

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION II

In the Matter of

IN THE MATTER OF:

INMOBILIARIA UNIBÓN, INC.

**RESPONDENT**

**Prehearing Exchange**

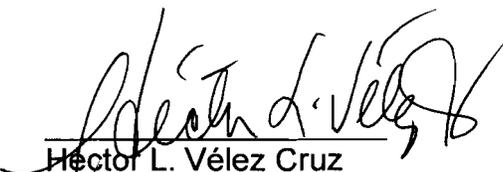
CWA-02-2008-3457

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REG.II  
2008 SEP 29 AM 11:32  
REGIONAL HEARING  
CLERK

**COMPLAINANT'S INITIALPREHEARING EXCHANGE**

Pursuant to the Order Setting Prehearing Procedures, dated July 21, 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 26<sup>th</sup> day of September, 2008.

  
Hector L. Velez Cruz

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. **Héctor Ortiz**  
Multimedia Permit and Compliance Branch  
U.S. Environmental Protection Agency, Region 2  
Caribbean Environmental Protection Division  
Storm Water Program Specialist

Mr. Héctor Ortiz has been working with EPA, Region 2, Caribbean Environmental Protection Division, since August 10, 2003, as an Environmental Engineer handling NPDES inspections in the Multi-Media Permits and Compliance Branch. Mr. Ortiz has a Bachelor in Science Degree from the University of Puerto Rico where he graduated in 1984, a Bachelor in Industrial Engineer and a Master in Environmental Management from the Polytechnic University of Puerto Rico. Mr. Ortiz has worked in several companies as an Environmental Manager.

Mr. Ortiz will testify about the NPDES storm water permit application regulations, the NPDES Construction General Permit requirements and how such apply to Respondent's facility. He will also testify about the: Compliance Evaluation Inspections that he performed on July 18, 2005, January 20, 2006, March 9, and November 7, 2007, which addressed compliance by Respondent's facility with the NPDES storm water permit regulations; factual and legal aspects of this case (i.e. the violations of the Clean Water Act [CWA] and the pertinent regulations, among other); 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. Ortiz will also testify about the: Administrative Compliance Order (ACO), Docket No. CWA-02-2006-3054, issued by EPA on June 1, 2006, to Respondent, ordering Respondent to comply with the storm water discharge permit regulations; visits he performed at the Facility, and communications held with Respondent's representatives regarding its compliance/non-compliance with the ACO, the CWA and the NPDES storm water permit regulations.

- ii. **Mr. Sergio Bosques**  
Environmental Engineer  
Regional Storm Water Coordinator  
Multi-Media Permits and Compliance Branch  
Caribbean Environmental Protection Division  
U.S. Environmental Protection Agency, Region 2

Mr. Sergio Bosques has been working with the EPA since July 14, 1991, where he started as an Environmental Engineer in the Water Permits and Compliance Branch, Water Management Division, New York, Region 2. Mr. Bosques is currently an Environmental Engineer in the EPA, Region 2, Caribbean Environmental Protection Division, Multi-Media Permits and Compliance Branch, where he started on May 10, 1998. Mr. Bosques holds a degree in B.S. in Chemical Engineering from the University of Puerto Rico where he graduated in 1991.

Mr. Bosques may testify as to the numerous NPDES Storm water seminars he has conducted in Puerto Rico over the years, and will discuss the NPDES storm water requirements and the Construction General Permit requirements and how they apply to Respondent's facility. Also, he may testify about the June 24, 2008 EPA National Storm Water Processing Center database and Regional records which revealed that Respondent's filed a NOI form seeking coverage for the development and obtained such coverage on February 7, 2004 (see Complainant's Exhibit 5 below).

- iii. **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-02-2008-3457, dated May 12, 2008, with letter addressed to Mr. Roberto Passalacqua, President, Inmobiliaria Unibón, ***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 13, 2008.
  - iii. **Complainant's Exhibit 3 - Letter addressed to Wanda García, Director of the Water Quality Bureau, PR Environmental Quality Board (EQB), dated May 12, 2008, with Certified Mail Receipt**, ***Complainant's Exhibit 3a.***
  - iv. **Complainant's Exhibit 4 - Penalty Memorandum, dated March 20, 2007**, prepared by Mr. Héctor Ortiz.
  - v. **Complainant's Exhibit 5 - EPA June 1, 2006 letter addressed to Mr. Roberto Passalacqua, President of Inmobiliaria Unibón, Inc., notifying violations of the CWA, with the EPA Administrative Compliance Order, Docket Number CWA-02-2006-3054, Complainant's Exhibit 5a, and with Respondent's Certification of acknowledgement of receipt and signed Return Receipt**, ***Complainant's Exhibit 5b.***

- vi. ***Complainant's Exhibit 6*** - EPA Water Compliance Inspection Reports, dated March 26, 2006, and May 26, 2006, regarding the July 18, 2005, and the January 20, 2006 EPA Site Inspections, respectively (including photos of the facility taken during the inspection);
- vii. ***Complainant's Exhibit 7*** - Respondent's June 30, 2006 letter to EPA in response to EPA's Administrative Compliance Order, with Compliance Plan;
- viii. ***Complainant's Exhibit 8*** - Respondent's August 10, 2006 letter to EPA submitting a Storm Water Pollution Prevention Plan for the site.
- ix. ***Complainant's Exhibit 9*** - Respondent's Notice of Intent Form seeking NPDES coverage for its activities at the site and EPA acknowledgement letter certifying that Respondent submitted a complete Notice of Intent form for Storm Water Discharges Associated with Construction Activity for the site, dated December 4, 2006.
- x. ***Complainant's Exhibit 10*** - EPA letter addressed to Respondent, dated September 21, 2006, regarding deficiencies found in Respondent's response to the Administrative Compliance Order.
- 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 Detail for F&R Contractors Corp., printed on June 24, 2008, from EPA's National Storm Water Processing Center Database by Mr. Jaime Lopez.
- xiii. ***Complainant's Exhibit 13*** - Respondent's October 10, 2006 letter addressing EPA's September 21, 2006 letter.
- xiv. ***Complainant's Exhibit 14*** - EPA's December 28, 2007 letter to Respondent regarding Respondent's continuing violations of the Administrative Compliance Order.
- xv. ***Complainant's Exhibit 15*** - EPA Water Compliance Inspection Report regarding the March 9, 2007 EPA Site Inspection (including photos of the facility taken during the inspection).

- xvi. **Complainant's Exhibit 16 – EPA Water Compliance Inspection Report regarding the November 7, 2007 EPA Site Inspection** (including photos of the facility taken during the inspection).
- xvii. **Complainant's Exhibit 17 - Mr. Héctor Ortiz's Information**.
- xviii. **Complainant's Exhibit 18 - Mr. José A. Rivera's Information**.
- xix. **Complainant's Exhibit 19 - Mr. Sergio Bosques' 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 Respondent's prior history of violations, 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 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 July 18, 2005, January 20, 2006, March 9, 2007, and November 7, 2007.

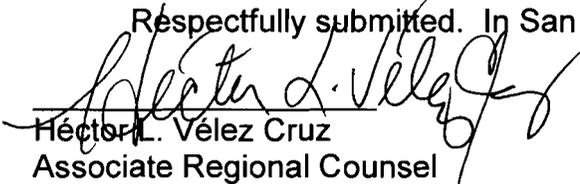
The Complainant proposes, subject to receipt and evaluation of further relevant information from the Respondent, that Respondent is assessed a civil penalty in the amount of \$157,500 for the violations alleged in the Complaint. A penalty memorandum and narrative explanation supporting the penalty figure 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, September 26, 2008.

  
Héctor L. Vélez Cruz  
Associate Regional Counsel  
U.S. Environmental Protection Agency, Region 2  
Office of Regional Counsel – Caribbean Team  
Centro Europa Bldg., Suite 417  
1492 Ponce de León Ave.  
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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION II

In the Matter of

**Prehearing Exchange**

IN THE MATTER OF:

CWA-02-2008-3457

**INMOBILIARIA UNIBÓN, INC.**

**RESPONDENT**

CERTIFICATE OF SERVICE

I certify that I have this day caused to be sent the foregoing **Prehearing Exchange**, dated September 26, 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, 16<sup>th</sup> Floor  
New York, NY 10007-1866.  
Fax (212) 637-3202

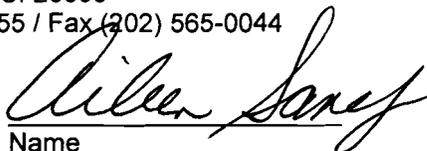
Copy by **Certified Mail/Return Receipt** to:

Attorney for Respondent:  
**Roberto Passalacqua, Esq.**  
P.O. Box 9065983, San Juan,  
Puerto Rico 00906

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

**Barbara A. Gunning**  
Administrative Law Judge  
Office of Administrative Law Judges  
U.S. Environmental Protection Agency  
1099 14<sup>th</sup> Street, N.W. Suite 350  
Franklin Court  
Washington, D.C. 20005  
Ph: 202.564.6255 / Fax (202) 565-0044

9/26/08  
Date

  
Name