

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2

U.S. Environmental  
Protection Agency-Region 2  
2014 APR -1 AM 9: 51  
REGIONAL HEARING  
CLERK

IN THE MATTER OF:

Estancias de Cerro Mar, Inc.

RESPONDENT

MOTION

DOCKET NUMBER CWA-02-2011-3356

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

Comes now Estancias de Cerro Mar, Inc. ("Respondent") represented by the undersigned attorneys, and respectfully states and prays:

This Answer to Administrative Complaint, Findings of Violation, Notice of Proposed Assessment of an Administrative Penalty, and Notice of Opportunity to Request a Hearing (the "Answer") is submitted by Respondent in response to the Administrative Complaint issued by the United States Environmental Protection Agency ("EPA") in the referenced matter (the "Complaint"). Any undefined terms used in this Answer shall have the definitions provided in the Complaint, unless otherwise stated.

**I. Statutory and Regulatory Authorities**

This Section of the Complaint contains statements or conclusions of law which do not require a response.

**II. Jurisdictional Findings**

With regard to the individual paragraphs contained in Section II of the Complaint, Respondent states as follows:

1. Paragraph 13 is admitted.

2. Paragraph 14 contains a conclusion of law that does not require a response.
3. Paragraph 15 is admitted.
4. Paragraph 16 is admitted.
5. Paragraph 17 is admitted.
6. With respect to Paragraph 18, Respondent does not have sufficient information in its records to admit or deny this paragraph.
7. With respect to Paragraph 19, Respondent does not have sufficient information in its records to admit or deny this paragraph.
8. With respect to Paragraph 20, Respondent does not have sufficient information in its records to admit or deny this paragraph.
9. With respect to Paragraph 21, Respondent does not have sufficient information in its records to admit or deny this paragraph.
10. With respect to Paragraph 22, Respondent does not have sufficient information in its records to admit or deny this paragraph.
11. Paragraph 23 contains a conclusion of law that does not require a response.
12. With respect to Paragraph 24, Respondent does not have sufficient information in its records to admit or deny this paragraph.
13. With respect to Paragraph 25, Respondent does not have sufficient information in its records to admit or deny this paragraph.
14. Paragraph 26 contains a conclusion of law that does not require a response.
15. Paragraph 27 is denied.
16. Paragraphs 28 and 29 contain conclusions of law that do not require a response.

### **III. Findings of Violation**

1. Respondent re-alleges its responses to Paragraphs 13 to 29 above.

2. With respect to Paragraph 31, Respondent admits that a person who identified himself as an EPA officer visited the Project for an inspection on December 29, 2010. Respondent does not have sufficient information to admit or deny the remaining statements in this paragraph.
3. Paragraph 32 is admitted.
4. With respect to Paragraph 33, Respondent admits that it saw a copy of the inspection report prepared of the inspection, and the findings listed in this paragraph appeared in the inspection report. Respondent does not have sufficient information to admit or deny whether any of the circumstances listed as findings in the inspection report were actually observed by the inspector or present at the time of the inspection. The Respondent objects to the statements made by the Treasurer of the Residents Association in paragraphs e and f as mere hearsay that is not documented. Respondent does not have sufficient information to admit or deny any of the remaining statements in this paragraph.
5. With respect to Paragraph 34, Respondent does not have sufficient information to admit or deny this allegation.
6. With respect to Paragraph 35, Respondent admits that it received the mentioned Administrative Compliance Order and that it stated the matters indicated in this paragraph.
7. With respect to Paragraph 36, Respondent admits that it received the mentioned Compliance Order.
8. With respect to Paragraph 37, Respondent admits that it did not submit to the EPA a document entitled "Preventive Maintenance Program for the Project's Pump Station and Sanitary Collection System" as required by Ordered Provision 7 of the Order. However, Respondent has taken actions to implement the measures required by Ordered Provision 7 of the Order.
9. Paragraph 38 contains conclusions of law that do not require a response.

#### **IV. Notice of Proposed Order Assessing a Civil Penalty**

Respondent hereby objects to the proposed penalty set forth in the Complaint as unwarranted, excessive, unreasonable, arbitrary and capricious and disproportionate.

#### **V. Procedures Governing This Administrative Litigation**

##### **A. Answering the Complaint.**

This Section does not require a response. Please see above for the answers to the Complaint. Respondent hereby raises the following defenses:

##### **1. Defenses**

- a. Respondent does not have a prior history of noncompliance with the Act.
- b. The allegations, including alleged SSO events, made by the Treasurer of the Resident's Association mentioned in the Complaint are mere hearsay and there is no evidence documenting any such allegations or events.
- c. There is no evidence documenting the actual discharge by the Respondent of any pollutants into a body of water.
- d. There is no evidence documenting the quality of the water of the overflows allegedly observed in the inspection mentioned in the complaint.
- e. There is no evidence that any alleged noncompliance caused any harm to the human health or the environment.
- f. The volume of flow, if any, involved in any alleged violation, if any, is small.
- g. The alleged findings in the inspection report mentioned in the Complaint are merely a snapshot and are not representative of the common conditions of the pump station in question.
- h. Respondent has acted in good faith.

- i. Respondent did not derive economic benefit from the alleged violations, if any.
- j. The proposed penalty is unwarranted, excessive, unreasonable, arbitrary and capricious and is not sustained by the totality of the administrative record.
- k. The proposed penalty is disproportionate compared to penalties imposed by EPA to other members of the regulated community subject to similar enforcement actions in similar circumstances.
- l. The Respondent's ability to pay is limited due to Respondent's poor financial condition. The proposed penalty will subject the Respondent to financial hardship.
- m. Respondent reserves the right to add further defenses of law or fact as the same may be discovered in the course of the investigation of the allegations and in the course of any discovery.

**B. Opportunity to Request a Hearing**

Respondent hereby requests a hearing.

**C. Failure to Answer**

This Section does not require a response.

**VI. Informal Settlement Conference**

This Section does not require a response.

**VII. Resolution of this Proceeding without Hearing or Conference**

This Section does not require a response.

**VII. Filing of Documents (Section renumbered as previous)**

This Section does not require a response.

**VIII. General Provisions**

This Section does not require a response.

Wherefore, in view of the foregoing, it is respectfully requested that after the appropriate procedures the Hearing Examiner dismiss the Complaint.

Respectfully submitted, in San Juan, Puerto Rico this 26<sup>th</sup> day of March,  
2014.

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By:   
Edwin R. Cruz

  
Doira Díaz

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2

IN THE MATTER OF:

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CERTIFICATE OF SERVICE

I certify that I have this day caused to be sent the foregoing **Answer to Administrative Complaint, Findings of Violation, Notice of Proposed Assessment of an Administrative Penalty, and Notice of Opportunity to Request a Hearing**, dated March 26, 2014, and bearing the above-referenced docket number, in the following manner to the respective addressees below:

**ORIGINAL AND COPY BY ELECTRONIC MAIL, CERTIFIED MAIL, RETURN RECEIPT TO:**

**Karen Maples**, Regional Hearing Clerk  
Region 2  
U.S. Environmental Protection Agency  
290 Broadway, 16th Floor  
New York, NY 10007-1866  
[maples.karen@epa.gov](mailto:maples.karen@epa.gov)

**COPY BY ELECTRONIC MAIL, CERTIFIED MAIL, RETURN RECEIPT TO:**

**Helen S. Ferrara**, Presiding Officer  
Region 2  
U.S. Environmental Protection Agency  
290 Broadway, 16th Floor  
New York, NY 10007-1866  
[ferrara.helen@epa.gov](mailto:ferrara.helen@epa.gov)

**COPY TO COMPLAINANT BY ELECTRONIC MAIL AND CERTIFIED MAIL, RETURN RECEIPT TO:**

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3/26/2014  
Date

  
Doira Díaz