

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 2**

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II
2000 JUL -1 PM 3:03
REGIONAL HEARING
CLERK

IN THE MATTER OF:

Desarrollos de la Vega, Inc.

Respondent

Jardines de Arecibo Pump Station
P.O. Box 9932
San Juan, Puerto Rico 00908-9932

Docket No. CWA-02-2008-3351

Proceeding Pursuant Section 309(g) of
the Clean Water Act, 33 U.S.C.
§1319(g) to Assess Class I Civil
Penalty

**COMPLAINT, FINDINGS OF VIOLATION, NOTICE OF PROPOSED
ASSESSMENT OF A CIVIL PENALTY, AND NOTICE OF
OPPORTUNITY TO REQUEST A HEARING**

I. Statutory Authority

1. This Complaint, Findings of Violation, Notice of Proposed Assessment of a Civil Penalty, and Notice of Opportunity to Request a Hearing ("Complaint") is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA") by Section 309(g) (2)(A) of the Clean Water Act ("Act"), 33 U.S.C. §1319(g) (2)(A). The Administrator has delegated this authority to the Regional Administrator of EPA, Region 2, who in turn has delegated it to the Director of the Caribbean Environmental Protection Division, Region 2, EPA ("Complainant").
2. Pursuant to Section 309(g)(2)(A) of the Act, and in accordance with the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits" ("CROP"), 40 C.F.R. Part 22, a copy of which is attached, Complainant hereby requests that the Regional Administrator assess a civil penalty against Desarrollos de la Vega, Inc. for discharging pollutants into a storm sewer that flows into an open channel that

flows into Caño Tiburones, which is a water of the United States, in violation of Section 301 of the Act.

3. Section 1362(a) of the Act provides that "except as in compliance with this section and sections 1312, 1316, 1317, 1328, 1342, and 1344 of this title, the discharge of any pollutant [into waters of the United States] by any person shall be unlawful."

II. Findings of Facts

4. Desarrollos de la Vega, Inc., ("Respondent") is a corporation organized and authorized to do business under the laws of the Commonwealth of Puerto Rico, and is a "person" within the meaning of Section 502(5) of the Act. Mr. Jaime Fullana is the President of Desarrollos de la Vega, Inc.
5. Respondent is the developer of Jardines de Arecibo Housing Development ("Jardines de Arecibo" or the "Development") located at State Road # 683, Km. 1.0 Factor I Ward, Arecibo, Puerto Rico.
6. The Development is a residential project comprised of approximately 330 residences, parking lots and recreational facilities, constructed by Respondent. The construction of the project was finished around August 2005. The project consists of a second Phase.
7. The Development includes a Storm Sewer System which consists of a system of conveyances including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains ("the Storm Sewer System").
8. The Storm Sewer System is designed or used for collecting or conveying storm water, and for discharging it into a body of water.
9. The Storm Sewer System includes, among other appurtenances, a storm water drainage consisting of a below-ground catch basin which collects surface storm water ("the Storm Drain).
10. Respondent's Storm Sewer System and the Storm Drain discharge into a municipal drainage system, which eventually discharges into the Caño Tiburones.
11. The Caño Tiburones is an estuarine wetland of at least 5,000 acres property of

the Puerto Rico Land Authority ("PRLA") and located between the municipalities of Arecibo and Barceloneta

12. Respondent constructed at the Development, a sanitary wastewater pump station (the "Pump Station") and its associated sewage collection system (manholes, sanitary sewer). The Pump Station is owned/operated by Respondent. The pump station consists, among other equipment, of a concrete building, wet well, bar screens, two underwater pumps and an electrical system.
13. Respondent, at all relevant times, has owned and operated the Pump Station.
14. The Pump Station collects the Development's sanitary wastewater sewage. The sanitary wastewater is then discharged into the Puerto Rico Aqueduct and Sewer Authority's sanitary collection system located at State Road # 2.
15. The Pump Station is located in the State Road # 683, Km 1.0 Factor I Ward, Arecibo, Puerto Rico, northwest of the Storm Drain.
16. On June 21, 2007 an EPA representative conducted a Compliance Evaluation Inspection at the Development to determine if Respondent's Pump Station was in compliance with the Act and the applicable NPDES regulations. During the inspection, the EPA representative observed sewage residue and debris around the Pump Station area. A resident of the Development informed EPA of at least eight instances of sewage overflow, which had been documented with photos.
17. To EPA's knowledge, sanitary sewage overflows ("SSOs") occurred at least on eight instances from July 25, 2006 thru July 04, 2007. During the known incidents, the overflows from the Pump Station discharged directly into an adjacent storm water channel that is a tributary of the Caño Tiburones.
18. SSOs are discharges of untreated sanitary sewage from separate sanitary sewer systems designed to collect household, commercial sewage or industrial wastewater and convey it to sewage treatment plants. During the known incidents, the overflows from the Pump Station discharged directly into an adjacent storm water channel that is a tributary of the Caño Tiburones.
19. EPA issued the Administrative Order CWA-02-2007-3059 ("Compliance Order"), dated August 6, 2007, against Respondent to address the violations mentioned above. The Compliance Order incorporated findings of violations, and ordered Respondent among other things, to cease and desist the discharge of pollutants into waters of the United States from the Pump Station and to submit a

compliance plan that addresses the deficiencies in the Pump Station.

III. Findings of Violation and Conclusions of Law

20. Respondent failed to properly operate and maintain the Pump Station, which resulted in the various incidents of SSOs which discharged directly into an adjacent storm water channel that is a tributary of the Caño Tiburones, a water of the United States.
21. Respondent at all relevant times did not have a NPDES permit to discharge pollutants into Caño Tiburones.
22. Respondent is a person as that term is defined under Section 1362(5) of the Act.
23. The raw sewage discharged as a result of the SOSs, is a pollutant as that term is defined under Section 1362(6) of the Act.
24. Caño Tiburones is a water of the United States. Section 1362(7) of the Act defines the term "navigable waters" to mean the waters of the United States, including the territorial seas.
25. Section 1362(12) of the Act defines the term "discharge of a pollutant" and the term "discharge of pollutants" to mean each "(A) any addition of any pollutant to navigable waters from any point source, (B) any addition of any pollutant to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft."
26. The Storm Drain built by Respondent, which discharged pollutants into the Caño Tiburones, is a "point source" as defined by Section 502(14) of the Act. Section 1362(14) of the Act defines the term "point source" to mean any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged.
27. Section 1362(16) of the Act defines the term "discharge," when used without qualification, to include a discharge of a pollutant, and a discharge of pollutants.
28. Respondent, at all relevant times, has failed to provide effective sewer operation and maintenance to the Pump Station.

29. The discharges of untreated sewage as described above, are "discharges of a pollutant" as defined by Section 502(12) of the Act.
30. Respondent failed to provide effective operation and maintenance to the Pump Station which has resulted in SSOs, which discharged into the Caño Tiburones. Respondent is subject to the provisions of the Act, 33 U.S.C. §1251 et seq.
31. Based on the Findings detailed above, Complainant hereby finds that the Respondent violated Section 301 of the Act, by discharging pollutants into waters of the United States without the appropriate permit to do so.

III. Notice of Proposed Order Assessing a Civil Penalty

Based on the foregoing Findings of Violation, and pursuant to the authority of Section 309(g) of the Act, EPA, Region 2, hereby proposes to issue a Final Order Assessing Administrative Penalties ("Final Order") to Respondent assessing a penalty of **\$25,978.00**. The proposed penalty has been determined in accordance with the applicable factors under Section 309(g)(3) of the Act. EPA is required to take in consideration the nature, circumstances, extent and gravity of the violation (or violations), and Respondent's prior compliance history, degree of culpability, economic benefit or savings accruing to Respondent by virtue of the violations, and Respondent's ability to pay the proposed penalty. EPA has also taken in consideration the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Act of 1996, which requires EPA to adjust penalties for inflation on a periodic basis.

Based on the Findings set forth above, Respondent has been found violating Section 301 of the Act, by discharging pollutants (raw sewage) into waters of the United States without a NPDES permit. Respondent failed to take appropriate measures to prevent the SSOs from the Development's Pump Station. Untreated sewage contains very high amounts of pollutants such as Biological Oxygen Demand (BOD), Total Suspended Solids ("TSS"), Coliforms, Phosphorous, Nitrogen, Chlorine, Sulfide, heavy metals, toxics, etc., that could be dangerous to human health if a person becomes in contact with this discharge. The violation is serious. SSOs occurred at least on eight instances from July 25, 2006 thru July 04, 2007. Respondent does not have a prior history of violations under the Act.

EPA may issue a final Order Assessing Administrative Penalties thirty (30) days after respondent's receipt of this Notice, unless Respondent, within that time files an answer to the Complaint and, requests a hearing on this Notice pursuant to the following section.

IV. Procedures Governing This Administrative Litigation

The rules of procedure governing this civil administrative litigation have been set forth in the CROP, which have been codified at 40 C.F.R. Part 22. A copy of these rules accompanies this Complaint.

A. Answering the Complaint

Where Respondent intends to contest any material fact upon which the Complaint is based, to contend that the proposed penalty is inappropriate or to contend that Respondent is entitled to judgment as a matter of law, Respondent must file with the Regional Hearing Clerk of EPA, Region 2, both an original and one copy of a written Answer to the Complaint, and such Answer must be filed within thirty (30) days after service of the Complaint. 40 C.F.R. § 22.15(a). The address of the Regional Hearing Clerk of EPA, Region 2, is:

**Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th floor
New York, New York 10007-1866**

Respondent shall also then serve one copy of the Answer to the Complaint upon Complainant and any other party to the action. 40 C.F.R. § 22.15(a).

Respondent's Answer to the Complaint must clearly and directly admit, deny, or explain each of the factual allegations that are contained in the Complaint and with regard to which Respondent has any knowledge. 40 C.F.R. § 22.15(b). Where Respondent lacks knowledge of a particular factual allegation and so states in its Answer, the allegation is deemed denied. 40 C.F.R. §22.15(b). The Answer shall also set forth: (1) the circumstances or arguments that are alleged to constitute the grounds of the defense, (2) the facts that Respondent disputes (and thus intends to place at issue in the proceeding), (3) the basis for opposing the proposed relief and (4) whether Respondent requests a hearing. 40 C.F.R. §22.15(b).

Respondent's failure to affirmatively raise in the Answer facts that constitute or that might constitute the grounds of its defense may preclude Respondent, at a subsequent stage in this proceeding, from raising such facts and/or from having such facts admitted into evidence at a hearing.

B. Opportunity to Request a Hearing

If requested by Respondent in its Answer, a hearing upon the issues raised by the Complaint and Answer may be held. 40 C.F.R. § 22.15(c). If, however, Respondent does not request a hearing, the Presiding Officer (as defined in 40 C.F.R. § 22.3) may hold a hearing if the Answer raises issues appropriate for adjudication. 40 C.F.R. § 22.15(c).

Any hearing in this proceeding will be held at a location determined in accordance with 40 C.F.R. § 22.21(d). A hearing of this matter will be conducted in accordance with the applicable provisions of the Administrative Procedure Act, 5 U.S.C. §§ 51-59, and the procedures set forth in Subpart D of 40 C.F.R. Part 22.

Should Respondent request a hearing on this proposed penalty assessment, members of the public, to whom EPA is obligated to give notice of this proposed action, will have a right under Section 309(g)(4)(B) of the Act, 33 U.S.C. §1319(g)(4)(B), to be heard and to present evidence on the appropriateness of the penalty assessment. Should Respondent not request a hearing, EPA will issue a Final Order, and only members of the public who submit timely comments on this proposal will have an additional thirty (30) days to petition EPA to set aside the Final Order and to hold a hearing thereon. EPA will grant the petition and will hold a hearing only if the petitioner's evidence is material and was not considered by EPA in the issuance of the Final Order.

C. Failure to Answer

If Respondent fails in its Answer to admit, deny, or explain any material factual allegation contained in the Complaint, such failure constitutes an admission of the allegation. 40 C.F.R. § 22.15(d). If Respondent fails to file a timely [i.e. in accordance with the 30-day period set forth in 40 C.F.R. § 2.15(a)] Answer to the Complaint, Respondent may be found in default upon motion. 40 C.F.R. § 22.17(a). Default by Respondent constitutes, for purposes of the pending proceeding only, an admission of all facts alleged in the Complaint and a waiver of Respondent's right to contest such factual allegations. 40 C.F.R. § 22.17(a). Following a default by Respondent for a failure to timely file an Answer to the Complaint, any order issued therefore shall be issued pursuant to 40 C.F.R. § 22.17(c).

Any penalty assessed in the default order shall become due and payable by Respondent without further proceedings thirty (30) days after the Default Order becomes final pursuant to 40 C.F.R. § 22.27(c). If necessary, EPA may then seek to enforce such Final Order of Default against Respondent, and to collect the assessed penalty amount, in federal court.

V. Informal Settlement Conference

Whether or not Respondent requests a formal hearing, EPA encourages settlement of this proceeding consistent with the provisions of the Act and its applicable regulations. 40 C.F.R. § 22.18(b). At an informal conference with a representative(s) of Complainant, Respondent may comment on the charges made in this Complaint, and Respondent may also provide whatever additional information that it believes is relevant to the disposition of this matter, including: (1) actions Respondent has taken to correct any or all of the violations herein alleged, (2) any information relevant to Complainant's calculation of the proposed penalty, (3) the effect the proposed penalty would have on Respondents' ability to continue in business and/or (4) any other special facts or circumstances Respondent wishes to raise.

Complainant has the authority to modify the amount of the proposed penalty, where appropriate, to reflect any settlement agreement reached with Respondent, to reflect any relevant information previously not known to Complainant or to dismiss any or all of the charges, if Respondent can demonstrate that the relevant allegations are without merit and that no cause of action as herein alleged exists. Respondent is referred to 40 C.F.R. § 22.18.

Any request for an informal conference or any questions that Respondent may have regarding this Complaint should be directed to:

Lourdes del Carmen Rodríguez
Assistant Regional Counsel
Office of Regional Counsel/CT
U.S. Environmental Protection Agency, Region 2
Centro Europa Building Suite 417
1492 Ponce de León Avenue
San Juan, Puerto Rico 00907-4127
Tel. (787) 977-5819

The parties may engage in settlement discussions irrespective of whether Respondent has requested a hearing. 40 C.F.R. § 22.18(b)(1). Respondent requesting a formal hearing does not prevent it from also requesting an informal settlement conference; the informal conference procedure may be pursued simultaneously with the formal adjudicatory hearing procedure. A request for an informal settlement conference constitutes neither an admission nor a denial of any of the matters alleged in the Complaint. Complainant does not deem a request for an informal settlement conference as a request for a hearing as specified in 40 C.F.R. § 22.15(c).

A request for an informal settlement conference does not affect Respondent's obligation to file a timely Answer to the Complaint pursuant to 40 C.F.R. § 22.15. No penalty reduction, however, will be made simply because an informal settlement conference is held.

Any settlement that may be reached as a result of an informal settlement conference shall be embodied in a written Consent Agreement. 40 C.F.R. § 22.18(b)(2). In accepting the Consent Agreement, Respondent waives its right to contest the allegations in the Complaint and waives its right to appeal the Final Order that is to accompany the Consent Agreement. 40 C.F.R. § 22.18(b)(2). In order to conclude the proceeding, a Final Order ratifying the parties' agreement to settle will be executed. 40 C.F.R. § 22.18(b)(3).

Respondent's entering into a settlement through the signing of such Consent Agreement and its complying with the terms and conditions set forth in such Consent Agreement terminates this administrative litigation and the civil proceedings arising out of the allegations made in the Complaint. Respondent's entering into a settlement does not extinguish, waive, satisfy or otherwise affect its obligation and responsibility to comply with all applicable statutory and regulatory requirements, and to maintain such compliance.

VI. Resolution of this Proceeding Without Hearing or Conference

Instead of filing an Answer, Respondent may choose to pay the total amount of the proposed penalty within thirty (30) days after receipt of the Complaint, provided that Respondent files with the Regional Hearing Clerk, Region 2 (at the address noted above), a copy of the check or other instrument of payment. 40 C.F.R. § 22.18(a). A copy of the check or other instrument of payment should be provided to the EPA Assistant Regional Counsel identified on the previous page. Payment of the penalty assessed should be made by sending a cashier's or certified check payable to the "**Treasurer, United States of America**," in the full amount of the penalty assessed in this complaint to the following addressee:

**U. S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000**

Pursuant to 40 C.F.R. § 22.18(a)(3), if Respondent elects to pay the full amount of the penalty proposed in the Complaint within thirty (30) days of receiving the Complaint,

then, upon EPA's receipt of such payment, the Regional Administrator of EPA, Region 2 (or, if designated, the Regional Judicial Officer), shall issue a Final Order in accordance with 40 C.F.R. § 22.18(a)(3). In accordance with 40 C.F.R. § 22.45(c)(3), no Final Order shall issue until at least ten (10) days after the close of the comment period on this Complaint. Issuance of a Final Order terminates this administrative litigation and the civil proceedings arising out of the allegations made in the Complaint. Further, pursuant to 40 C.F.R. § 22.18(a)(3), the making of such payment by Respondent shall constitute a waiver of Respondent's right both to contest the allegations made in the Complaint and to appeal said Final Order to federal court. Such payment does not extinguish, waive, satisfy or otherwise affect Respondent's obligation and responsibility to comply with all applicable statutory and regulatory requirements, and to maintain such compliance.

VII. Filing of Documents

1. The Answer and any Hearing Request and all subsequent documents filed in this action should be sent to:

**Regional Hearing Clerk
U.S. Environmental Protection Agency
290 Broadway - 16th Floor
New York, New York 10007-1866**

2. A copy of the Answer, any Hearing Request and all subsequent documents filed in this action shall be sent to:

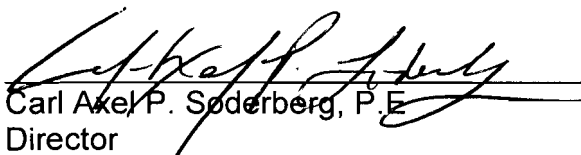
**Lourdes del Carmen Rodríguez
Assistant Regional Counsel
Office of Regional Counsel/CT
U.S. Environmental Protection Agency, Region 2
1492 Ponce de León Avenue, Suite 417
Centro Europa Building
San Juan, Puerto Rico 00907-4127
Tel. (787) 977-5819**

VIII. General Provisions

1. Respondent has a right to be represented by an attorney at any stage of these proceedings.

2. This Complaint does not constitute a waiver, suspension or modification of the requirements of the Act, regulations promulgated there under, or any applicable permit.
3. Neither assessment nor payment of an administrative civil penalty pursuant to Section 309(g) of the Act will affect Respondent's continuing obligation to comply with the Act, and with any separate Compliance Order issued under Section 309(a) of the Act, 33 U.S.C. §1319(a), for the violations alleged herein.

ISSUED THIS 23rd DAY OF June, 2008.



Carl Axel P. Soderberg, P.E.
Director

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

To: Mr. Jaime Fullana,
President
Desarrollos de la Vega, Inc.
P.O. Box 9932
San Juan, Puerto Rico 00908 - 9932

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2**

In the Matter of	
Desarrollos de la Vega, Inc.	Docket No. CWA-02-2008-3351
Respondent	Proceeding to Assess Class II Civil Penalty under Section 309(g) of the Clean Water Act

CERTIFICATE OF SERVICE


I certify that, on the date noted below, I caused to be mailed, by certified mail, return receipt requested, a copy of the foregoing "ADMINISTRATIVE COMPLAINT" and a copy of the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits", 40 C.F.R. Part 22 , to the following person at the address listed below:

**Mr. Jaime Fullana, President
Desarrollos de la Vega, Inc.
P.O. Box 9932
San Juan, Puerto Rico 00908-9932**

I sent the original and a copy of the foregoing Complaint for filing, to:

**Karen Maples
Regional Hearing Clerk
U.S. Environmental Protection Agency, R 2
290 Broadway, 16th Floor
New York, NY 10007-1866.**

In the matter of Desarrollos de la Vega, Inc.
Docket No. CWA-02-2008-3351

 6/30/08