

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION II

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG.II
2011 DEC 13 P 2:16
REGIONAL HEARING
CLERK

IN THE MATTER OF:

Tri-Stella Development Group, Inc.

and

Dynamics Engineers, Corp.
RESPONDENTS

Prehearing Exchange

DOCKET NUMBER CWA-02-2011-944

COMPLAINANT'S INITIAL PREHEARING EXCHANGE

Pursuant to the request made by Hon. Susan L. Biro, Chief Administrative Law Judge, on the Prehearing Order dated December 8, 2011, the Complainant hereby files its Initial Prehearing Exchange for the above captioned matter.

Respectfully Submitted, in San Juan, Puerto Rico this 9th day of December 2011.



Héctor L. Vélez Cruz
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U.S. Environmental Protection Agency, Region 2
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1. Pursuant to Section 22.19(a) of the Rules, each party shall file with the Regional hearing Clerk and shall serve on the opposing party and on the Presiding Judge:

a. The names of any expert and other witnesses intended to be called at hearing, identifying each as a fact witness or expert witness, with a brief narrative summary of their expected testimony, or a statement that no witnesses will be called;

Complainant expects to call the following persons as witnesses at the hearing:

- i. Héctor Ortiz**
Environmental Engineer
Multi-Media Permit and Compliance Branch
U.S. Environmental Protection Agency, Region 2
Caribbean Environmental Protection Division

Mr. Héctor Ortiz has been working with EPA, Region 2, Caribbean Environmental Protection Division, since August 10, 2003, as an Environmental Engineer handling NPDES inspections in the Multi-Media Permits and Compliance Branch. Mr. Ortiz has a Bachelor in Science Degree from the University of Puerto Rico where he graduated in 1984, a Bachelor in Industrial Engineer and a Master in Environmental Management from the Polytechnic University of Puerto Rico. Mr. Ortiz has worked in several companies as an Environmental Manager.

Mr. Ortiz will testify about the NPDES storm water permit application regulations, the NPDES Construction General Permit requirements and how such apply to Respondents' facility. He will also testify about the: Compliance Evaluation Inspections that he performed on February 23, and on March 15, 2007, which addressed compliance by Respondents with the NPDES storm water permit regulations at the Facility; factual and legal aspects of this case [i.e. the violations of the Clean Water Act (CWA) and the pertinent regulations, among other]; and the calculation of the assessed penalty included in the complaint (which he performed), the reasoning behind the calculation of said assessed penalty and the appropriateness of the penalty.

Mr. Ortiz will also testify about the: Administrative Compliance Order ("ACO"), Docket No. CWA-02-2007-3034, dated September 7, 2007, issued to Respondents, ordering Respondents to comply with the storm water discharge permit regulations; visits he performed at the Facility and communications held with Respondents' representatives regarding its compliance/non-compliance with the ACO, the CWA and the NPDES storm water permit regulations.

- ii. **Sergio Bosques**
Environmental Engineer
Regional Storm Water Coordinator
Multi-Media Permit and Compliance Branch
U.S. Environmental Protection Agency, Region 2
Caribbean Environmental Protection Division

Mr. Sergio Bosques has been working with the EPA since July 14, 1991, where he started as an Environmental Engineer in the Water Permits and Compliance Branch, Water Management Division, New York, Region 2. Mr. Bosques is currently an Environmental Engineer in the EPA, Region 2, Caribbean Environmental Protection Division, Multi-Media Permits and Compliance Branch, where he started on May 10, 1998. Mr. Bosques holds a degree in B.S. in Chemical Engineering from the University of Puerto Rico where he graduated in 1991.

Mr. Bosques may testify as to the numerous NPDES Storm water seminars he has conducted in Puerto Rico over the years, and will discuss the NPDES storm water requirements and the Construction General Permit requirements and how they apply to Respondents' facility.

Complainant reserves the right, and nothing herein is intended or is to be construed to prejudice or waive any such right, to call or not to call any of the aforementioned potential witnesses, and to expand or otherwise modify the scope, extent and/or areas of the testimony of any of the above-named potential witnesses, where appropriate. In addition, Complainant reserves the right to list and to call additional potential hearing witnesses, including expert witnesses, to answer and/or rebut evidence (testimonial or documentary) listed by Respondent in its prehearing exchange or on matters arising as a consequence of such evidence.

b. Copies of all documents and exhibits intended to be introduced into evidence. Included among the documents produced shall be a curriculum vitae or resume for each identified expert witness. The documents and exhibits shall be identified as Complainant's or Respondent's exhibit, as appropriate, and numbered with Arabic numerals:

- i. ***Complainant's Exhibit 1 - Administrative Complaint***, Docket No. CWA-02-2011-3454, dated July 28, 2011, with letters addressed to Mr. José E. Bacardí, President of Dynamics Engineers, Corp., dated July 28, 2011, ***Complainant's Exhibit 1a***, and to Mr. Adrian Stella, President of Tri-Stella Development Group, Inc., ***Complainant's Exhibit 1b***.

- ii. ***Complainant's Exhibit 2*** - Letter addressed to Roberto Ayala, Director of the Water Quality Bureau, PR Environmental Quality Board (EQB), dated July 28, 2011.
- iii. ***Complainant's Exhibit 3*** - Respondent Dynamics Engineers, Corp.'s Answer to the Administrative Complaint and Request for Hearing, dated September 2, 2011. Respondent Tri-Stella Development Group, Inc.'s Answer to the Administrative Complaint and Request for Hearing, dated August 29, 2011, Complainant's Exhibit 3a.
- iv. ***Complainant's Exhibit 4*** - Penalty Memorandum, dated July 21, 2011, prepared by Mr. Héctor Ortiz.
- v. ***Complainant's Exhibit 5*** - EPA Water Compliance Inspection Reports, dated September 6, 2007, regarding the February 23, and on March 15, 2007 EPA Site Inspections, including photos of the facility taken during the inspections.
- vi. ***Complainant's Exhibit 6*** - EPA September 10, 2007 letters addressed to Mr. José E. Bacardí, President of Dynamics Engineers, Corp., and to Mr. Adrian Stella, President of Tri-Stella Development Group, Inc. (***Complainant's Exhibit 6a***), notifying violations of the CWA, with Certified Mail Receipt, and with the Administrative Compliance Order, Docket Number CWA-02-2007-3034, Complainant's Exhibit 6b.
- vii. ***Complainant's Exhibit 7*** - EPA October 10, 2007 letter addressed to Mr. José E. Bacardí, President of Dynamics Engineers, Corp., and to Mr. Adrian Stella, President of Tri-Stella Development Group, Inc., notifying closure of the Administrative Compliance Order, Docket Number CWA-02-2007-3034, along with certificates of service and return receipts.
- viii. ***Complainant's Exhibit 8*** - EPA's Final NPDES General Permit for Storm Water Discharges from Construction Activities, issued on July 1, 2003, and published in the Federal Register (68 FR 39087).
- ix. ***Complainant's Exhibit 9*** - Copy of Tri-Stella Development Group, Inc. corporate registry information generated by the online system of the Commonwealth of Puerto Rico Department of State Corporate Division.

- x. ***Complainant's Exhibit 10*** – Copy of Dynamics Engineers, Corp. corporate registry information generated by the online system of the Commonwealth of Puerto Rico Department of State Corporate Division.

- xi. ***Complainant's Exhibit 11*** – Copy of Tri-Stella Development Group, Inc. and Dynamics Engineers, Corp. Contract for construction activities at the Caminos Verdes II Development.

- xii. ***Complainant's Exhibit 12*** – EPA Water Compliance Inspection Reports, dated October 24, 2008, regarding the May 1, 2008 EPA Site Inspection, including photos of the facility taken during the inspections.

- xiii. ***Complainant's Exhibit 13*** – Public Notice Number 11-48 for the Proposed Administrative Penalty Assessment and Opportunity to Comment during period 8/01/2011 through 8/31/2011.

- xiv. ***Complainant's Exhibit 14*** - Copy of Tri-Stella Development Group, Inc.'s Notice of Intent form seeking coverage for Storm water Discharges Associated with Construction Activities from the Facility under a NPDES, printed on February 27, 2007, from EPA's National Storm Water Processing Center Database.

- xv. ***Complainant's Exhibit 15*** - Copy of Dynamics Engineers, Corp.'s Notice of Intent form seeking coverage for Storm water Discharges Associated with Construction Activities from the Facility under a NPDES Permit, printed on October 22, 2009, from EPA's National Storm Water Processing Center Database.

Complainant reserves the right, and nothing herein is intended or should be construed to prejudice such right, to supplement or add, subject to notice to the Court and Respondent, documentary evidence to Complainant's prehearing exchange submission in order to respond to and/or rebut, or otherwise to address an issue arising as a consequence of, evidence Respondent submits in its prehearing exchange or otherwise to update this prehearing exchange.

c. Statement expressing its view as to the place for the hearing and the estimated amount of time needed to present its direct case.

Pursuant to 40 CFR §§ 22.21(d) and 22.19(d), the hearing should be held in the county where the Respondents conduct business which the hearing concerns, in the city in which the relevant Environmental Protection Agency Regional office is located, or in Washington, D.C. Complainant requests that the hearing be held in San Juan, where the relevant Environmental Protection Agency Regional office is located. This location is convenient for both parties and witnesses and it is the municipality where the events that gave rise to this action occurred. The Complainant can assist by providing the Regional Hearing Clerk with information on facilities which may be available for purposes of holding the hearing. Complainant estimates it will need one day to present its direct case.

2. In addition, the Complainant shall, without limitation, submit the following as part of its Initial Prehearing Exchange:

a. A brief narrative statement, and a copy of any documents in support, explaining in details the factual and/or legal bases for the allegations in Paragraphs 21, 24, 28-31, 34, 43 and 49 of the Complaint, to the extent either Respondent denied those allegations in its Answer;

For the allegations in Paragraph 21, please see *Complainant's Exhibits 9 and 10* which are copies of Tri-Stella Development Group, Inc.'s and Dynamics Engineers, Corp.'s corporate registry information generated by the online system of the Commonwealth of Puerto Rico Department of State Corporate Division.

For the allegations in Paragraph 24, please see *Complainant's Exhibit 11*, which is a copy of Tri-Stella Development Group, Inc. and Dynamics Engineers, Corp. contract for construction activities at the Caminos Verdes II Development.

For the allegations in Paragraph 28-31, please see *Complainant's Exhibit 5*, EPA Water Compliance Inspection Reports, dated September 6, 2007, regarding the February 23, and on March 15, 2007 EPA Site Inspections, which includes photos of the facility taken during the inspections, and *Complainant's Exhibits 14 and 15* which are copies of Tri-Stella Development Group, Inc.'s and Dynamics Engineers, Corp.'s Notice of Intent forms seeking coverage for Storm water Discharges Associated with Construction Activities from the Facility under a NPDES Permit.

For the allegations in Paragraph 34, please see *Complainant's Exhibit 5*, EPA Water Compliance Inspection Reports, dated September 6, 2007, regarding the February 23, and on March 15, 2007 EPA Site Inspections, which includes photos of the facility taken during the inspections, and *Complainant's Exhibit's 14 and 15* which are copies of Tri-Stella Development Group, Inc.'s and Dynamics Engineers, Corp.'s Notice of Intent forms seeking coverage for Storm water Discharges Associated with Construction Activities from the Facility under a NPDES Permit.

For the allegations in Paragraph 43, please see *Complainant's Exhibit 5*, EPA Water Compliance Inspection Reports, dated September 6, 2007, and *Complainant's Exhibit's 14 and 15* which are copies of Tri-Stella Development Group, Inc.'s and Dynamics Engineers, Corp.'s Notice of Intent forms seeking coverage for Storm water Discharges Associated with Construction Activities from the Facility under a NPDES Permit.

For the allegations in Paragraph 49, please see *Complainant's Exhibit 12*, EPA Water Compliance Inspection Reports, dated October 24, 2008, regarding the May 1, 2008 EPA Site Inspection, including photos of the facility taken during the inspections.

b. A copy of the Administrative Compliance Order referenced in Paragraph 44, and a copy of the letter referenced in Paragraph 46 of the Complaint;

For the allegations in Paragraph 44, please see *Complainant's Exhibit 6, 6a and 6b* for copies of the EPA September 10, 2007 letters addressed to Mr. José E. Bacardí, President of Dynamics Engineers, Corp., and to Mr. Adrian Stella, President of Tri-Stella Development Group, Inc., notifying violations of the CWA, with Certified Mail Receipt, and the Administrative Compliance Order, Docket Number CWA-02-2007-3034.

For the allegations in Paragraph 46, please see *Complainant's Exhibit 7*, for a copy of the EPA October 10, 2007 letter addressed to Mr. José E. Bacardí, President of Dynamics Engineers, Corp., and to Mr. Adrian Stella, President of Tri-Stella Development Group, Inc., notifying closure of the Administrative Compliance Order, Docket Number CWA-02-2007-3034, along with certificates of service and return receipts.

c. A copy of any reports , notes or other pertinent documentation produced as a result of the inspections referred to in Paragraphs 40-41, and 48-49 of the Complaint;

For the allegations in Paragraphs 40-41, please see *Complainant's Exhibit 5*, EPA Water Compliance Inspection Reports, dated September 6, 2007, regarding the February 23, and on March 15, 2007 EPA Site Inspections, which includes photos of the facility taken during the inspections.

For the allegations in Paragraphs 48-49, please see *Complainant's Exhibit 12*, EPA Water Compliance Inspection Reports, dated October 24, 2008, regarding the May 1, 2008 EPA Site Inspection, including photos of the facility taken during the inspections

d. A copy of the permit, or pertinent sections thereof, referred to in Paragraphs 16 of the Complaint;

Please see *Complainant's Exhibit 8*, copy of EPA's Final NPDES General Permit for Storm Water Discharges from Construction Activities, issued on July 1, 2003, and published in the Federal Register (68 FR 39087).

e. A statement indicating whether Complainant has provided the public notice and opportunity to comment required by Section 309(g)(4)(A) of the Clean Water Act, 33 U.S.C. § 1319(G)(4)(A), see 40 C.F.R. § 22.45; and

Please see *Complainant's Exhibit 13*, copy of Public Notice Number 11-48 for the Proposed Administrative Penalty Assessment and Opportunity to Comment during period 8/01/2011 through 8/31/2011, for the Tri-Stella Development Group, Inc. and Dynamics Engineers, Corp., Docket Number CWA-02-2011-3454.

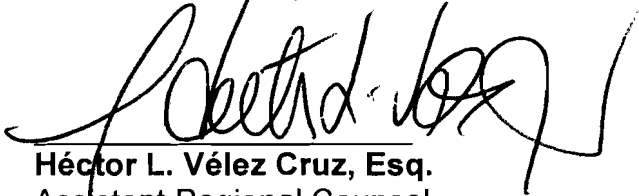
f. All factual information and supporting documentation relevant to the assessment of the penalty, a detailed narrative explanation of the proposed penalty addressing relevant penalty factors, and a copy, or a statement of the internet address (URL), of any policy or guidance relied on by Complainant in calculating the propose penalty, or intended to be relied on if that penalty is adjusted;

The calculation of the proposed penalty was performed using each of the statutory factors listed in Section 309 (g) of the CWA, 33 U.S.C. § 1319(g). Factors such as the nature, circumstances, extent and gravity of the violation, prior history of such violations, degree of culpability, Respondents' Economic Benefit or savings accrued by virtue of the violations and their ability to pay were considered by EPA when

calculating the proposed penalty. EPA has also taken into account the particular facts and circumstances of this case. The particular facts and circumstances of this case are based on a series of compliance evaluations performed on EPA records and communications between EPA and Respondent.

The Complainant proposes, subject to receipt and evaluation of further relevant information from the Respondents, that the Respondents are assessed a civil penalty in the amount of \$56,454.00 for the violations alleged in the Complaint. A penalty memorandum and narrative explanation supporting the penalty figure for the violations cited in the Complaint is included in ***Complainant's Exhibit 4***.

Respectfully submitted. In San Juan, Puerto Rico, December 9, 2011.



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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION II

IN THE MATTER OF:

Tri-Stella Development Group, Inc.

and

Dynamics Engineers, Corp.
RESPONDENTS

Complainant's Prehearing Exchange

DOCKET NUMBER CWA-02-2011-3454

CERTIFICATE OF SERVICE

I certify that I have this day caused to be sent the foregoing Complainant's Prehearing Exchange, dated December 9, 2011, and bearing the above-referenced docket number, in the following manner to the respective addressees below:

Original and copy by facsimile, **Overnight Mail** 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, **Overnight Mail** to:

Attorney for Respondent:
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Attorney for Respondent:
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Copy by facsimile, **Overnight Mail** to:

Chief Administrative Law Judge
Honorable Susan L. Biro
Office of Administrative Law Judges, U.S. Environmental Protection Agency
1099 14th Street, N.W., Suite 350, Washington, D.C. 20005
Fax (202) 565-0044.

Date

12/09/11

