

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region 2**

IN THE MATTER OF:

Caribbean Properties Investment, Inc.
P. O. Box 363967
San Juan, Puerto Rico 00936

and

VPI Construction Corp.
P. O. Box 807
Culebra, Puerto Rico 00775

RESPONDENTS

**CONSENT AGREEMENT
AND
FINAL ORDER**

DOCKET NUMBER CWA-02-2008-3461

REGIONAL HEARING
CLERK

2011 APR - 7 A 9:23

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II

CONSENT AGREEMENT AND ORDER

Complainant, the United States Environmental Protection Agency ("EPA" or "Complainant"), having issued the Complaint herein on September 26, 2008, against C.P.I. Hospitality Inc. formerly known as Caribbean Properties Investment, Inc. (Respondent CPI) and VPI Construction Corp. (Respondent VPI) (together the "Respondents"), and

Complainant and Respondent CPI having agreed that settlement of this matter is in the public interest, and that entry of this Consent Agreement and Final Order (CA/FO) without further litigation is the most appropriate means of resolving this matter:

NOW, THEREFORE, before the taking of any testimony, upon the pleadings, without adjudication of any issue of fact or law, and upon consent and agreement of the Parties, it is hereby agreed, and ordered as follows:

I. PRELIMINARY STATEMENT

1. EPA initiated this proceeding for the assessment of a civil penalty, pursuant to Section 309 of the Clean Water Act, 33 U.S.C. § 1319.

2. The Complaint alleges that Respondents failed to submit an individual NPDES permit application as required by 40 C.F.R. § 122.21, nor did they file a complete and accurate Notice Of Intent (NOI) form prior to commencement of construction activities as required by Part 2 of the "NPDES General Permit for Discharges from Large and Small Construction Activities" (the "Construction Permit").
3. The Complaint also alleges that Respondents discharged pollutants from the Project into waters of the United States without NPDES permit coverage, in violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a).
3. EPA notified the Commonwealth of Puerto Rico regarding this action and offered an opportunity for the Commonwealth of Puerto Rico to confer with EPA on the proposed penalty assessment, pursuant to 40 CFR Part 22.
4. This action was public noticed. No public comment was received.
5. On June 3, 2010, Respondent filed an answer to the Complaint, denying certain facts, admitting others, raising affirmative defenses and requesting a hearing in this matter.
6. This Consent Agreement and Final Order shall apply to and be binding upon Respondents, their officers, directors, employees, successors and assigns, including, but not limited to, subsequent purchasers.
7. Respondents stipulate that EPA has jurisdiction over the subject matter alleged in the Complaint and that the Complaint states a claim upon which relief can be granted against Respondents. Respondents waive any defenses they might have as to jurisdiction and venue, and, without admitting or denying the factual or legal allegations contained in the Complaint, consent to the terms of this Consent Agreement and Final Order.
8. Respondents hereby waive their rights to a judicial or administrative hearing or appeal on any issue of law or fact set forth in the Complaint.

II. TERMS OF SETTLEMENT

9. Pursuant to § 309(g) of the Clean Water Act, 33 U.S.C. § 1319(g), the nature of the violations and other relevant factors, EPA has determined that an appropriate civil penalty to settle this action is in the amount of EIGHT THOUSAND DOLLARS (\$8,000.00). Respondent shall pay this civil penalty in accordance with paragraph 11 of this Consent Agreement.

10. For purposes of settlement, Respondents consent to the issuance of this Consent Agreement and consent to the payment of the civil penalty cited in the foregoing Paragraph.

II. A. Penalty

11. No later than sixty (60) days after the date signature on the Final Order (at the end of this document), Respondent shall pay an initial penalty of FIVE HUNDRED DOLLARS (\$500.00).
12. Thereafter, Respondent shall make 15 payments of FIVE HUNDRED DOLLARS (\$500.00) each, in accordance with the following schedule:
 - a. the first of the 15 payments no later than the last day in the 3rd month following the Effective Date;
 - b. the second of the 15 payments no later than the last day of the 4th month following the Effective Date;
 - c. the third of the 15 payments no later than the last day of the 5th month following the Effective Date;
 - d. the fourth of the 15 payments no later than the last day of the 6th month following the Effective Date;
 - e. the fifth of the 15 payments no later than the last day of the 7th month following the Effective Date;
 - f. the sixth of the 15 payments no later than the last day of the 8th month following the Effective Date;
 - g. the seventh of the 15 payments no later than the last day of the 9th month following the Effective Date;
 - h. the eighth of the 15 payments no later than the last day of the 10th month following the Effective Date;
 - i. the ninth of the 15 payments no later than the last day of the 11th month following the Effective Date;
 - j. the tenth of the 15 payments no later than the last day of the 12th month following the Effective Date;
 - k. the eleventh of the 15 payments no later than the last day of the 13th month following the Effective Date;

- l. the twelfths of the 15 payments no later than the last day of the 14th month following the Effective Date;
 - m. the thirteenth of the 15 payments no later than the last day of the 15th month following the Effective Date;
 - n. the fourteenth of the 15 payments no later than the last day of the 16th month following the Effective Date;
 - o. the fifteenth and final payment of the 15 payments no later than the last day of the 17th month following the Effective Date.
13. Respondent shall pay the penalty of EIGHT THOUSAND DOLLARS (\$8,000.00) by cashiers' or certified checks, payable to the "Treasurer of the United States of America" or by wire transfers.
14. Respondent shall clearly identify, with either form of payment, the name and docket number of this case, set forth in the caption on the first page of this document
 - a. Respondent shall mail the checks to:

US Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000.

OVERNIGHT MAIL:
U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
ATTN Box 979077
St. Louis, MO 63101
Contact: Natalie Pearson
314-418-4087.

b. Alternatively, Respondent shall make wire transfers to:

WIRE TRANSFERS:
Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York NY 10045.

Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency."

15. Respondents shall also send copies of each payment to each of the following:

Jaime López
Storm Water Program Specialist
Multimedia, Permits and Compliance Branch
Caribbean Environmental Protection Agency
U.S. Environmental Protection Agency Region 2
1492 Ponce de León Ave., Suite 417
San Juan, PR 00907-4127
Fax number: (787) 289-7104,

Héctor L. Vélez Cruz, Esq.
Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 2
1492 Ponce de León Ave., Suite 417
San Juan, PR 00907-4127
Fax number: (787) 729-7748,

and

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th Floor
New York, New York 10007.

Payments must be received at the above address as specified in paragraphs 11 - 12, above.

a. failure to pay the penalty in full according to the above provisions will result in a referral of this matter to the United States Department of Justice or the United States Department of the Treasury for collection;


- b. further, if the payment is not received on or before the due date, interest will be assessed at the annual rate established by the Secretary of Treasury pursuant to the Debt Collection Act, 31 U.S.C. § 3717, on the overdue amount from the due date through the date of payment. In addition, a late payment handling charge of \$15.00 will be assessed for each 30 day period (or any portion thereof) following the due date in which the balance remains unpaid. A 6% per annum penalty also will be applied on any principal amount not paid within 90 days of the due date;
 - c. in addition, pursuant to Section 309(g)(9) of the Clean Water Act, 33 U.S.C. § 1319(g)(9), if payment is not received by the due date, a quarterly nonpayment penalty will be imposed for each calendar quarter during which such nonpayment persists. The quarterly nonpayment penalty is 20% of the aggregate amount of penalties and quarterly nonpayment penalties which are unpaid as of the beginning of such quarter; and
 - d. Respondent also may be required to pay attorneys fees and costs for collection proceedings in connection with nonpayment.
16. The penalty to be paid is a civil penalty assessed by the EPA and shall not be deductible from the Respondent's federal or state taxes.

II. B. General Provisions

17. The Respondents waive any right they may have pursuant to 40 C.F.R. § 22.8 to be present during discussions with or to be served with and to reply to any memorandum or communication addressed to the Director or the Regional Administrator where the purpose of such discussion, memorandum, or communication is to discuss a proposed settlement of this matter or to recommend that such official accept this Consent Agreement and issue the accompanying Final Order.
18. Nothing in this agreement shall be construed as prohibiting, altering or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondents' violation of this agreement or of the statutes and regulations upon which this agreement is based, or for Respondents' violation of any applicable provision of law.
19. This Consent Agreement and Order shall not relieve Respondents of their obligation to comply with all applicable provisions of federal, state or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit.

20. This Consent Agreement and Final Order constitutes a settlement by EPA of all claims for civil penalties pursuant to the Clean Water Act for the violations alleged in the Complaint. Nothing in this Consent Agreement and Final Order is intended to nor shall be construed to operate in any way to resolve any criminal liability of the Respondents. Compliance with this Consent Agreement and Final Order shall not be a defense to any actions subsequently commenced pursuant to Federal laws and regulations administered by EPA, and it is the responsibility of Respondents to comply with such laws and regulations.
21. Each undersigned representative of the parties to this Consent Agreement certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this Consent Agreement and to execute and legally bind that party to it.
22. Each party shall bear its own costs and attorney's fees in connection with the action resolved by this Consent Agreement and Order.

RESPONDENT CPI:

BY: 
NAME OF SIGNATORY
TITLE OF SIGNATORY

DATE: 3/31/11

RESPONDENT VPI:

BY: *Ulinda Osalo*
NAME OF SIGNATORY
TITLE OF SIGNATORY

DATE: *Marzo 31. 2011*

COMPLAINANT:

BY: 

DATE: April 5, 2011

Carl-Axel P. Soderberg, Director
Caribbean Environmental Protection Division
U.S. Environmental Protection Agency - Region 2
Centra Europa Building, Suite 417
1492 Ponce de León Avenue
San Juan, Puerto Rico 0090

III. FINAL ORDER

The Regional Judicial Officer of the U.S. Environmental Protection Agency Region 2, ratifies the foregoing Consent Agreement. The Consent Agreement entered into by the parties is hereby approved, incorporated herein, and issued as an Order. The effective date of this Order shall be the date of filing with the Regional Hearing Clerk, United States Environmental Protection Agency, Region 2, New York, NY.

4/6/11
Date

Helen Ferrara
Helen Ferrara
Regional Judicial Officer
United States Environmental
Protection Agency-Region 2
290 Broadway, 16th Floor
New York, NY 10007-1866

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION II

IN THE MATTER OF:

Caribbean Properties Investment, Inc.

and

VPI Construction Corp.

RESPONDENTS

Certificate of Service

DOCKET NUMBER CWA-02-2008-3461

CERTIFICATE OF SERVICE

I certify that I have this day caused to be sent the foregoing **Consent Agreement and Final Order**, dated *April 6*, 2011, 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, **certified mail** to:

Attorney for Respondents:
Eduardo J. Mayoral García, Esq.
PMB 157
P.O. Box 194000
San Juan, PR 00919-4000
Telephone/Fax: 787.754.2002
emayoral@gmail.com

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

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

4-6-2011

Date


Signature