

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 2**

IN THE MATTER OF:

Desarrollos de la Vega, Inc.

Respondent

**Jardines de Arecibo Pump Station
PO Box 9932
San Juan, Puerto Rico 00908-9932**

Defendant

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**

ANSWER TO COMPLAINT AND REQUEST FOR HEARING

**U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II
2008 AUG 26 PM 2:53
REGIONAL HEARING
CLERK**

**TO: Regional Hearing Clerk
U. S. EPA Region 2
290 Broadway, 16th floor
New York, New York 10007-1866**

Comes now Respondent, Desarrollos de la Vega, Inc., (hereinafter "DV") through the undersigned counsels and very respectfully STATE and PRAY as follow:

1. On July 2, 2008, DV received notification of the subject Complaint, Findings of Violation, Notice of Proposed Assessment of a Civil Penalty, and Notice of Opportunity to Request a Hearing.
2. DV requested an extension to file an answer to the Complaint.
3. The Environmental Protection Agency (EPA) granted an extension through August 30, 2008 to file said answer to the Complaint.
4. DV hereby files an Answer to the Complaint contesting the material facts upon which the complaint is based and contends that the proposed penalty is inappropriate.

I. Statutory Authority

1. Paragraph number 1 of the section titled Statutory Authority is a conclusion or matter of law, reason for which it does not require a response. In the alternative, it is denied.

2. Paragraph number 2 of the section titled Statutory Authority is a conclusion or matter of law, reason for which it does not require a response. In the alternative, it is denied.

3. Paragraph number 3 of the section titled Statutory Authority is a conclusion or matter of law, reason for which it does not require a response. In the alternative, it is denied.

II. Findings of Facts

4. DV admits paragraph number 4 of the section titled Findings of Facts.

5. DV admits paragraph number 5 of the section titled Findings of Facts.

6. DV denies as drafted paragraph number 6 of the section titled Findings of Facts as the Development is comprised of 326 residences, does not have parking facilities, construction was finished in May of 2004 and the second phase is in the permitting process.

7. DV admits paragraph number 7 of the section titled Findings of Facts.

8. DV admits paragraph number 8 of the section titled Findings of Facts.

9. DV denies as drafted paragraph number 9 of the section titled Findings of Facts as the Storm Sewer System includes, among other appurtenances, a storm water drainage consisting of various below ground catch basins.

10. Paragraph number 10 of the section titled Findings of Facts is accepted as to the fact that DV's Storm Sewer System and Storm Drain discharge into a municipal drainage system. The rest of the paragraph is denied for lack of information.

11. DV denies paragraph number 11 of the section titled Findings of Facts for lack of information.

12. DV denies as drafted the first sentence of paragraph number 12 of the section titled Findings of Facts as DV contracted the services of F&R Construction Inc. whom in turn contracted SR Engineering to construct the sanitary wastewater pump. DV admits the rest of the paragraph.

13. DV admits paragraph number 13 of the section titled Findings of Facts.

14. DV admits paragraph number 14 of the section titled Findings of Facts.
15. DV admits paragraph number 15 of the section titled Findings of Facts.
16. DV admits that on June 21, 2007 an EPA representative conducted a Compliance Evaluation Inspection at the Development. DV denies the rest of paragraph number 16 of the section titled Findings of Facts.
17. DV denies paragraph number 17 of the section titled Findings of Facts.
18. The first sentence of paragraph number 18 of the section titled Findings of Facts is a conclusion or matter of law, reason for which it does not require a response. In the alternative, it is denied. DV denies the rest of paragraph number 18 of the section titled Findings of Facts.
19. DV admits paragraph number 19 of the section titled Findings of Facts.

III. Findings of Violation and Conclusions of Law

20. DV denies paragraph number 20 of the section titled Findings of Violation and Conclusion of Law.
21. DV denies paragraph number 21 of the section titled Findings of Violation and Conclusion of Law.
22. Paragraph number 22 of the section titled Findings of Violation and Conclusion of Law is a conclusion or matter of law, reason for which it does not require a response. In the alternative, it is denied.
23. Paragraph number 23 of the section titled Findings of Violation and Conclusion of Law is a conclusion or matter of law, reason for which it does not require a response. In the alternative, it is denied.
24. Paragraph number 24 of the section titled Findings of Violation and Conclusion of Law is a conclusion or matter of law, reason for which it does not require a response. In the alternative, it is denied.
25. Paragraph number 25 of the section titled Findings of Violation and Conclusion of Law is a conclusion or matter of law, reason for which it does not require a response. In the alternative, it is denied.
26. Paragraph number 26 of the section titled Findings of Violation and Conclusion of Law is a conclusion or matter of law, reason for which it does not require a response. In the alternative, it is denied.

27. Paragraph number 27 of the section titled Findings of Violation and Conclusion of Law is a conclusion or matter of law, reason for which it does not require a response. In the alternative, it is denied.

28. DV denies paragraph number 28 of the section titled Findings of Violation and Conclusion of Law.

29. Paragraph number 29 of the section titled Findings of Violation and Conclusion of Law is a conclusion or matter of law, reason for which it does not require a response. In the alternative, it is denied.

30. DV denies paragraph number 30 of the section titled Findings of Violation and Conclusion of Law.

31. Paragraph number 31 of the section titled Findings of Violation and Conclusion of Law is a conclusion or matter of law, reason for which it does not require a response. In the alternative, it is denied.

Affirmative Defenses

32. DV at all times acted in good faith to comply with the requirements of the Clean Water Act.

33. DV complied with all applicable requirements under the Clean Water Act.

34. EPA received, accepted and processed all information DV submitted in compliance with applicable requirements/orders.

35. This administrative action is time-barred and/or the delay in the preparation of the Complaint by Complainant from the time of the site inspection to the time of the service of the Complaint, i.e. approximately one year afterwards, has caused the DV to be in an unjust position, where evidence that could have been available is no longer available, thus violating due process of law, both substantive and procedural. The delay caused by EPA is unjustified.

36. There is no evidence of environmental harm from the alleged acts of DV.

37. DV reserves the right to use and raise other affirmative defenses, such as that of laches, violation of due process, estoppels, lack of jurisdiction over the subject matter and person, during the discovery procedures.

Request for Hearing

38. DV requests a formal hearing.

Contest of the Proposed Penalty

39. DV contends that there are no economic benefits from the alleged violations. The extent, circumstances, gravity of alleged violations, if any, applicable history, degree of culpability, if any, economic benefit, if any, environmental damages, if any, and/or such other matters as justice may require, demonstrate that DV shall not be penalized and that the proposed penalty amount is inappropriate.

40. The extent of time during which violations have allegedly been committed is denied and/or is overbroad and excessive.

WHEREFORE, DV respectfully requests that the above captioned Complaint shall be dismissed with prejudice.

RESPECTFULLY REQUESTED,

In San Juan, Puerto Rico on August 22, 2008.

I HEREBY CERTIFY: that a true and exact copy of the foregoing document has been sent by certified mail to: Lourdes del Carmen Rodriguez, Esq., Assistant Regional Counsel, Office of Regional Counsel/CT, U.S. Environmental Protection Agency, Region 2, 1492 Ponce de Leon Avenue, Suite 417, Centro Europa Building, San Juan, Puerto Rico 00907-4127; Wanda Garcia, Chief, Water Quality Division, PREQB, PO Box 11488, San Juan, PR 00910.

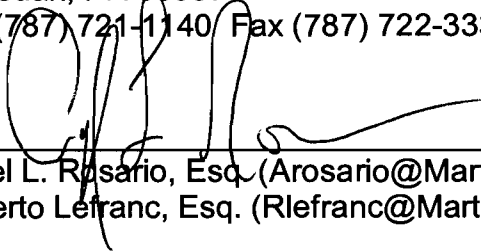
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