

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REGION 2
2010 JUN -1 PM 1:35
REGIONAL HEARING
CLERK

In the Matter of:

DESARROLLOS ALTAMIRA I, INC., and
CIDRA EXCAVATION, S.E.,

RESPONDENTS

Proceeding pursuant to Section 309(g) of the
Clean Water Act, 33 U.S.C. § 1319(g)

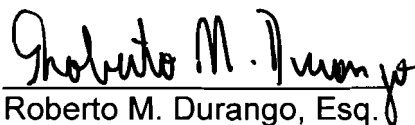
**REBUTTAL PREHEARING
EXCHANGE**

**DOCKET NUMBER
CWA-02-2009-3462**

COMPLAINANT'S REBUTTAL PREHEARING EXCHANGE

Pursuant to the Prehearing Order, dated March 25, 2010, directing the Parties to file their prehearing exchanges in seriatim fashion, Complainant was directed to file its Rebuttal Prehearing Exchange by May 28, 2010. Complainant hereby files its Rebuttal Prehearing Exchange for the above-captioned matter.

Respectfully submitted, in San Juan, Puerto Rico this 27th day of May 2010.



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**Complainant's Rebuttal Prehearing Exchange
In the Matter of Desarrollos Altamira I, Inc., and
Cidra Excavation, S.E.
Docket Number CWA-02-2009-3462
Page 1 of 15**

1. In compliance with this Honorable Court's Prehearing Order, Complainant submits as part of its Rebuttal Prehearing Exchange the following:

(A) *the names of the expert and other witnesses intended to be called at hearing, identifying each as a fact witness or an expert witness, with a brief narrative summary of their expected testimony:*

- i. **Sindulfo Castillo, P.E. (Fact Witness)**
Section Chief
US Army Corps of Engineers
Antilles Regulatory Section

Mr. Castillo will testify, among other things, about Joint Permit Application (JPA) Number 706, that DAI submitted to the US Army Corps of Engineers (the Corps). Mr. Castillo will testify that, as stated in the February 23, 2006 Letter, the Corps' determination is limited to an ephemeral stream located *inside* the boundaries of the Project. Mr. Castillo will also testify that *the Corps' determination does not address and has no relationship to* the Unnamed Creek and the Rio Canovanas, which are located *outside* the Project's boundaries, to wit Complainant alleges in this matter.

- ii. **Jorge Martinez, P.E., M.P.H. (Expert Witness)**
Drinking Water Specialist
U.S. Environmental Protection Agency
Caribbean Environmental Protection Division, Region 2

Mr. Jorge Martinez has been working for the U.S. Environmental Protection Agency since 1984. For over twenty five years, Mr. Martinez has worked as the Drinking Water Specialist for the Caribbean Environmental Protection Division, Region 2, in San Juan, Puerto Rico. Mr. Martinez is in charge of the Public Water Supply Supervision (PWSS) program for Puerto Rico and the U.S. Virgin Islands. Mr. Martinez holds a B.S. in Civil Engineering (1975) and a Masters in Public Health (2006), both from the University of Puerto Rico.

Mr. Martinez will testify, among other things, about the impacts to the Rio Canovanas Filter Plant (a.k.a. Water Treatment Plant) (WPT), located downstream from the Project, due to Respondents discharges. Mr. Martinez will also testify as to how

Respondents discharges affected the effectiveness of the chlorination process at the WTP, which in turn, potentially affected the roughly 50,000 people the WTP serves.

Mr. Martinez will also testify about the Unnamed Creek and the Rio Canovanas' classification as a Class SD Water, in terms of its intended use as a raw source of public water supply. In addition, Mr. Martinez, along with Mr. Rivera, will testify about Respondents' activities as major source of pollution of the Rio Canovanas, in accordance to the CWA Section 303(d) impaired body of water classification, the interaction between Respondents' discharges and other pollutants, which in turn affect the public water supply.

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 Respondents in their 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 to be produced shall be a curriculum vita or resume for each identified expert witness:*

i. **Complainant's Exhibit 17**—Joint Permit Application File, JPA No. 706, dated February 23, 2006, signed by Mr. Sindulfo Castillo, containing all the information used to determine that a stream located in its entirety *inside* Respondents' property was non-jurisdictional. JPA No. 706 is unrelated to the Unnamed Creek and the Rio Canovanas, located *outside* Respondents' property, as alleged in the Complaint.

ii. **Complainant's Exhibit 18**—Aerial Photograph of the Rio Canovanas WTP, depicting the location of the Rio Canovanas WTP, a drinking water source that serves roughly 50,000 people.

iii. **Complainant's Exhibit 19**—Environmental Sensitivity Index Map, published by the National Oceanic and Atmospheric Administration (NOAA), depicting flora and fauna in the area, along with the human use resources, including the Rio Canovanas WTP.

iv. ***Complainant's Exhibit 20***—Puerto Rico Water Quality Standards Regulation, as amended on June 13, 2003, effective at the time of Respondents' CWA violations, which classify the Unnamed Creek and the Rio Canovanas as Class SD Waters (pp. 23, 35–37).

v. ***Complainant's Exhibit 21***—305(b) and 303(d) Integrated Report, as revised in May 2008, effective at the time of Respondents' CWA violations, which classifies the Rio Canovanas as a 303(d) water, and lists Respondents' activities as one of the Sources of Pollution, and lists the Causes of Impairment to the Rio Canovanas (p. 41). In addition, the Integrated Report designates the Rio Canovanas for use as a Primary and Secondary Contact Recreation body of water, as a Raw Source for Drinking Water, and for Aquatic Life.

vi. ***Complainant's Exhibit 22***—Mr. Jorge Martinez's Curriculum Vitae.

vii. ***Complainant's Exhibit 23***—NPDES Permit Number PR0022420, issued by the United States Environmental Protection Agency, Region 2, on August 9, 2002, to the Puerto Rico Aqueduct and Sewer Authority (PRASA), for the Rio Canovanas WPT, and Rio Canovanas Filtration Plant Report, ***Complainant's Exhibit 23a***.

viii. ***Complainant's Exhibit 24***—Flow Extraction Report for the Rio Canovanas,

ix. ***Complainant's Exhibit 25***—DNER Franchise Permit, for the Rio Canovanas (PTR-10-219-97) (Aug. 22, 2005).

x. ***Complainant's Exhibit 26***—Amended Proposed Penalty Memorandum, EPA'S GUIDE TO CALCULATING ENVIRONMENTAL BENEFITS OF ENFORCEMENT CASES: FY 2005 CCDS UPDATE, ***Complainant's Exhibit 26a***, Administrative Compliance Order, CWA-02-2007-3011, ***Complainant's Exhibit 26b***, Consent Agreement and Final Order, CWA-02-2007-3411, ***Complainant's Exhibit 26c***.

xi. ***Complainant's Exhibit 27***—USGS Surface Water Records for the Rio Canovanas.

xii. ***Complainant's Exhibit 28***—Rio Canovanas NOI Search Results, summarizing the Construction and Industrial General Permits, along with the thirty NOIs that have been filed, listing the Rio Canovanas as the receiving body of water.

(C) *a statement and/or any documents in response to Respondents' Prehearing Exchanges as to provisions 3(A) through 3(F), and 4(A) through 4(F):*

3(A) *a narrative statement fully describing what interest and roles each of the two Respondents as well as "Las Quintas 957, Inc." had in the Hacienda Altamira I Residential Development project and/or the real property upon which construction of such Project occurred during the time period from November 25, 2007 through September 27, 2007, along with copies of all documents evidencing such various interests or roles;*

In compliance to Prehearing Order, 2 n. 1, Complainant intends to move to amend the Complaint to include Las Quintas 957, Inc. as an additional party to this matter.

3(B) *a detailed narrative statement explaining the factual and legal basis, and any and all documents it intends to rely upon in support, for its claim made on page 8 of its Answer that the proposed penalty of \$146,425.49 “has no basis in law or fact;”*

Contrary to what DAI states, under Service Oil Inc. v. US EPA, 590 F.3d 545 (8th Cir. 2009) and In the Matter of Municipality of Rio Grande, Docket No. CWA-02-2009-3458 (Jan. 13, 2010), Respondents were required to apply for an NPDES permit on or before February 20, 2007, the date on which evidence in the record shows that the first actual discharge from the Project occurred.

Contrary to what DAI states, the penalty calculation does not assume that it rained on a continuous basis for 245 days. See **Complainant’s Exhibit 26**.

In light of Service Oil and Municipality of Rio Grande, both of which were decided after the Complainant in this matter was filed, Complainant submits an Amended Penalty Memorandum to reflect the impact of both decisions on the penalty proposed in the Complaint. See **Complainant’s Exhibit 26**.

Contrary to what DAI states, Respondents’ CWA violations caused actual and potential harm human health and the environment to wit Complainant’s witnesses will testify to and the following documentation exchanged: **Complainant’s Exhibits 5, 7–7d, 9, 9a, 13–13f, 18, 19, 20, 21, 23, 24, 25, 26, 26a, and 27**.

Contrary to what DAI states, Complainant calculated the amount of pollutants that reached the Unnamed Creek and the Rio Canovanas based on EPA’S GUIDE TO CALCULATING ENVIRONMENTAL BENEFITS OF ENFORCEMENT CASES: FY 2005 CCDS UPDATE, See **Complainant’s Exhibits 26–26a**.

3(C) *a detailed narrative statement explaining the factual and legal basis, and any and all documents it intends to rely upon in support, for its claim made on page 8 of its Answer that “the proposed penalty assessment is excessive, unwarranted, burdensome, and fails to take into account the factors identified in Section 309(g)(3) of the Clean Water Act, 33 U.S.C. §§ 1251 et seq., § 1319(g);”*

Pursuant to Section 309(g)(3) of the Act, 33 U.S.C. § 1319(g)(3), Complainant took into account the nature, circumstances, extent, and gravity of the violation, or violations, and, with respect to the violator, ability to pay, any prior history of such violations, the degree of culpability, economic benefit or savings (if any) resulting from the violation and such other matters as justice may require.

DAI states that “there are no drinking water intakes.” DAI’s statement is false. See Complainant’s Exhibits 18, 19, 20, 21, 23, 24, 25, and 27.

DAI states that “[there are no] recreational facilities near the area.” Respondent’s statement is inaccurate. The Puerto Rico Water Quality Standards classify the Unnamed Creek and the Rio Canovanas as Class SD Waters. See Complainant’s Exhibit 20. Class SD Waters are “surface waters intended for use as raw source of public water supply, propagation and preservation of desirable species, including threatened or endangered species, as well as *primary and secondary contact recreation*” Id. at 35–6 (emphasis added). See also Complainant’s Exhibits 18, 19, 20, 21, 23, 24, 25, and 27.

3(D) *a detailed narrative statement explaining the factual and legal basis, and any and all documents it intends to rely upon in support, for its claim made on page 8 of its Answer that “the proposed penalty assessment fails to consider that respondents presented a timely application to EPA, that EPA acknowledged it as complete, and that EPA failed to review within 30 days;”*

Both the purported NOIs, DAI submitted, on February 15, 2006 and on January 30, 2007, are incomplete and wholly inaccurate (Respondent DAI’s Exhibit 3 and 4). Specifically, Respondent DAI’s Exhibit 3 and 4 state that “[t]here are no bodies of water that will receive discharge.” (emphasis added). Although the NOI submitted by Respondent DAI on October 17, 2007, was finally accepted, it was still incomplete and inaccurate. See

Complainant's Exhibits 12–12b. Moreover, the October 17 NOI is *not* identical as it states that the Project *will* discharge to a body of water.

Based on the H-H Study, Respondents knew, since March 2006, that the Project would discharge into the Unnamed Creek and the Rio Canovanas. See **Complainant's Exhibit 5**. However, Respondents disregarded the CWA and NPDES permit requirements. As such, Respondents' egregious violations are not considered to be a mitigating factor, but rather, an aggravating factor.

3(E) a detailed narrative statement explaining the factual and legal basis, and any and all documents it intends to rely upon in support, for its "Affirmative Defenses" set forth in its Answer on pages 8 through 11 (paragraphs 1–20 thereon);

1. See supra ¶ 3(B).

2. The Project discharged storm water into an Unnamed Creek and into Río Canóvanas, both of which are waters of the United States. **Complainant's Exhibits 5, 7–7d, 9, 9a, 13–13f, 18, 19, 20, 21, 23, 24, 25, 26, 26a, and 27**. EPA has jurisdiction under the Clean Water Act, 33 U.S.C. §§ 1251 et seq., and regulations promulgated thereunder.

3. Pursuant to the Construction General Permit both the owner and the operator of the Project were required to submit a NOI. See **Complainant's Exhibit 9**, at A-2. The Amended Penalty Memorandum reflects DAI's the lesser degree of culpability due to the Contract between DAI and Cidra. See **Complainant's Exhibit 26** and Respondent DAI's Exhibit 2.

4. See supra ¶ 3(E)(1).

5. See supra ¶ 3(D).

6. See supra ¶ 3(D).

7. See supra ¶ 3(D).

8. See supra ¶ 3(D). DAI also states that "EPA was negligent in not reviewing the applications submitted in 2006 and 2007." Complainant takes issues with such statement. First, and foremost, such statement lacks any legal and factual merit. Second, Respondent does not cite any negligence standard for Complainant to properly respond to such

statement. Finally, as mentioned in supra ¶ 3(D), Respondents knew they were required to submit a complete and accurate NOI, but failed to do so. See Complainant's Exhibit 5.

9. Contrary to what DAI alleges, Respondents' failure to timely apply for coverage under the Construction General Permit meant that the implementation of the NPDES storm water program and regulations were hindered, and that the benefits which otherwise would have been obtained, such as immediate development and implementation of storm water pollution prevention plans at the Project and the performance of erosion and sediment controls inspections by qualified personnel, in order to protect the Unnamed Creek and Río Canóvanas were not received. See Complainant's Exhibit 26, at 7–10.

The Río Canóvanas and the Unnamed Creek are designated by the Commonwealth of Puerto Rico as Class SD waters. Class SD Waters are surface waters intended for use as raw source of public water supply, propagation and preservation of desirable species, including threatened or endangered species, as well as primary and secondary contact recreation. Río Canóvanas is a raw source of public water supply servicing the Municipality of Canóvanas, which is composed of roughly 50,000 people. See Complainant's Exhibit 26, at 7–10.

Respondents' egregious violations also resulted in an economic benefit. See Complainant's Exhibit 26, at 10–11. Specifically, Respondents obtained an economic benefit in relationship to the other Construction and Industrial permittees that list the Río Canóvanas as the receiving water and are required to comply with the CWA and NPDES permit requirements. See Complainant's Exhibit 28.

10. See Complainant's Exhibits 5, 7–7d, 9, 9a, 13–13f, 18, 19, 20, 21, 23, 24, 25, 26, 26a, and 27. It is noteworthy to mention that DAI relies on Respondent Cidra's Exhibit 4. As previously stated JPA Number 706 determination is limited to an ephemeral stream located *inside* the boundaries of the Project. JPA Number 706 *does not address and has no relationship to* the Unnamed Creek and the Río Canóvanas, which are located *outside* the Project's boundaries, to wit Complainant alleges in this matter. Respondents' assertions to the contrary are a misguided effort to confuse the issues in this matter.

11. See supra ¶ 3(E)(10).

12. See supra ¶ 3(E)(10).

13. See supra ¶ 3(E)(10).

14. See supra ¶ 3(E)(10).

15. See supra ¶ 3(E)(10).

16. See Complainant's Exhibits 5, 7–7d, 9, 9a, 13–13f, 18, 19, 20, 21, 23, 24, 25, 26, 26a, and 27.

17. See supra ¶¶ 3(B), 3(C), 3(E)(1), (2).

18. Contrary to what DAI states, Respondents were required to obtain NPDES permit coverage. Moreover, Respondents' egregious CWA violations resulted in an economic benefit. See Complainant's Exhibits 26 and 28.

19. See supra ¶ 3(D).

20. See supra ¶ 3(D).

3(F) if Respondent DAI takes the position that it is unable to pay the proposed penalty, a copy of any and all documents upon which it intends to rely in support of such position; and

DAI has not submitted any documentary evidence to support such claim for either DAI or Las Quintas. Moreover, Ms. Diaz's proposed testimony is inadmissible hearsay.

3(G) if Respondent DAI takes the position that the proposed penalty should be reduced or eliminated on any other grounds, a copy of any and all documents upon which it intends to rely in support of such position.

Complainant takes the position that the proposed penalty should not be reduced or eliminated. See supra ¶¶ 3(B), 3(C), 3 (D), 3(F).

4(A) a detailed narrative statement explaining the factual and legal basis, and any and all documents it intends to rely upon in support of its denial of the truth of the factual allegations set forth in Paragraph 14 of the Complaint

Complainant takes notice that Cidra is organized as a "Special Partnership" under applicable Laws of the Commonwealth of Puerto Rico rather than as a Corporation.

4(B) a detailed narrative statement explaining the factual and legal basis, and any and all documents it intends to rely upon in support, for its claim

made on page 8 of its Answer that the proposed penalty of \$146,425.49 “has no basis in law or fact;”

Contrary to what Cidra states, under Service Oil Inc. v. US EPA, 590 F.3d 545 (8th Cir. 2009) and In the Matter of Municipality of Rio Grande, Docket No. CWA-02-2009-3458 (Jan. 13, 2010), Respondents were required to apply for an NPDES permit on or before February 20, 2007, the date on which evidence in the record shows that the first actual discharge from the Project occurred.

Contrary to what Cidra states, the penalty calculation does not assume that it rained on a continuous basis for 245 days. See **Complainant’s Exhibit 26**.

In light of Service Oil and Municipality of Rio Grande, both of which were decided after the Complainant in this matter was filed, Complainant submits an Amended Penalty Memorandum to reflect the impact of both decisions on the penalty proposed in the Complaint. See **Complainant’s Exhibit 26**.

Contrary to what Cidra states, Respondents’ CWA violations caused actual and potential harm human health and the environment to wit Complainant’s witnesses will testify to and the following documentation exchanged: **Complainant’s Exhibits 5, 7–7d, 9, 9a, 13–13f, 18, 19, 20, 21, 23, 24, 25, 26, 26a, and 27**.

Contrary to what Cidra states, Complainant calculated the amount of pollutants that reached the Unnamed Creek and the Rio Canovanas based on EPA’s GUIDE TO CALCULATING ENVIRONMENTAL BENEFITS OF ENFORCEMENT CASES: FY 2005 CCDS UPDATE, See **Complainant’s Exhibit 26–26a**.

4(C) *a detailed narrative statement explaining the factual and legal basis, and any and all documents it intends to rely upon in support, for its claim made on page 8 of its Answer that “the proposed penalty assessment is excessive, unwarranted, burdensome, and fails to take into account the factors identified in Section 309(g)(3) of the Clean Water Act, 33 U.S.C. §§ 1251 et seq., § 1319(g);”*

See supra ¶¶ 3(C), (D), 4(B).

4(D) a detailed narrative statement explaining the factual and legal basis, and any and all document it intends to rely upon in support, for its “Affirmative Defenses” set forth in its Answer on pages 9 through 12 (paragraphs 1–18 thereon);

1. See supra ¶¶ 3(C), (D), 4(B).

2. The Project discharged storm water into an Unnamed Creek and into Río Canóvanas, both of which are waters of the United States. See **Complainant’s Exhibits 5, 7–7d, 9, 9a, 13–13f, 18, 19, 20, 21, 23, 24, 25, 26, 26a, and 27**. EPA has jurisdiction under the Clean Water Act, 33 U.S.C. §§ 1251 et seq. and regulations promulgated thereunder.

3. Complainant alleged that Cidra was the “operator” of the Project. See Complaint, at ¶ 16.

4. Cidra admits to being the “operator” of a “facility” or “activity” within the meaning of the Clean Water Act, 33 U.S.C. §§ 1251 et seq. and regulations issued thereunder.

5. See supra ¶ 4(D)(4). Complainant reserves the right to cross-examine Mr. Israel Quintana.

6. See supra ¶ 4(D)(4). As the “operator” of the Project, Cidra was required to obtain NPDES permit coverage. See also **Complainant’s Exhibit 9**, at A-2.

7. See supra ¶ 4(D)(4). As the “operator” of the Project, Cidra was required to obtain NPDES permit coverage. See also **Complainant’s Exhibit 9**, at A-2.

8. See **Complainant’s Exhibits 5, 7–7d, 9, 9a, 13–13f, 18, 19, 20, 21, 23, 24, 25, 26, 26a, and 27**. As previously stated JPA Number 706 determination is limited to an ephemeral stream located *inside* the boundaries of the Project. JPA Number 706 *does not address and has no relationship to* the Unnamed Creek and the Rio Canóvanas, which are located *outside* the Project’s boundaries, to wit Complainant alleges in this matter. Respondents’ assertions to the contrary are a misguided effort to confuse the issues in this matter.

9. See supra ¶ 4(D)(8).

10. See supra ¶ 4(D)(8).

11. See supra ¶ 4(D)(8). Cidra's statement that the Compliant describes the Unnamed Creek as "intermittent" is false. See Complaint ¶¶ 1–43.

12. See supra ¶ 4(D)(8). Cidra's statement that the Compliant describes the Unnamed Creek as "intermittent" is false. See Complaint ¶¶ 1–43.

13. See supra ¶ 4(D)(8).

14. See supra ¶ 4(D)(8).

15. See supra ¶ 4(D)(8).

16. Contrary to what Cidra states, Respondents' CWA violations caused actual and potential harm human health and the environment to wit Complainant's witnesses will testify to and the following documentation exchanged: ***Complainant's Exhibits 5, 7–7d, 9, 9a, 13–13f, 18, 19, 20, 21, 23, 24, 25, 26, 26a, and 27.***

Contrary to what Cidra states, Complainant calculated the amount of pollutants that reached the Unnamed Creek and the Rio Canovanas based on EPA'S GUIDE TO CALCULATING ENVIRONMENTAL BENEFITS OF ENFORCEMENT CASES: FY 2005 CCDS UPDATE, See ***Complainant's Exhibit 26–26a.***

Cidra states that discharges from the Project "did not reach potable water sources." Respondent's statement is inaccurate. See, ***Complainant's Exhibits 18, 19, 20, 21, 23, 24, 25, 26, 26a, and 27.***

Cidra states that discharges from the Project "did not adversely impact wildlife habitat or endanger public health." Respondent's statement is inaccurate. The Puerto Rico Water Quality Standards classify the Unnamed Creek and the Rio Canovanas as Class SD Waters. See, ***Complainant's Exhibit 20.*** Class SD Waters are "surface waters intended for use as raw source of public water supply, propagation and preservation of desirable species, including threatened or endangered species, as well as *primary and secondary contact recreation*" Id., at 35–6 (emphasis added).

17. Contrary to what Cidra states, Respondents were required to obtain NPDES permit coverage. Moreover, Respondents' egregious CWA violations resulted in an economic benefit. See ***Complainant's Exhibits 26 and 28.***

18. See supra ¶ 4(D)(4). Both the purported NOIs, DAI submitted, on February 15, 2006 and on January 30, 2007, are incomplete and wholly inaccurate (Respondent DAI's Exhibit 3 and 4). Specifically, Respondent DAI's Exhibit 3 and 4 state that “[t]here are no bodies of water that will receive discharge.” (emphasis added). Although the NOI submitted by Respondent DAI on October 17, 2007, was finally accepted, it was still incomplete and inaccurate. See Complainant's Exhibits 12–12b. Moreover, the October 17 NOI is *not* identical as it states that the Project *will* discharge to a body of water.

Based on the H-H Study, Respondents knew, since March 2006, that the Project would discharge into the Unnamed Creek and the Rio Canovanas. See Complainant's Exhibit 5. However, Respondents disregarded the CWA and NPDES permit requirements. As such, Respondents' egregious violations are not considered to be a mitigating factor, but rather, an aggravating factor.

4(E) if Respondent Cidra takes the position that it is unable to pay the proposed penalty, a copy of any and all documents upon which it intends to rely in support of such position; and

Cidra has not submitted any documentary evidence to support an inability to pay argument.

4(F) if Respondent Cidra takes the position that the proposed penalty should be reduced or eliminated on any other grounds, a copy of any and all documents upon which it intends to rely in support of such position.

Complainant takes the position that the proposed penalty should not be reduced or eliminated. See supra ¶¶ 3(B), 3(C), 3 (D), 3(F).

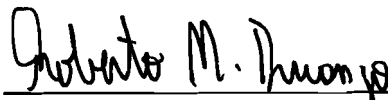
(D) *a statement admitting, denying, or indicating it lacks sufficient information to either admit or deny, each and every allegation set forth in paragraphs 1–20 of the Affirmative Defenses sections (pp. 8–11) of the Answer filed by Respondent DAI, providing a detailed narrative statement setting forth the factual and legal basis for each such allegation the truth of which Complainant denies, along with a copy of any and all documentation supporting such denial; and*

See supra ¶ 3(E)(1)–(20).

- (E) *a statement admitting, denying, or indicating it lacks sufficient information to either admit or deny, each and every allegation set forth in paragraphs 1–18 of the Affirmative Defenses sections (pp. 9–12) of the Answer filed by Respondent DAI, providing a detailed narrative statement setting forth the factual and legal basis for each such allegation the truth of which Complainant denies, along with a copy of any and all documentation supporting such denial*

See supra ¶ 4(D)(1)–(18) .

Respectfully submitted, in San Juan, Puerto Rico this 27th day of May 2010.



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CERTIFICATE OF SERVICE

I hereby certify that on this day I have caused to be sent the foregoing **Complainant's Rebuttal Prehearing Exchange**, dated May 27, 2010, and bearing the above-referenced docket number, in the following manner to the respective addressees below:

Copy by **Overnight** to:

The Honorable Susan L. Biro
Chief Administrative Law Judge
Office of Administrative Law Judges
U.S. Environmental Protection Agency
Franklin Court Building
1099 14th Street, N.W., Suite 350
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Ph: 202.564.6291 / Fax (202) 565-0044.

Original and copy by **Overnight** to:

Karen Maples
Regional Hearing Clerk
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New York, NY 10007-1866.

Copy by **Overnight** to:

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Date: 5/27/10


Aileen Sanchez
Office of Regional Counsel