



UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

IN THE MATTER OF )  
 )  
CARIBBEAN PROPERTIES )  
INVESTMENT, INC., and ) DOCKET NO. CWA-02-2008-3461  
VPI CONSTRUCTION CORP. )  
 )  
RESPONDENTS )

ORDER SCHEDULING HEARING

This proceeding arises under the authority of Section 309(g)(2)(B) of the Clean Water Act ("CWA"), 33 U.S.C. § 1319(g)(2)(B).<sup>1/</sup> The parties are reminded that the proceeding is governed by the Consolidated Rules of Practice Governing the

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<sup>1/</sup> The United States Environmental Protection Agency, Region 2, Caribbean Environmental Protection Division ("Complainant" or "EPA") initiated this proceeding on September 30, 2008, by filing a Complaint, Findings of Violation, Notice of Proposed Assessment of a Civil Penalty, and Notice of Opportunity to Request a Hearing ("Complaint") against Caribbean Properties Investment, Inc., and VPI Construction Corp. ("Respondents"). The Complaint alleges violations of Section 301(a) of the CWA, 33 U.S.C. § 1311(a). For these alleged violations, Complainant seeks a class II civil administrative penalty of \$56,050 pursuant to Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B). A hearing on the record in accordance with 5 U.S.C. § 554 shall be held in civil penalty cases brought under Section 309(g)(2)(B) of the CWA. Sections 309(g)(4)(A) and (B) of the CWA provide that, before issuing an order assessing a class II civil penalty, the Administrator shall provide public notice of and reasonable opportunity to comment on the proposed issuance of such order and that any person who comments on a proposed assessment of a class II civil penalty shall be given at least 20 days notice of any hearing and of the order assessing such penalty. 40 C.F.R. §§ 1319(g)(4)(A) and (B). See also 40 C.F.R. § 22.45. The file before me contains no documentary proof that Complainant has provided the public notice described above.

Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Rules of Practice"), 40 C.F.R. §§ 22.1-22.32.

Pursuant to the Prehearing Order issued by the undersigned on June 29, 2010, the parties have filed their initial prehearing exchanges. Section 22.19(f) of the Rules of Practice, 40 C.F.R. § 22.19(f), requires parties to promptly supplement their initial prehearing exchanges when they learn that the information therein is incomplete, inaccurate, or outdated, and the additional information has not otherwise been disclosed to the opposing party. The parties retain the right to make a motion to supplement their prehearing exchanges no later than fifteen (15) days before the hearing date. Sections 22.19(a) and 22.22(a) of the Rules of Practice, 40 C.F.R. §§ 22.19(a) and 22.22(a), provide that documents or exhibits that have not been exchanged and witnesses whose names or testimony summaries have not been exchanged at least 15 days before the hearing date shall not be admitted into evidence or allowed to testify unless good cause is shown for failing to exchange the required the information. The parties are advised that the undersigned will not entertain last minute attempts to supplement their prehearing exchanges absent extraordinary circumstances.

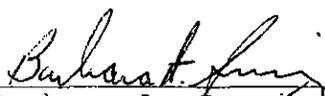
The parties are also advised that every motion filed in this proceeding must be served in sufficient time to permit the filing of a response by the non-moving party and to permit the issuance of an order on the motion before the deadlines set by this Order or any subsequent order. Section 22.16(b) of the Rules of Practice, 40 C.F.R. § 22.16(b), requires a party's response to a motion to be filed within 15 days of service of the motion, and Section 22.7(c), 40 C.F.R. § 22.7(c), provides for an additional five days to be added to that 15-day period when the motion is served by mail.

The file before me reflects that the parties have expressed a willingness to engage in settlement negotiations but that a settlement has not yet been reached. United States Environmental Protection Agency policy, found in the Rules of Practice at Section 22.18(b), 40 C.F.R. § 22.18(b), encourages settlement of a proceeding without the necessity of a formal hearing. The benefits of a negotiated settlement may far outweigh the uncertainty, time, and expense associated with a litigated proceeding. However, the pursuit of settlement negotiations or an averment that a settlement in principle has been reached will not constitute good cause for failure to comply with the requirements or schedule set forth in this Order.

As the parties have not reached a settlement in this matter, they shall strictly comply with the requirements of this Order and prepare for a hearing. In connection therewith, on or before **February 18, 2011**, the parties shall file a joint set of stipulated facts, exhibits, and testimony. See Section 22.19(b)(2) of the Rules of Practice, 40 C.F.R. § 22.19(b)(2). The time allotted for the hearing is limited. Therefore, the parties must make a good faith effort to stipulate, as much as possible, to matters which cannot reasonably be contested so that the hearing can be concise and focused solely on those matters which can only be resolved after a hearing.

The Hearing in this matter will be held beginning at 9:30 a.m. on Wednesday, **March 16, 2011**, in San Juan, Puerto Rico, continuing if necessary through March 17, 2011. The Regional Hearing Clerk will make appropriate arrangements for a courtroom and retain a stenographic reporter. The parties will be notified of the exact location and of other procedures pertinent to the hearing when those arrangements are complete. Individuals requiring special accommodation at this hearing, including wheelchair access, should contact the Regional Hearing Clerk at least five business days prior to the hearing so that appropriate arrangements can be made.

IF ANY PARTY DOES NOT INTEND TO ATTEND THE HEARING OR HAS GOOD CAUSE FOR NOT BEING ABLE TO ATTEND THE HEARING AS SCHEDULED, IT SHALL NOTIFY THE UNDERSIGNED AT THE EARLIEST POSSIBLE MOMENT.

  
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Barbara A. Gunning  
Administrative Law Judge

Dated: November 19, 2010  
Washington, D.C.

**In the Matter of *Caribbean Properties Investment, Inc., and VPI Construction Corp.,***  
**Respondent.**  
**Docket No. CWA-02-2008-3461**

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **Order Scheduling Hearing**, dated November 19, 2010, was sent this day in the following manner to the addressees listed below.



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Mary Angeles  
Legal Staff Assistant

Original and One Copy by Pouch Mail to:

Karen Maples  
Regional Hearing Clerk  
US EPA, Region II  
290 Broadway, 16<sup>th</sup> Floor  
New York, NY 10007-1866

Copy by Pouch Mail to:

Hector L. Velez Cruz, Esq.  
Office of Regional Counsel  
U.S. EPA, Region II  
Caribbean Field Division  
Centro Europa Building  
1492 Ponce de Leon Ave., Ste. 417  
San Juan, PR 00907-4127

Copy by Regular Mail to:

Eduardo J. Mayoral Garcia, Esq.  
Attorney for Respondents  
USDC-PR No. 17025, PMB 157  
P.O. Box 194000  
San Juan, PR 00919-4000

Dated: November 19, 2010  
Washington, D.C.