

4/5/07



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**  
CARIBBEAN ENVIRONMENTAL PROTECTION DIVISION  
CENTRO EUROPA BUILDING, SUITE 417  
1492 PONCE DE LEON AVENUE, STOP 22  
SAN JUAN, PR 00907-4127

APR 04 2007

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Mr. Juan R. Zalduondo, Esq.  
President  
Palmas Lakes Inc.  
P.O. Box 191334  
San Juan, Puerto Rico 00919

Mr. Jaime Fullana  
President  
F&R Contractors Corp.  
P.O. Box 9932  
San Juan, Puerto Rico 00908

**Re: Notice of Proposed Assessment of a Civil Penalty  
Palmas Lakes, Inc./F&R Contractors  
Docket Number CWA-02-2007-3410  
Harbour Lakes Residential Development  
NPDES GCP Number PRR10B567**

Dear Messrs. Zalduondo and Fullana:

Enclosed is a Complaint which the United States Environmental Protection Agency ("EPA" or "Agency") is issuing to the Palmas Lakes, Inc. and F&R Contractors Corp. (hereinafter referred to as "Palmas Lakes and F&R"/"Respondents"), for their failure to comply with certain requirements of the permit, the unlawful discharge of pollutants (storm water runoff associated with construction activities) into navigable waters, from its facility, located on State Road 906, Palmas Dr., Palmas del Mar, Humacao, Puerto Rico (the "facility") and F&R's failure to timely apply for a National Pollutant Discharge Elimination System ("NPDES") storm water permit, in violation of Sections 301 and 402 of the Clean Water Act (the "Act"), 33 U.S.C. §1311 and §1342, respectively.

This Complaint is filed pursuant to the authority contained in §309(g) of the Act, 33 U.S.C. §1319(g). The Complaint proposes that a penalty of **\$157,500** be assessed against the Respondents for the violations.

The Respondents have the right to a hearing to contest the factual allegations of the Complaint. If the Respondents admit the allegations, or they are found to be true after there has been an opportunity for a hearing on them, the Respondents have the right to contest the penalty proposed in the Complaint.

I have enclosed a copy of 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" ("CROP"), which the Agency follows in cases of this kind. The CROP is codified at 40 CFR Part 22.

Please note the requirements for an Answer at §22.15 of the CROP. If the Respondents wish to contest the allegations in the Complaint or the penalty proposed in the Complaint, the Respondent must file an original and a copy of a written Answer within thirty (30) days of the Respondents' receipt of the enclosed Complaint to the EPA Regional Hearing Clerk at the following address:

Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 2  
290 Broadway, 17<sup>th</sup> Floor  
New York, New York 10007-1866

If the Respondents do not file an Answer within thirty (30) days of receipt of this Complaint, the Respondents may be judged to have defaulted (see §22.17 of the CROP). If a default order is entered, the entire proposed penalty may be assessed without further proceedings.

Whether or not the Respondents request a formal hearing, the Respondents may informally confer with EPA concerning the alleged violations and the amount of the proposed penalty. EPA encourages all parties against whom it files a Complaint to pursue the possibility of settlement as a result of such informal conference with the Agency. The Agency also encourages the use of Supplemental Environmental Projects (SEPs), where appropriate, as part of the settlement. Enclosed is a copy of the EPA Supplemental Environmental Projects Policy for your consideration. The Respondents may represent themselves or be represented by an attorney at any stage of the proceedings, including any informal discussions, whether in person or by telephone. An attorney from the Agency's Office of Regional Counsel will normally be present at any informal conference. Please note that a request for an informal conference does not substitute for a written Answer or effect what the Respondents may choose to say in an Answer, nor does it extend the thirty (30) days by which the Respondents must file an Answer requesting a hearing. Any hearing held in this matter will be conducted in accordance with the CROP.

If you have any questions or wish to discuss a settlement of this matter with EPA in an informal conference, please immediately contact:

Silvia Carreño, Esq.  
Assistant Regional Counsel  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 2  
Centro Europa Building, Suite 417  
1492 Ponce de León Avenue  
San Juan, Puerto Rico 00907-4127  
Tel.:(787) 977-5818  
Fax: (787) 729-7748

We urge your prompt attention to this matter.

Sincerely,



Carl-Axel F. Soderberg  
Director

Enclosures

cc: Wanda García, EQB (w/o enclosures)

**bcc: Karen Maples, Regional Hearing Clerk (with the original and one copy of the Complaint)**  
**D. McKenna, DECA/WCB (w/ enclosures)**  
**P. Harvey, DECA/CAPS (w/ enclosures)**  
**Silvia Carreño, ORC (w/ enclosures)**  
**J. Lopez, CEPD-ESB (w/ enclosures)**  
**Harbour Lakes Residential Development NPDES File PRR10B567 (w enclosures)**



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**  
CARIBBEAN ENVIRONMENTAL PROTECTION DIVISION  
CENTRO EUROPA BUILDING, SUITE 417  
1492 PONCE DE LEON AVENUE, STOP 22  
SAN JUAN, PR 00907-4127

APR 04 2007

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Mrs. Wanda García  
Director  
Water Quality Area  
Environmental Quality Board  
P.O. Box 11488  
San Juan, Puerto Rico 00910

**Re: Notice of Proposed Assessment of a Civil Penalty  
Palmas Lakes, Inc./F&R Contractors  
Docket Number CWA-02-2007-3410  
Harbour Lakes Residential Development  
NPDES GCP Number PRR10B567**

Dear Mrs. García:

Enclosed is a copy of the Administrative Complaint, Findings of Violation, Notice of Proposed Assessment of a Civil Penalty, and Notice of Opportunity to Request a Hearing Thereon, hereinafter referred to as the "Complaint," which the United States Environmental Protection Agency (EPA) proposes to issue to Palmas Lakes, Inc., and F&R Contractors pursuant to Section 309(g) of the Clean Water Act (the "Act"), 33 U.S.C. §1319(g). EPA proposes to issue the Complaint to begin the process to assess administratively a Class II civil penalty of **\$157,500.00** against Palmas Lakes, Inc., and F&R Contractors for violations of the Act.

You may confer with me at (787) 977-5801. A copy of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation of Suspension of Permits ("CROP") is enclosed for your reference.

Sincerely,

A handwritten signature in black ink, appearing to read "Carl-Axel P. Soderberg".

Carl-Axel P. Soderberg  
Director

Enclosures

**bcc:** Karen Maples, Regional Hearing Clerk (w/o enclosures)  
D. McKenna, DECA/WCB (w/o enclosures)  
Silvia Carreño, ORC (w/o enclosures)  
P. Harvey, DECA/CAPS (w/o enclosures)  
J. López, CEPD-ESB (w/o enclosures)  
Harbour Lakes Residential Development NPDES File PRR10B567 (w/o enclosures)

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2**

IN THE MATTER OF:

Palmas Lakes, Inc.,  
P.O. Box 191334  
San Juan, Puerto Rico 00919

and

F&R Contractors Corporation  
P.O. Box 9932  
San Juan, Puerto Rico 00908

**Harbour Lakes Residential Development**  
**NPDES GCP Number PRR10B567**

Respondents.

Docket No. CWA-02-2007-3410  
Proceeding Pursuant to Section 309(g) of the  
Clean Water Act, 33 U.S.C. §1319(g) to Assess  
Class II Civil Penalties

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

**I. Statutory Authority**

1. This "Administrative 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 U.S. Environmental Protection Agency ("EPA") by Section 309(g) (2) (B) of the Clean Water Act ("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) (B) 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" ("CROP"), 40 CFR Part 22 (2001), a copy of which is attached, Complainant hereby requests that the Regional Administrator assess a civil penalty against the Palmas Lakes, Inc., and F&R Contractors Corp., (hereinafter referred to as "Palmas Lakes" and "F&R" or "Respondents"), for their failure to comply with certain requirements of the permit, the unlawful discharge of pollutants (storm water runoff associated with construction

activities) into navigable waters, from its facility, located at State Road 906, Palmas Dr., Palmas del Mar, Humacao, Puerto Rico (the "facility") and F&R's failure to timely apply for a National Pollutant Discharge Elimination System ("NPDES") storm water permit, in violation of Sections 301 and 402 of the Clean Water Act (the "Act"), 33 U.S.C. §1311 and §1342, respectively.

3. Section 301(a) of the Act, 33 U.S.C. §1311(a), provides in part that "except as in compliance with this Section and Sections ...402 and 404 of the Act, the discharge of any pollutant by any person shall be unlawful."
4. Section 402 of the Act, 33 U.S.C. §1342, provides that the Administrator may, after opportunity for public hearing, issue a permit for the discharge of any pollutant, or combination of pollutants, subject to certain requirements of the Act and conditions which the Administrator determines are necessary.
5. The Act and its implementing regulations, contain the following definitions:
  - a. "Navigable waters" includes the waters of the United States pursuant to Section 502(7) of the Act, 33 U.S.C. §1362(7). "Waters of the United States" include, but are not limited to, 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). See 40 CFR §122.2.
  - b. "Pollutant" includes, among other things, solid waste, dredged spoil, rock, sand, cellar dirt, sewage, sewage sludge... and industrial, municipal and agricultural waste discharged into water, pursuant to Section 502(6) of the Act, 33 U.S.C. §1362(6).
  - c. "Point source" means 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, ... pursuant to Section 502 (14) of the Act, 33 U.S.C. §1362(14).
  - d. "Discharge of a pollutant" means any addition of any pollutant to navigable waters from any point source, pursuant to Section 502(12) of the Act, 33 U.S.C. §1362(12).
  - e. "Person" includes an individual, corporation, partnership or association, pursuant to Section 502(5) of the Act, 33 U.S.C. §1362(5).
  - f. The term "Operator" for the purpose of the NPDES storm water general permit for construction activities and in the context of storm water associated with construction activity, means any party associated with a construction project that meets either of the following two (2) criteria:



1. The party has operational control over construction plans and specifications including the ability to make modifications to those plans and specifications; or
  2. The party has day-to-day operational control of those activities at a project which are necessary to ensure compliance with a storm water pollution prevention plan for the site or other permit conditions.
- g. "NPDES" means National Pollutant Discharge Elimination System under Section 402 of the Act, 33 U.S.C. §1342. National Pollutant Discharge Elimination System means the national program for, among other things, issuing and enforcing permits. See 40 CFR §122.2.

## **II. Findings of Violation**

1. Respondents are corporations, and as such, are persons within the meaning of Section 502(5) of the Act, 33 U.S.C. §1362(5).
2. Palmas Lakes owns and is developing Harbour Lakes Residential Development (the "development").
3. Palmas Lakes contracted F&R to conduct construction activities at the site. Under the contract, F&R is required to perform earth movement, site preparation and other activities. F&R is also the operator of the project.
4. Respondents were and are, at all relevant times, a "point source" within the meaning of Section 502(14) of the Act, 33 U.S.C. §1362(14).
5. The Administrator of EPA has promulgated regulations, 40 CFR §§122.26(a)(1)(ii) and 122.26(b)(14), which require that a National Pollutant Discharge Elimination System ("NPDES") permit shall be obtained for storm water discharges associated with industrial activity. The development is covered by the NPDES application regulation for storm water discharges at 40 CFR §122.26(b)(14)(x). The regulations at 40 CFR §122.26(b)(14)(x) regulate storm water discharges associated with industrial activity from construction sites which include clearing, grading and excavation activities that result in the disturbance of five (5) or more acres of total land area. The development encompasses approximately 43.5 acres.
6. The development is covered by the NPDES permit application regulation for storm water discharges at 40 CFR §122.26(b)(14)(x) since clearing, grading and/or excavation activities resulted in the disturbance of more than five (5) acres of total land area.
7. On July 1, 2003, EPA issued and published in the Federal Register (68 FR 39087) the

- “NPDES General Permit for Discharges from Large and Small Construction Activities” (the “permit”). The permit became effective on July 1, 2003 and expires on July 1, 2008.
8. A review of the EPA National Storm Water Processing Center database on August 30, 2006 revealed that Palmas Lakes filed a Notice of Intent (“NOI”) form postmarked September 14, 2004. Palmas Lakes obtained permit coverage beginning on September 21, 2004.
  9. Palmas Lakes indicated in the NOI form that the “Caribbean Sea” is the receiving water of its storm water discharges from the site.
  10. A review of the EPA National Storm Water Processing Center database on August 30, 2006, revealed that F&R Contractors have not obtained NPDES permit coverage for the project.
  11. On September 18, 2006, EPA enforcement officers, performed a legal Compliance Evaluation Inspection (“CEI”) of the site and the on-going construction activities associated with it. The findings of the CEI were incorporated in the Water Compliance Inspection Report dated November 22, 2006. (Attachment 1)
  12. The CEI revealed that Palmas Lakes and F&R violated and continue in violation of the permit and therefore, Sections 301 and 402 of the Act, 33 U.S.C. §1311 and §1342, respectively. Among others, Palmas Lakes was found in violation of the following permit requirements:
    - a. Perform the inspections required by Part 3.10 of the permit.
    - b. Comply with the storm water pollution prevention plan requirements in Part 3.1 of the permit.
    - c. Provide temporary and final stabilization practices in certain areas as required by Part 3.13.D of the permit.
    - d. Provide storm water run-on and run-off management in areas of the project.
    - e. Provide adequate sediment and erosion control measures in the project as required by Part 3.13.E of the permit.
    - f. Post a sign or other notice at the Project concerning the NOI and the location of the Storm Water Pollution Prevention Plan, as required by Part 3.12.B of the construction permit.
  13. The “Caribbean Sea” is a water of the United States within the meaning of Section 502(7) of the Act, 33 U.S.C. §1362(7).
  14. Respondents’ construction activities resulted in clearing, grading and/or excavation activities

and caused significant sedimentation of the Caribbean Sea.

15. Therefore, on the basis of the findings cited in the paragraphs above, EPA hereby finds that Palmas Lakes and F&R violated and continue in violation of Section 301 and 402 of the Act, 33 U.S.C. §1311 and §1342, respectively, for their failure to comply with certain requirements of the permit, the unlawful discharge of pollutants (storm water runoff associated with construction activities) into navigable waters and F&R's failure to timely apply for a National Pollutant Discharge Elimination System ("NPDES") storm water permit.
16. EPA has notified the Commonwealth of Puerto Rico of this proposed action by mailing a copy of this Complaint and Notice and offering an opportunity for the Commonwealth to confer with EPA on the proposed penalty assessment.

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

Based on the foregoing Findings of Violation, 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 Respondents assessing a penalty of **\$157,500**. 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 into account the nature, circumstances, extent and gravity of the violations, and Respondents' prior history of violations, degree of culpability, economic benefit or savings accruing to Respondents by virtue of the violations, and Respondents' ability to pay the proposed penalty.

Based on the Findings set forth above Respondents have been found to have violated the Act for at least 822 days for their failure to comply with certain requirements of the permit, the unlawful discharge of pollutants (storm water runoff associated with construction activities) into navigable waters, from its facility, located at State Road 906, Palmas Dr., Palmas del Mar, Humacao, Puerto Rico (the "facility") and F&R's failure to timely apply for a National Pollutant Discharge Elimination System ("NPDES") storm water permit from October 1, 2004 (when Respondents began construction activities at the development) through December 31, 2006. Respondents also did not comply with the related NPDES storm water regulations (development and implementation of an appropriate Storm Water Pollution Prevention Plan; monitoring, sampling and reporting of its discharges, etc.) developed to ensure prevention and minimization of contamination of storm water by the facility's construction activities. EPA took into account Respondents' knowledge of the critical erosion condition at the development and the excessive sedimentation in the receiving waters as a result of Respondents' discharges of pollutants. The violations alleged in the complaint are serious and have potential effect on human health and the environment. Respondents obtained an economic benefit as a result of their noncompliance with the Act and the NPDES regulations. Respondents have a prior history of violations. Respondents are in violation of the Act for their failure to comply with certain requirements of the permit and the unlawful discharge of pollutants (storm water runoff associated with construction activities) into navigable waters. In addition, F&R, failed to timely apply for a National Pollutant Discharge Elimination System ("NPDES") storm water permit.

Respondents should have known of their obligations and complied with their NPDES permits pursuant to §309(g)(3) of the Act, 33 U.S.C. §1319(g)(3).

EPA may issue the final Order Assessing Administrative Penalties thirty (30) days after Respondents' receipt of this Notice, unless Respondents, within that time, file an answer to the complaint, and request a hearing on this Notice pursuant to the following section.

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

The rules of procedure governing this civil administrative litigation have been set forth in the CROP, which has been codified at 40 CFR Part 22. A copy of these rules accompanies this Complaint.

##### **A. Answering The Complaint**

Where Respondents intends to contest any material fact upon which the Complaint is based, to contend that the proposed penalty is inappropriate or to contend that Respondents are entitled to judgment as a matter of law, Respondents 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 CFR §22.15(a). 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.**

Respondents shall also then serve one copy of the Answer to the Complaint upon Complainant and any other party to the action. 40 CFR §22.15 (a).

Respondents' 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 Respondents have any knowledge. 40 CFR §22.15(b). Where Respondents lack knowledge of a particular factual allegation and so state in their Answers, the allegation is deemed denied. 40 CFR §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 Respondents dispute (and thus intend to place at issue in the proceeding), (3) the basis for opposing the proposed relief, and (4) whether Respondents request a hearing. 40 CFR §22.15(b).

Respondents' failure to affirmatively raise in the Answer facts that constitute or that might constitute the grounds of their defense may preclude Respondents, 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**

If requested by Respondents in the Answer, a hearing upon the issues raised by the Complaint and Answer may be held. 40 CFR §22.15(c). If, however, Respondents do not request a hearing, the Presiding Officer (as defined in 40 CFR §22.3) may hold a hearing if the Answer raises issues appropriate for adjudication. 40 CFR §22.15(c).

Any hearing in this proceeding will be held at a location determined in accordance with 40 CFR §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 CFR Part 22.

Should Respondents 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 assessed. Should Respondents 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**

If Respondents fail in the Answer to admit, deny, or explain any material factual allegation contained in the Complaint, such failure constitutes an admission of the allegation. 40 CFR §22.15(d). If Respondents fail to file a timely [*i.e.* in accordance with the 30-day period set forth in 40 CFR §22.15(a)] Answer to the Complaint, Respondents may be found in default upon motion. 40 CFR §22.17(a). Default by Respondents constitute, for purposes of the pending proceeding only, an admission of all facts alleged in the Complaint and a waiver of Respondents' right to contest such factual allegations. 40 CFR §22.17(a). Following a default by Respondents for a failure to timely file an Answer to the Complaint, any order issued therefor shall be issued pursuant to 40 CFR §22.17(c).

Any penalty assessed in the default order shall become due and payable by Respondents without further proceedings thirty (30) days after the Default Order becomes final pursuant to 40 CFR §22.27(c). 40

CFR §22.17(d). If necessary, EPA may then seek to enforce such Final Order of Default against Respondents, and to collect the assessed penalty amount, in federal court.

## **V. Informal Settlement Conference**

Whether or not Respondents request a formal hearing, EPA encourages settlement of this proceeding consistent with the provisions of the Act and its applicable regulations. 40 CFR §22.18(b). At an

informal conference with a representative(s) of Complainant, Respondents may comment on the charges made in this complaint, and Respondents may also provide whatever additional information that it believes is relevant to the disposition of this matter, including: (1) actions Respondents have 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 Respondents' ability to continue in business, and/or (4) any other special facts or circumstances Respondents wish to raise.

Complainant has the authority to modify the amount of the proposed penalty, where appropriate, to reflect any settlement agreement reached with Respondents, to reflect any relevant information previously not known to Complainant or to dismiss any or all of the charges, if Respondents can demonstrate that the relevant allegations are without merit and that no cause of action as herein alleged exists. Respondents are referred to 40 CFR §22.18.

Any request for an informal conference or any questions that Respondents may have regarding this Complaint should be directed to the EPA attorney named in Section VII, Paragraph 2, below.

The parties may engage in settlement discussions irrespective of whether Respondents have requested a hearing. 40 CFR §22.18(b)(1). Respondents' requesting a formal hearing does not prevent them 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 CFR §22.15(c).

A request for an informal settlement conference does not affect Respondents' obligation to file a timely Answer to the Complaint pursuant to 40 CFR §22.15. No penalty reduction, however, will be made simply because an informal settlement conference is held.

Any settlement that may be reached as a result of an informal settlement conference shall be embodied in a written Consent Agreement. 40 CFR §22.18(b)(2). In accepting the Consent Agreement, Respondents waive their right to contest the allegations in the Complaint and waive any right to appeal the Final Order that is to accompany the Consent Agreement. 40 CFR §22.18(b)(2). In order to conclude the proceeding, a Final Order ratifying the parties' agreement to settle will be executed. 40 CFR §22.18(b)(3).

Respondents' 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. Respondents' entering into a settlement does not extinguish, waive, satisfy or otherwise affect their obligation and responsibility to comply with all applicable statutory and regulatory requirements, and to maintain such compliance.

## **VI. Resolution of this Proceeding Without Hearing or Conference**

Instead of filing an Answer, Respondents may choose to pay the total amount of the proposed penalty within 30 days after receipt of the Complaint, provided that Respondents file with the Regional Hearing Clerk, Region 2 (at the address noted above), a copy of the check or other instrument of payment. 40 CFR §22.18(a). A copy of the check or other instrument of payment should be provided to the EPA Assistant Regional Counsel identified on Section VII., paragraph 2. 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  
PO Box 360188  
Pittsburgh, Pennsylvania 15251**

Pursuant to 40 CFR §22.18(a)(3), if Respondents elect 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 CFR §22.18(a)(3). In accordance with 40 CFR §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 CFR §22.18(a)(3), the making of such payment by Respondents shall constitute a waiver of Respondents' 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 Respondents' obligation and responsibility to comply with all applicable statutory and regulatory requirements, and to maintain such compliance.

## **VII. Filing of Documents**

1. The original and one copy of 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 10007-1866**

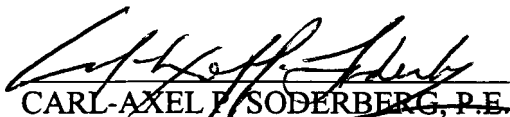
2. A copy of the Answer, any Hearing Request and all subsequent documents filed in this action shall be sent to:

**Silvia Carreño, Esq.**  
Assistant Regional Counsel  
Office of Regional Counsel, Caribbean Team  
U.S. Environmental Protection Agency, Region 2  
1492 Ponce de León Avenue  
San Juan, Puerto Rico 00907-4127  
Telephone: (787) 977-5818  
Fax: (787) 729-7748

**VIII. General Provisions**

1. Respondents have a right to be represented by an attorney at any stage of these proceedings.
2. This Complaint does not constitute a waiver, suspension or modification of the requirements of the Act, regulations promulgated thereunder, or any applicable permit.
3. Neither assessment nor payment of an administrative civil penalty pursuant to Section 309(g) of the Act will affect Respondents' 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 3rd DAY OF APRIL, 2007.

  
CARL-AXEL F. SODERBERG, P.E.  
Director, Caribbean Environmental Protection Division  
United States Environmental  
Protection Agency - Region 2  
Centro Europa Bldg., Suite 417  
1492 Ponce de León Avenue  
San Juan, Puerto Rico 00907-4127

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2**

Notice of Proposed Assessment of a Civil Penalty  
Palmas Lakes, Inc. and F&R Contractors Corp.      DOCKET NO. CWA-02-2007-3410



**ATTACHMENT 1**

**WATER COMPLIANCE INSPECTION REPORT**  
**September 18, 2006**



United States Environmental Protection Agency  
Washington, D.C. 20460  
**Water Compliance Inspection Report**

Form Approved.  
OMB No. 2040-0057  
Approval expires 8-31-98

**Section A: National Data System Coding (i.e., PCS)**

Transaction Code 1 <b>N</b>	2 <b>5</b>	NPDES 3 <b>P R R 1 0 B 5 6 7 11</b>	yr/mo/day 12 <b>0 6 0 9 1 8 17</b>	Inspection Type 18 <b>C</b>	Inspector 19 <b>R</b>	Fac Type 20 <b>2</b>
Remarks						
Inspection Work Days 5 <b>1 0 69</b>	Facility Self-Monitoring Evaluation Rating 70 <b>3</b>		B1 71 <b>N</b>	QA 72 <b>N</b>	Reserved 73 <b>  </b> 74 <b>  </b> 75 <b>  </b> 80 <b>  </b>	

**Section B: Facility Data**

Name and Location of Facility Inspected (for industrial users discharging to POTW, also include POTW name and NPDES permit number) <b>Harbour Lakes Residential Development State Road 906, Palmas Dr., Palmas del Mar Humacao, Puerto Rico</b>	Entry Time/Date <b>09/18/06, 12:00 PM</b>	Permit Effective Date
	Exit Time/Date <b>09/18/06, 4:00 PM</b>	Permit Expiration Date
Name(s) of On-Site Representative(s)/Title(s)/Phone and Fax Number(s) <b>Eulogio Carrasco, Project Engineer tel. 787-753-7010</b>	Other Facility Data	
Name, Address of Responsible Official/Title/Phone and Fax Number(s) <b>Juan R. Zalduondo, Esq. Alberto Mercado</b>	Contacted <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	

**Section C: Areas Evaluated During Inspection (Check only those areas evaluated)**

<input type="checkbox"/> Permit	<input type="checkbox"/> Flow Measurement	<input type="checkbox"/> Operations & Maintenance	<input type="checkbox"/> CSO/SSO (Sewer Overflow)
<input type="checkbox"/> Records/Reports	<input type="checkbox"/> Self-Monitoring Program	<input type="checkbox"/> Sludge Handling/Disposal	<input checked="" type="checkbox"/> Pollution Prevention
<input checked="" type="checkbox"/> Facility Site Review	<input type="checkbox"/> Compliance Schedules	<input type="checkbox"/> Pretreatment	<input type="checkbox"/> Multimedia
<input type="checkbox"/> Effluent/Receiving Water	<input type="checkbox"/> Laboratory	<input checked="" type="checkbox"/> Storm Water	<input type="checkbox"/> Other:

**Section D: Summary of Findings/Comments (Attach additional sheets of narrative and checklists as necessary)**

**See Supplement to Water Compliance Inspection Report Form (3560-3)**

Name(s) and Signature(s) of Inspector(s) <b>Jaime López</b> 	Agency/Office/Phone and Fax Numbers <b>EPA/CEPD/MPCB tel. (787) 977-5851</b> <b>Fax (787)289-7982</b>	Date <b>Nov 22, 2006</b>
Signature of Management QA Reviewer <b>Tere Rodriguez, Chief</b> 	Agency/Office/Phone and Fax Numbers <b>Multimedia Permits Compliance Branch Tel. (787) 977-5864, Fax (787) 289-7982</b>	Date <b>Nov 22, 2006</b>

**SUPPLEMENT TO WATER COMPLIANCE INSPECTION REPORT FORM  
(EPA FORM 3560-3 (REV 9-94))**

**HARBOUR LAKES RESIDENTIAL DEVELOPMENT  
State Road 906, Palmas Dr., Palmas del Mar, Humacao, Puerto Rico**

On September 18, 2006, Mr. Jaime Lopez of the United States Environmental Protection Agency ("EPA") performed a Compliance Evaluation Inspection ("CEI") of the referenced Development. The purpose of the CEI was to evaluate the operators' compliance with the NPDES storm water permit application regulations for construction sites and the Clean Water Act (the "Act"). The findings of the CEI are listed below and complement the Water Compliance Inspection Report Form:

**1. SITE AND OPERATORS INFORMATION**

- A. Harbour Lakes Housing Development (the "project" or "development") is a construction project of 51 multifamily residential units. Construction activities consist of earth movement (e.g., clearing, grading and excavation), site work, residential construction, recreational facilities construction and general construction work.
- B. The project is located at State Road 906, Palmas Dr., Palmas del Mar, Humacao, Puerto Rico 00792.
- C. The area of the project to be disturbed is 43.5 acres of land.
- D. The development is owned by Palmas Lakes, Inc., ("PALMAS LAKES"). PALMAS LAKES' address is P.O. Box 191334, San Juan, Puerto Rico 00919. The contact persons for PALMAS LAKES are Juan R. Zalduondo, Esq. and Alberto Mercado.
- E. PALMAS LAKES contracted F&R Contractors Corp. ("F&R"), a corporation duly organized under the laws of the Commonwealth of Puerto Rico, to conduct construction activities at the site. F&R's address is P.O. Box, 9932, San Juan, Puerto Rico 00908. The contact person for F&R is Eng. Eulogio Carrasco Delgado. The telephone number for F&R is 787-753-7010.
- F. Under the contract, F&R is required to perform earth movement, site preparation and other construction activities.

## 2. PERMITTING

- A. The project is covered by the NPDES permit application regulations for storm water discharges at 40 CFR §122.26(b) (14) (x), since clearing, grading and/or excavation activities are equal to or greater than one (5) acres of total land area.
- B. On July 1, 2003, EPA issued and published in the Federal Register (68 FR 39087) the "NPDES General Permit for Discharges from Large and Small Construction Activities" (the "permit"). The permit became effective on July 1, 2003 and expires on July 1, 2008.
- C. An operator is defined by the permit and in the context of storm water associated with construction activity, as any party associated with a construction project that meets either of the following two (2) criteria:
  - (i) the party has operational control over construction plans and specifications including the ability to make modifications to those plans and specifications; or
  - (ii) the party has day-to-day operational control of those activities at a project which are necessary to ensure compliance with a Storm Water Pollution Prevention Plan (SWPPP) for the site or other permit conditions.
- D. The permit requires eligible operators to timely file a Notice of Intent ("NOI") for coverage under the permit. Part 2.3 of the permit establishes NOI submission deadlines.
- E. PALMAS LAKES is the owner and an operator of the project.
- F. F&R is also an operator of the project.
- G. My review of the EPA National Storm Water Processing Center database at "<http://www.epa.gov/npdes/stormwater>," and EPA files on January 24, 2006 revealed that PALMAS LAKES obtained permit coverage for its construction activities at the project beginning on February 7, 2004. The permit number assigned to PALMAS LAKES is **PRR10B567**.
- H. My review of the EPA National Storm Water Processing Center database at "<http://www.epa.gov/npdes/stormwater>," and EPA files on May 9, 2006 revealed that F&R had not filed a NOI and had not obtained permit coverage for its construction activities at the project.

**3. September 18, 2006 INSPECTION FINDINGS**

The following findings are based on the walk-through, and an interview with Mr. Eulogio Carrasco, Project Engineer:

- A. F&R began earth movement activities on or about October, 2004.
- B. PALMAS LAKES and F&R were the operators conducting construction activities at the site.
- C. Storm water runoff from the project is discharged into the Caribbean Sea, a water of the United States.
- D. Water from Pond #4 is being pumped out through the overflow to the storm water sewer system which discharges into the Caribbean Sea.
- E. The receiving waters were impacted with sediments.
- F. A copy of the SWPPP was not available on site at the time of inspection.
- G. Neither PALMAS LAKES nor F&R had appropriately implemented the Storm Water Pollution Prevention Plan (SWPPP) requirement associated with the construction activity at the construction site neither assured compliance with the terms and conditions of Part 3.1 of the Construction General Permit.
- H. Stabilization practices on slopes and roads were not observed at the visited areas. Most of the slopes were observed without temporary or final stabilization. Such stabilization practices may include but are not limited to: establishment of temporary vegetation, establishment of permanent vegetation, mulching, geotextiles, sod stabilization, vegetative buffer strips, protection of trees, preservation of mature vegetation, and other appropriate measures.
- I. Copies of the inspections required by Part 3.10 of the permit were not provided.
- J. No off-site vehicle tracking control on project entrance.
- K. Eleven (11) photos were taken with an electronic camera and are included in Attachment 1. Below is a general description of the photos:

1. Cut slopes without stabilization, no vegetative or geotextile cover.
2. Eroded slopes showing erosion channels without stabilization.
3. Unpaved road, no stabilization or velocity dissipation devices installed, slopes without stabilization
4. Area of top soil storage with some vegetative cover.
5. Retention pond #2 basin showing overflow bar screen without any filtering control for sediments.
6. Retention pond #2 without wall stabilization..
7. Retention pond #2 with some vegetation.
8. Earth dike along project main road without stabilization controls.
9. Retention pond #2 without the proper construction design and poor maintenance practice. No overflow.
10. Eroded slopes at west side of project without stabilization or permanent vegetation erosion controls.
11. Ongoing earth movement activities without the proper storm water management controls

#### **4. RECOMMENDATIONS**

Based upon the findings noted above and my professional judgment, I recommend that EPA issue an enforcement action to bring the operator(s) of the construction project into compliance with the NPDES storm water regulations for construction activities and the Clean Water Act.

#### **Attachment 1 - Photo Documentation**

September 18, 2006 CEI

**PHOTO DOCUMENTATION**

ATTACHMENT 1

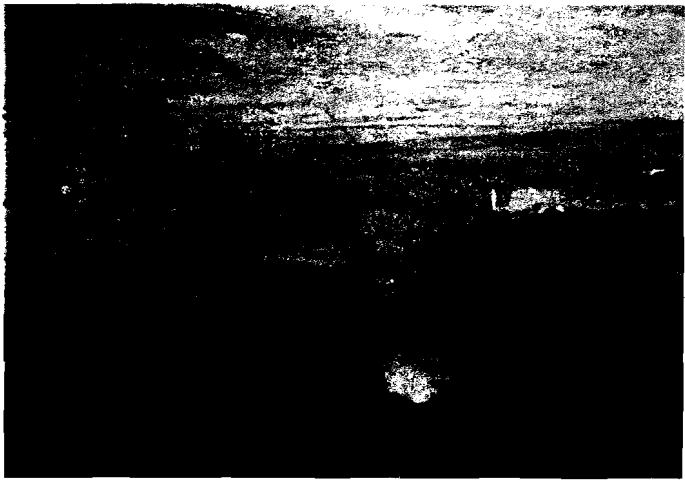
9



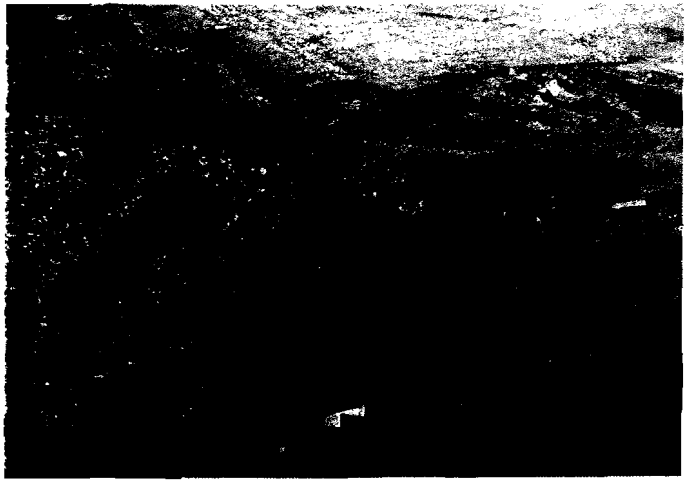
5



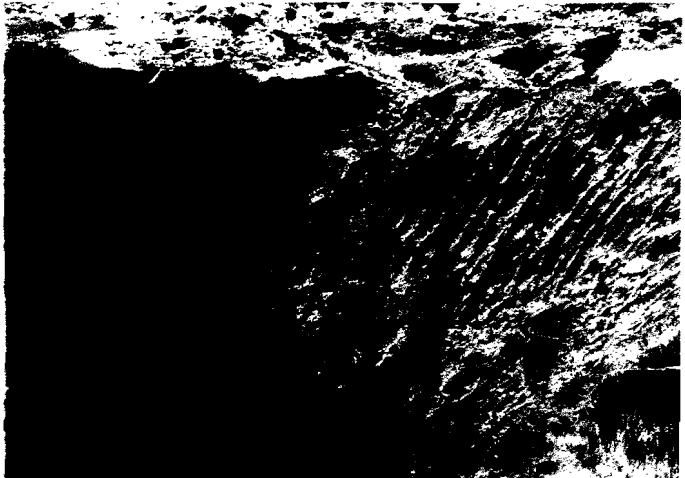
4



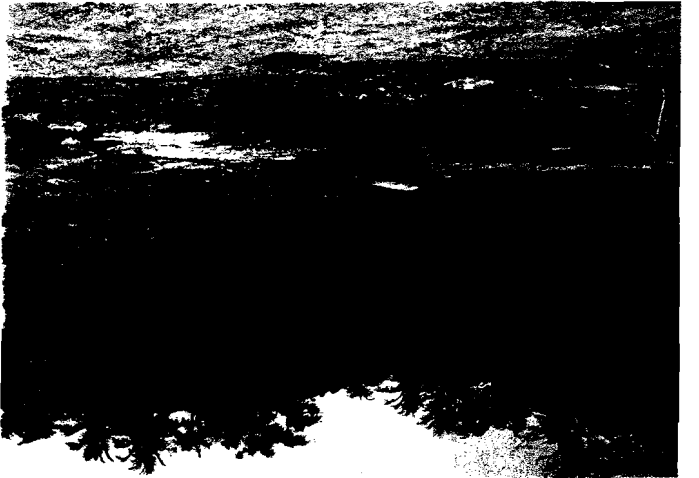
3



2



1





11



01



6



8



7

