

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2

IN THE MATTER OF:

**Brighton Homes Caribbean, Inc.**  
Grand Palm Pump Station  
State Road # 6690 Int., Km. 0.7  
Vega Alta, Puerto Rico 00692

**NPDES Tracking Number PRU200820**

**Respondent.**

**DOCKET NO. CWA-02-2011-3361**

Proceeding Pursuant to Section  
309(g) of the Clean Water Act,  
33 U.S.C. § 1319(g), to Assess Class  
II Civil Penalty

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

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REGION 2  
2011 AUG 19 P 12: 21  
REGIONAL HEARINGS  
CLERK

**I. STATUTORY AUTHORITY**

1. This Complaint, Findings of Violation, Notice of Proposed Assessment of a Civil Penalty, and Notice of Opportunity to Request a Hearing ("Complaint") is issued under the authority vested in the Administrator of the United States Environmental Protection Agency ("EPA") by Section 309(g)(2)(B) of the Clean Water Act ("CWA" or the "Act"), 33 U.S.C. § 1319(g)(2)(B). The Administrator has delegated this authority to the Regional Administrator of EPA, Region 2, who in turn has delegated it to the Director, Caribbean Environmental Protection Division ("CEPD") of EPA, Region 2 ("Complainant").
2. Pursuant to Section 309(g)(2)(A) of the Act, and in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits ("Rules of Practice"), at 40 C.F.R. Part 22, a copy of which is attached, Complainant hereby requests that the Regional Administrator assess a civil penalty against Brighton Homes Caribbean, Inc. ("Respondent" or "Brighton") as a result of Complainant's determination that the Respondent violated Section 301 of the Act, 33 U.S.C. § 1311, for its unauthorized discharges from Brighton's Sanitary Sewer System into a municipal separate storm sewer system, which in turn, discharges into the Atlantic Ocean, a navigable water of the United States.

3. Section 301(a) of the Act, 33 U.S.C. § 1311(a), provides in part that “[e]xcept as in compliance with this section and sections . . . [402, and 404 of the Act], the discharge of any pollutant [into waters of the United States] by any person shall be unlawful.”
4. Section 402(a)(1) of the Act, 33 U.S.C. § 1342(a)(1), provides that “the Administrator [of EPA] may, after opportunity for public hearing, issue a permit for the discharge of any pollutant .”
5. Section 502(16) of the Act, 33 U.S.C. § 1362(16), defines the term “discharge” to include “when used without qualification . . . a discharge of a pollutant, and a discharge of pollutants.”
6. Section 502(12) of the Act, 33 U.S.C. § 1362(12), defines the terms “discharge of a pollutant” and “discharge of pollutants” to each mean “(A) any addition of any pollutant to navigable waters from any point source, (B) any addition of any pollutant to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft.”
7. Section 502(6) of the Act, 33 U.S.C. § 1362(6) defines the term “pollutant” to mean “dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water.”
8. Section 502(14) of the Act, 33 U.S.C. § 1362(14), defines the term “point source” to mean “any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged. This term does not include agricultural storm water discharges and return flows from irrigated agriculture.”
9. Section 502(7) of the Act, 33 U.S.C. § 1362(7), defines the term “navigable waters” to mean “the waters of the United States, including the territorial seas.” The term “water of the United States” is further defined to include, among others, waters which are currently used or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide and including wetlands, rivers, streams (including intermittent streams). 40 C.F.R. § 122.2.
10. Section 502(5) of the Act, 33 U.S.C. § 1362(5), defines “person” to mean “an individual, corporation, partnership, association, State, municipality, commission, or political subdivision of a State, or any interstate body.
11. Sanitary sewer overflows (“SSOs”) are discharges of untreated sewage

from a sanitary sewer collection system prior to the headworks of a sewage treatment plant.

## **II. FINDINGS OF VIOLATION**

12. Brighton, presided by Mr. Luis González, is a corporation organized pursuant to the laws of the Commonwealth of Puerto Rico.
13. Brighton is the developer of the Grand Palm Housing Development ("Grand Palm"), located on State Road 6690 (interior), Vega Alta, Puerto Rico, 00692.
14. Brighton is a "person" within the meaning of Section 502(5) of the Act.

### **A. Brighton's Stormwater Collection System**

15. Respondent constructed a Stormwater Collection System at Grand Palm, which consists of a system of conveyances, including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, and storm drains (the "Stormwater Collection System").
16. Respondent's Stormwater Collection System includes, among other appurtenances, a storm water drain, which consists of a below-ground catch basin that collects and conveys stormwater (the "Storm Drain").
17. The Storm Drain is located at Brisas del Mar Rd., in Vega Alta, Puerto Rico, at a point on the road that is located between the Grand Palm and the San Nicolas residential development projects.
18. Respondent's Stormwater Collection System and Storm Dain are designed or used for collecting and conveying stormwater and discharging it into a Municipal Separate Storm Sewer System ("MS4"), which in turn discharges into the Atlantic Ocean.
19. The Atlantic Ocean is a "water of the United States" within the meaning of Section 502(7) of the Act.

### **B. Brighton's Sanitary Sewer System**

20. Respondent constructed a sanitary sewer system and a sanitary wastewater pump station at Grand Palm (the "Grand Palm Pump Station").
21. The Gran Palm Pump Station is comprised of a concrete house, wet well, two submersible pumps and an electrical system.
22. Respondent has, at all relevant times, owned and operated the Grand Palm Pump Station.

23. Respondent's Grand Palm Pump Station is located at the corner of Brisas del Mar Rd. and Villa Palma Rd., in Vega Alta, Puerto Rico.
24. Respondent's sanitary sewer system is designed to collect sewage from households within Grand Palm I and II, Evergreen II, Coconut Court, and Estancias San Nicolas to convey such sewage into the Grand Palm Pump Station.
25. The Grand Palm pump station discharges into the Puerto Rico Aqueduct and Sewer Authority's ("PRASA's") Dorado Wastewater Treatment Plant and its appurtenances.
26. Respondent's Grand Palm Pump Station system includes a manhole (the "Manhole"), which is located north of the Storm Drain.
27. Respondent has, at all relevant times, failed to properly manage and operate the Grand Palm Pump Station, which has caused the overflow of untreated sanitary sewer through the Manhole (e.g., SSOs).
28. The frequency of the SSOs at the Manhole indicates that Respondent has engaged in egregious violations of the Act.

### **C. Discharges of Untreated Sewage**

29. On January 26, 2010, duly-authorized EPA Enforcement Officer conducted a Compliance Evaluation Inspection of the Grand Palm Pump Station (the "Inspection").
30. During the Inspection, EPA's Enforcement Officer observed sewage and debris around the Grand Palm Pump Station and SSOs from the Manhole into the Storm Drain.
31. During the Inspection, EPA's Enforcement Officer was apprised, by several residents of Grand Palm, of various other SSOs from the Manhole into the Storm Drain from on or about November 25, 2009, through the date of the Inspection.
32. The residents submitted sworn statements and photographs to EPA's Enforcement Officer, to support and depict the alleged SSOs described in the above paragraph.
33. As a result of the Inspection EPA issued Administrative Compliance Order CWA-02-2010-3113 ("Compliance Order"), on February 04, 2010, against Respondent to address the aforementioned violations.
34. The Compliance Order incorporated findings of violations, and ordered Respondent to, among other things, cease and desist the discharge of pollutants into waters of the United States from the Pump Station and to

submit a Compliance Plan to addresses the deficiencies at the Pump Station.

#### **D. Prior History of Violations**

35. On September 6, 2005 EPA issued an Administrative Penalty Order, CWA-02-2005-3316 to Brighton Homes for the unauthorized discharge of untreated sewage into waters of the United States, in violation of Section 301 of the Clean Water Act, 33 U.S.C. § 1311. Brighton Homes discharged unauthorized pollutants on March 31 and June 29, 2005. Brighton does not have a NPDES permit to discharge pollutants into the Atlantic Ocean.

#### **III. CONCLUSIONS OF LAW**

36. As described in the above paragraphs, Respondent violated Section 301(a) of the Act, 33 U.S.C. §1311(a), by discharging pollutants into waters of the United States, without the appropriate permit to do so:

- COUNT 1 –** On or about November 25, 2009, Respondent discharged untreated, raw sewage from the Manhole into the Storm Drain, which discharges into the Atlantic Ocean.
- COUNT 2 –** On or about January 26, 2010, Respondent discharged untreated, raw sewage from the Manhole into the Storm Drain, which discharges into the Atlantic Ocean.
- COUNT 3 –** On or about February 21, 2010, Respondent discharged untreated, raw sewage from the Manhole into the Storm Drain, which discharges into the Atlantic Ocean.
- COUNT 4 –** On or about February 22, 2010, Respondent discharged untreated, raw sewage from the Manhole into the Storm Drain, which discharges into the Atlantic Ocean.
- COUNT 5 –** On or about February 25, 2010, Respondent discharged untreated, raw sewage from the Manhole into the Storm Drain, which discharges into the Atlantic Ocean.
- COUNT 6 –** On or about June 1, 2010, Respondent discharged untreated, raw sewage from the Manhole into the Storm Drain, which discharges into the Atlantic Ocean.

#### **IV. NOTICE OF PROPOSED ORDER ASSESSING A CIVIL PENALTY**

37. Based on the foregoing Findings of Violation and Conclusions of Law, and pursuant to the authority of Section 309(g) of the Act, 33 U.S.C. §1319(g), and the Debt Collection Improvement Act of 1996, EPA, Region 2 hereby proposes to issue a Final Order Assessing Administrative Penalties ("Final Order") to Respondent assessing a penalty of **\$52,500.00**.
38. EPA determined the proposed penalty 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 account the nature, circumstances, extent and gravity of the violations, and Respondent's prior compliance history, degree of culpability, economic benefit or savings accruing to Respondent by virtue of the violations, and Respondent's ability to pay the proposed penalty.

#### **V. PROCEDURES GOVERNING THIS ADMINISTRATIVE LITIGATION**

39. The rules of procedure governing this civil administrative litigation have been set forth in the Rules of Practice, which are codified at 40 C.F.R. Part 22. A copy of these rules accompanies this Complaint.

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

40. Where Respondent intends to contest any material fact upon which the Complaint is based, to contend that the proposed penalty is inappropriate or to contend that Respondent is entitled to judgment as a matter of law, Respondent must file with the Regional Hearing Clerk of EPA, Region 2, both an original and one copy of a written Answer to the Complaint, and such Answer must be filed within thirty (30) days after service of the Complaint. 40 C.F.R. § 22.15(a).
41. The address of the Regional Hearing Clerk of EPA, Region 2, is:

**Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 2  
290 Broadway, 17th floor  
New York, New York 10007-1866.**

42. Respondent shall also then serve one copy of the Answer to the Complaint upon Complainant and any other party to the action. 40 C.F.R. § 22.15(a).
43. Respondent's Answer to the Complaint must clearly and directly admit, deny, or explain each of the factual allegations that are contained in the Complaint and with regard to which Respondent has any knowledge. 40 C.F.R. § 22.15(b). Where Respondent lacks knowledge of a particular

factual allegation and so state in their Answer, the allegation is deemed denied. 40 C.F.R. § 22.15(b). The Answer shall also set forth: (1) the circumstances or arguments that are alleged to constitute the grounds of defense, (2) the facts that Respondent disputes (and thus intend to place at issue in the proceeding), (3) the basis for opposing the proposed relief, and (4) whether Respondent requests a hearing. 40 C.F.R. § 22.15(b).

44. Respondent's failure to affirmatively raise in the Answer facts that constitute, or that might constitute, the grounds of their defense may preclude Respondent, at a subsequent stage in this proceeding, from raising such facts and/or from having such facts admitted into evidence at a hearing.

### **B. Opportunity to Request a Hearing**

45. If requested by Respondent in its Answer, a hearing upon the issues raised by the Complaint and Answer may be held. 40 C.F.R. § 22.15(c). If, however, Respondent does not request a hearing, the Presiding Officer (as defined in 40 C.F.R. § 22.3) may hold a hearing if the Answer raises issues appropriate for adjudication. 40 C.F.R. § 22.15(c).
46. Any hearing in this proceeding will be held at a location determined in accordance with 40 C.F.R. § 22.21(d). A hearing of this matter will be conducted in accordance with the applicable provisions of the Administrative Procedure Act, 5 U.S.C. §§ 551–59, and the procedures set forth in Subpart D of 40 C.F.R. Part 22.
47. Should Respondent request a hearing on this proposed penalty assessment, members of the public, to whom EPA is obligated to give notice of this proposed action, will have a right under Section 309(g)(4)(B) of the Act, 33 U.S.C. § 1319(g)(4)(B), to be heard and to present evidence on the appropriateness of the penalty assessment. Should Respondent not request a hearing, EPA will issue a Final Order, and only members of the public who submit timely comments on this proposal will have an additional thirty (30) days to petition EPA to set aside the Final Order and to hold a hearing thereon. EPA will grant the petition and will hold a hearing only if the petitioner's evidence is material and was not considered by EPA in the issuance of the Final Order.

### **C. Failure to Answer**

48. If Respondent fails in its Answer to admit, deny, or explain any material factual allegation contained in the Complaint, such failure constitutes an admission of the allegation. 40 C.F.R. § 22.15(d). If Respondent fails to file a timely (e.g., in accordance with the 30-day period set forth in 40 C.F.R. § 22.15(a)) Answer to the Complaint, Respondent may be found in default upon motion. 40 C.F.R. § 22.17(a). Default by Respondent constitutes, for purposes of the pending proceeding only, an admission of

all facts alleged in the Complaint and a waiver of Respondent's right to contest such factual allegations. 40 CFR § 22.17(a). Following a default by Respondent for a failure to timely file an Answer to the Complaint, any order issued therefore shall be issued pursuant to 40 C.F.R. § 22.17(c).

49. Any penalty assessed in the default order shall become due and payable by Respondent without further proceedings thirty (30) days after the Default Order becomes final pursuant to 40 C.F.R. § 22.27(c). 40 C.F.R. § 22.17(d). If necessary, EPA may then seek to enforce such Final Order of Default against Respondent, and to collect the assessed penalty amount, in federal court.

## **VI. INFORMAL SETTLEMENT CONFERENCE**

50. Whether or not Respondent requests a formal hearing, EPA encourages settlement of this proceeding consistent with the provisions of the Act and its applicable regulations 40 C.F.R. § 22.18(b). At an informal conference with a representative(s) of Complainant, Respondent may comment on the charges made in this Complaint, and Respondent may also provide whatever additional information that it believes is relevant to the disposition of this matter, including: (1) actions Respondent has taken to correct any or all of the violations herein alleged; (2) any information relevant to Complainant's calculation of the proposed penalty; (3) the effect the proposed penalty would have on Respondent's ability to continue in business; and/or (4) any other special facts or circumstances Respondent wishes to raise.
51. Complainant has the authority to modify the amount of the proposed penalty, where appropriate, to reflect any settlement agreement reached with Respondent, to reflect any relevant information previously not known to Complainant or to dismiss any or all of the charges, if Respondent can demonstrate that the relevant allegations are without merit and that no cause of action as herein alleged exists. Respondent is referred to 40 C.F.R. § 22.18. Any request for an informal conference or any questions that Respondent may have regarding this Complaint should be directed to the EPA attorney named in Section VIII of this Complaint (below).
52. The parties may engage in settlement discussions irrespective of whether Respondent has requested a hearing. 40 C.F.R. § 22.18(b)(1). Respondent's request for a formal hearing does not prevent it from also requesting an informal settlement conference; the informal conference procedure may be pursued simultaneously with the formal adjudicatory hearing procedure. A request for an informal settlement conference constitutes neither an admission nor a denial of any of the matters alleged in the Complaint. Complainant does not deem a request for an informal settlement conference as a request for a hearing as specified in 40 C.F.R. § 22.15(c).



53. A request for an informal settlement conference does not affect Respondent's obligation to file a timely Answer to the Complaint pursuant to 40 C.F.R. § 22.15. No penalty reduction, however, will be made simply because an informal settlement conference is held.
54. Any settlement that may be reached as a result of an informal settlement conference shall be embodied in a written Consent Agreement. 40 C.F.R. § 22.18(b)(2). In accepting the Consent Agreement, Respondent waives its right to contest the allegations in the Complaint and waives its right to appeal the Final Order that is to accompany the Consent Agreement. 40 C.F.R. § 22.18(b)(2). In order to conclude the proceeding, a Final Order ratifying the parties' agreement to settle will be executed. 40 C.F.R. § 22.18(b)(3).
55. Respondent entering into a settlement through the signing of such Consent Agreement and its complying with the terms and conditions set forth in such Consent Agreement terminates this administrative litigation and the civil proceedings arising out of the allegations made in the Complaint. Respondent entering into a settlement does not extinguish, waive, satisfy or otherwise affect its obligation and responsibility to comply with all applicable statutory and regulatory requirements, and to maintain such compliance.

**VII. RESOLUTION OF THIS PROCEEDING WITHOUT HEARING OR CONFERENCE**

56. Instead of filing an Answer, Respondent may choose to pay the total amount of the proposed penalty within thirty (30) days after receipt of the Complaint, provided that Respondent files with the Regional Hearing Clerk, Region 2 (at the address noted above), a copy of the check or other instrument of payment. 40 C.F.R. § 22.18(a). A copy of the check or other instrument of payment should be provided to the EPA attorney named in Section VII, Paragraph 2, below. Payment of the penalty assessed should be made by sending a cashier's or certified check payable to the "**Treasurer, United States of America,**" in the full amount of the penalty assessed in this Complaint to the following addressee:

**Regional Hearing Clerk  
U. S. Environmental Protection Agency, Region 2  
P.O. Box 360188M  
Pittsburgh, Pennsylvania 15251.**

57. Pursuant to 40 C.F.R. § 22.18(a)(3), if Respondent elects to pay the full amount of the penalty proposed in the Complaint within thirty (30) days of

receiving the Complaint, then, upon EPA's receipt of such payment, the Regional Administrator of EPA, Region 2 (or, if designated, the Regional Judicial Officer), shall issue a Final Order in accordance with 40 C.F.R. § 22.18(a)(3). In accordance with 40 C.F.R. § 22.45(c)(3), no Final Order shall be issued until at least ten (10) days after the close of the comment period on this Complaint. Issuance of a Final Order terminates this administrative litigation and the civil proceedings arising out of the allegations made in the Complaint. Further, pursuant to 40 C.F.R. § 22.18(a)(3), the making of such payment by Respondent shall constitute a waiver of Respondent's right both to contest the allegations made in the Complaint and to appeal said Final Order to federal court. Such payment does not extinguish, waive, satisfy or otherwise affect Respondent's obligation and responsibility to comply with all applicable statutory and regulatory requirements, and to maintain such compliance.

### **VIII. FILING OF DOCUMENTS**

58. The Answer and any Hearing Request and all subsequent documents filed in this action should be sent to:

**Regional Hearing Clerk  
U.S. Environmental Protection Agency  
290 Broadway, 17th Floor  
New York, New York 10007.**

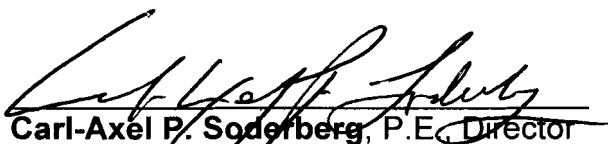
59. A copy of the Answer, any Hearing Request and all subsequent documents filed in this action shall be sent to:

**Roberto M. Durango, Esq.  
Assistant Regional Counsel  
Office of Regional Counsel, Caribbean Team  
U.S. Environmental Protection Agency, Region 2  
1492 Ponce de Leon Ave.,  
Centro Europa Building, Suite 417  
San Juan, Puerto Rico 00907-1866  
Tel.: (787) 977-5822;  
Fax: (787) 729-7748**

## IX. GENERAL PROVISIONS

60. Respondent has a right to be represented by an attorney at any stage of these proceedings.
61. This Complaint does not constitute a waiver, suspension or modification of the requirements of the Act, regulations promulgated hereunder, or any applicable permit.
62. Neither assessment nor payment of an administrative civil penalty pursuant to Section 309(g) of the Act will affect Respondent's continuing obligation to comply with the Act, and with any separate Compliance Order issued under Section 309(a) of the Act, 33 U.S.C. § 1319(a), for the violations alleged herein.

ISSUED THIS 18<sup>th</sup> DAY OF August, 2011.



**Carl-Axel P. Soderberg, P.E.**, Director  
Caribbean Environmental Protection Division  
U. S. Environmental Protection Agency, Region 2  
1492 Ponce de Leon Ave, Suite 417  
San Juan, Puerto Rico 00907-1866

To: **Mr. Luis González**  
President  
Brighton Homes Caribbean, Inc.  
425 State Road 693 PMB 303  
Dorado, Puerto Rico 00646-4802

cc: **Mr. Roberto Ayala**  
Director  
Water Quality Area  
PR Environmental Quality Board  
P.O. Box 11488  
San Juan, Puerto Rico 00910

ATTACHMENTS

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2

IN THE MATTER OF:

**Brighton Homes Caribbean, Inc.**  
Grand Palm Pump Station  
State Road # 6690 Int., Km. 0.7  
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**NPDES Tracking Number PRU200820**

**Respondent.**

**DOCKET NO. CWA-02-2011-3361**

Proceeding Pursuant to Section  
309(g) of the Clean Water Act,  
33 U.S.C. § 1319(g), to Assess Class  
II Civil Penalty

**CERTIFICATE OF SERVICE**


I certify that, on the date noted below, I caused to be mailed, by certified mail, return receipt requested, a copy of the foregoing "ADMINISTRATIVE COMPLAINT" and a copy of the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits", 40 C.F.R. Part 22, to the following person at the address listed below:

**Mr. Luis González,**  
President  
Brighton Homes Caribbean, Inc.  
425 State Road 693 PMB 303  
Dorado, Puerto Rico 00646-4802

I sent the original and a copy of the foregoing Complaint for filing, to:

**Karen Maples**  
Regional Hearing Clerk  
U.S. Environmental Protection Agency, R 2  
290 Broadway, 16<sup>th</sup> Floor  
New York, NY 10007-1866.

Date: August 18, 2011  
San Juan, Puerto Rico

  
Aileen Sanchez, Program Support Assistant  
EPA, Region 2, Office of Regional Counsel