estoppels, lack of jurisdiction over the subject matter and person, during the discovery procedures.

18. There is no environmental harm from the acts of F&R in relation to the development project in the subject Complaint.

Request for Hearing

19. F&R requests a formal hearing.

Contest of the Proposed Penalty

20. F&R contends that there are no economic benefits from the alleged violations. The extent, circumstances, gravity of alleged violations, if any, applicable history, degree of culpability, if any, economic benefit, if any, environmental damages, if any, and/or such other matters as justice may require, demonstrate that F&R shall not be penalized and that the proposed penalty amount is inappropriate.

21. The extent of time during which violations have allegedly been committed is denied and/or is overbroad and excessive.

In Guaynabo, Puerto Rico, this May 14th, 2007.

WE HEREBY CERTIFY that on this same date copy of this Answer to the Complaint and Request for Hearing has been mailed by certified mail to Silvia Carreño, Esq., Assistant Regional Counsel, Office of Regional Counsel, U.S. Environmental Protection Agency, Region 2, Centro Europa Suite 417, 1492 Ponce de León Ave., San Juan, Puerto Rico 00907-4127; Wanda García, P.E., Chief, Permit Section, Water Quality Division, Environmental Quality Board of PR, P.O. Box 11488, San Juan, PR 00910.



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