

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

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PROTECTION AGENCY
REGION 2
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IN THE MATTER OF

CARIBBEAN PROPERTIES
INVESTMENT, INC.;
VPI CONSTRUCTION, CORP.

DOCKET NO. CWA-02-2008-3461

BAHÍA MARINA RESORT
DEVELOPMENT
NPDES PRU201934

PROCEEDING PURSUANT TO
SECTION 309(G) OF THE CLEAN
WATER ACT, 33 U.S.C. §1319(G) TO
ASSESS CLASS II CIVIL PENALTY

RESPONDENTS

ANSWER TO COMPLAINT AND REQUEST FOR HEARING

**TO THE HONORABLE ENVIRONMENTAL PROTECTION AGENCY
REGION 2:**

COME NOW respondents C.P.I. Hospitality, Inc. and V.P.I. Construction, Corp.,
through the undersigned counsel, and respectfully state, allege and pray as follows:

I. Statutory Authority

Part I of the complaint, including paragraphs 1 and 2 of the complaint are neither
admitted nor denied as they aver legal statements and not factual allegations. In the
alternative, they are denied.

II. Statutory and Regulatory Background

Part II of the complaint, including paragraphs 3-13 of the complaint are neither denied
nor admitted as they aver legal statements and not factual allegations. In the
alternative they are denied.

III. Findings of Violation

14. Paragraph 14 of the complaint is admitted. It is affirmatively alleged that on May 15, 2006, Caribbean Properties Investments, Inc. changed its corporate name to “C.P.I. Hospitality, Inc.”

15. Paragraph 15 of the complaint admitted.

16. Paragraph 16 of the complaint is denied. It is affirmatively alleged that CPI is the developer of the project “Condo-Hotel Bahía Marina Resort” and VPI is the general contractor for said project.

17. Paragraph 17 of the complaint is admitted.

18. Paragraph 18 of the complaint is denied as drafted. It is affirmatively alleged that the project is a Condo-Hotel which consist of a 4 apartment buildings with 6 units per building.

19. Paragraph 19 of the complaint is neither admitted nor denied at this stage of the proceedings, since it avers a legal conclusion and not a factual allegation. In the alternative it is denied.

20. Paragraph 20 of the complaint is admitted.

21. Of paragraph 21 of the complaint it is only admitted that activities at the project involve clearing, grading and excavation. The remaining averments of paragraph 21 are denied.

22. Paragraph 22 of the complaint is denied. It is affirmatively alleged that the activities began on August 2006.

23. Paragraph 23 of the complaint is neither admitted nor denied at this stage of the proceedings since it avers a legal conclusion and not a factual allegation. In the alternative it is denied.

24. Paragraph 24 of the complaint is neither admitted nor denied at this stage of the proceedings, since it avers a legal conclusion and not a factual allegation. In the alternative it is denied.

25. Paragraph 25 of the complaint is denied. It is affirmatively alleged that in the Playa Sardinias II Ward of the Municipality of Culebra there are neither rivers nor creeks.

26. Of paragraph 26 of the complaint it is only admitted that the Atlantic Ocean are waters of the United States. The remaining averments of paragraph 26 are denied for the reasons stated in paragraph 25 of this Answer.

27. Paragraph 27 of the complaint is neither admitted nor denied at this stage of the proceedings, since it avers a legal conclusion and not a factual allegation. In the alternative it is denied.

28. Paragraph 28 of the complaint is denied.

29. Paragraph 29 of the complaint is neither admitted nor denied at this stage of the proceedings, since it avers a legal conclusion and not a factual allegation. In the alternative it is denied.

30. Paragraph 30 of the complaint is denied.

31. Paragraph 31 of the complaint is denied for lack of sufficient knowledge to state an opinion upon its veracity. In the alternative it is denied.

32. Paragraph 32 of the complaint is denied for lack of sufficient knowledge to state an opinion upon its veracity. In the alternative it is denied.

33. Paragraph 33 of the complaint is denied for lack of sufficient knowledge to state an opinion upon its veracity. In the alternative it is denied.

34. Paragraph 34 of the complaint is denied.

35. Paragraph 34 of the complaint is denied.

36. Paragraph 36 of the complaint is denied for lack of sufficient knowledge to state an opinion upon its veracity. In the alternative it is denied.

37. Paragraph 37 of the complaint is denied for lack of sufficient knowledge to state an opinion upon its veracity. In the alternative it is denied. It is affirmatively alleged that respondents took all necessary and adequate control measures to prevent that sediments and/or storm waters carrying sediments reached any area outside of the project. Among these measures is a retention pond located at the lowest point of the land where the project is situated that stores any storm water that may run off from the construction site. Moreover, even considering that these measures were not sufficient to completely prevent storm water from reaching beyond the premises of the project, it is physically impossible for this storm water to reach the Atlantic Ocean. The distance between the project and the Atlantic Ocean is approximately half a kilometer. To reach the Atlantic Ocean the water must go up and over a high hill of sandy and vegetation covered land. Therefore, it is highly unlikely for storm water that travels half a kilometer through elevated and rough land to reach the Atlantic Ocean.

38. Paragraph 38 of the complaint is denied for lack of sufficient knowledge to state an opinion upon its veracity. In the alternative it is denied.
39. Paragraph 39 of the complaint is denied for lack of sufficient knowledge to state an opinion upon its veracity. In the alternative it is denied.
40. Paragraph 40 of the complaint is denied.
41. Paragraph 41 of the complaint is denied for lack of sufficient knowledge to state an opinion upon its veracity. In the alternative it is denied.
42. Paragraph 42 of the complaint is denied for lack of sufficient knowledge to state an opinion upon its veracity. In the alternative it is denied.
43. Paragraph 43 of the complaint is neither denied nor admitted since it avers conclusions of law and not factual allegations. In the alternative it is denied.

AFFIRMATIVE DEFENSES AND REQUEST FOR HEARING

1. The complaint fails to state a claim upon which relief can be granted.
2. Laches.
3. There are neither rivers nor creeks in the Playa Sardinas II Ward of the Municipality of Culebra.
4. Respondents took all necessary and adequate control measures to prevent any sediment from reaching any area outside of the project.
5. No storm water reaches beyond the project's grounds. In the alternative, it is impossible for any storm water traceable to the project to reach the Atlantic Ocean.
6. The project does not border at any point a body of water.

7. The project is located between two hills at the lower part of one of these hills. The lowest point between the two hills is a road. Therefore, for storm water to reach the Atlantic Ocean it would need to go down the hill, across the road, and up and over the second hill to finally reach the Atlantic Ocean.
8. Moreover, the distance between the project and the Atlantic Ocean is approximately half a kilometer. This land is sandy and covered with vegetation and, therefore, it is highly unlikely for storm water that travels this distance through this rough ground to reach the Atlantic Ocean.
9. Respondents have never been notified with any report, finding or other kind of document from this Honorable Agency. If this were the case, this matter would have clarified and/or corrected if necessary.
10. Lack of due notice and due process of law.
11. Respondents' postal addresses contained in the public records of the Department of State are not the addresses that this Honorable Agency notified the complaint in this case. Therefore, this Honorable Agency has not given due opportunity for respondents to state their position and before proposing the civil penalty notified in the present complaint.
12. The proposed penalty is excessive and disproportioned to the violations described in the complaint.
13. **Hearing is requested pursuant to 40 C.F.R. §22.15(c).**

WHEREFORE it is respectfully requested from this Honorable Agency to accept and take notice of respondents' answer to the complaint and schedule a hearing to

allow respondents to present evidence to rebut the allegations stated in the complaint with any other order or ruling that it deems proper.

I HEREBY CERTIFY that this Answer to the Complaint and Request For Hearing was notified to the following persons at the addresses listed below:

Original and copy (express mail):

Regional Hearing Clerk
U.S. Environmental Protection Agency
290 Broadway – 16th Floor
New York NY 10007-1866;

Copy to (certified mail):

Héctor L. Vélez Cruz
Office of Regional Counsel
U.S. Environmental Protection Agency
1492 Ponce de León Ave., Suite 417
San Juan PR 00907-4127

Respectfully submitted.

In San Juan, Puerto Rico, this 3 day of June of 2010.



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