

USEPA – Region II
REGIONAL HEARING CLERK
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

<p>IN THE MATTER OF:</p> <p>KARIMAR CONSTRUCTION, INC. P.O. Box 8000 Aguada, Puerto Rico 00602</p> <p>Aguada Sea Beach Apartments Development Road PR-441, Km. 1.2 Int., Carrizal Ward Aguada, Puerto Rico</p> <p>NPDES ID: PRR10005U</p> <p>RESPONDENTS</p>	<p align="center">DOCKET NUMBER CWA-02-2020-3352</p> <p align="center">Proceeding pursuant to Section 309(g)(2)(A) of the Clean Water Act, 33 U.S.C. § 1319(g)(2)(A), to assess a Class I Civil Penalty</p>
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ANSWER TO COMPLAINT, AFFIRMATIVE DEFENSES
AND REQUEST FOR HEARING

Respondent, Karimar Construction, Inc, ("Inhance" or "Respondent"), through the undersigned attorney, presents its Answer to the Administrative Complaint ("Complaint") issued by the United States Environmental Protection Agency Region 2 ("EPA" or "Complainant"), and respectfully states, alleges and prays as follows:

I. STATUTORY AND REGULATORY AUTHORITIES

1. This paragraph sets forth legal conclusions to which no response is required. To the extent further response is required, Respondent is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations stated in this paragraph, and the allegations are therefore denied.
2. This paragraph sets forth legal conclusions to which no response is required. To the extent further response is required, Respondent is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations stated in this paragraph, and the allegations are therefore denied.
3. This paragraph sets forth legal conclusions to which no response is required. To the extent further response is required, Respondent is without knowledge

- or information sufficient to form a belief as to the truth or falsity of the allegations stated in this paragraph, and the allegations are therefore denied.
4. This paragraph sets forth legal conclusions to which no response is required. To the extent further response is required, Respondent is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations stated in this paragraph, and the allegations are therefore denied.
 5. This paragraph sets forth legal conclusions to which no response is required. To the extent further response is required, Respondent is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations stated in this paragraph, and the allegations are therefore denied.
 6. This paragraph sets forth legal conclusions to which no response is required. To the extent further response is required, Respondent is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations stated in this paragraph, and the allegations are therefore denied.
 7. This paragraph sets forth legal conclusions to which no response is required. To the extent further response is required, Respondent is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations stated in this paragraph, and the allegations are therefore denied.
 8. This paragraph sets forth legal conclusions to which no response is required. To the extent further response is required, Respondent is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations stated in this paragraph, and the allegations are therefore denied.
 9. This paragraph sets forth legal conclusions to which no response is required. To the extent further response is required, Respondent is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations stated in this paragraph, and the allegations are therefore denied.
 10. This paragraph sets forth legal conclusions to which no response is required. To the extent further response is required, Respondent is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations stated in this paragraph, and the allegations are therefore denied.
 11. This paragraph sets forth legal conclusions to which no response is required. To the extent further response is required, Respondent is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations stated in this paragraph, and the allegations are therefore denied.

12. This paragraph sets forth legal conclusions to which no response is required.
To the extent further response is required, Respondent is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations stated in this paragraph, and the allegations are therefore denied.
13. This paragraph sets forth legal conclusions to which no response is required.
To the extent further response is required, Respondent is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations stated in this paragraph, and the allegations are therefore denied.
14. This paragraph sets forth legal conclusions to which no response is required.
To the extent further response is required, Respondent is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations stated in this paragraph, and the allegations are therefore denied.
15. This paragraph sets forth legal conclusions to which no response is required.
To the extent further response is required, Respondent is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations stated in this paragraph, and the allegations are therefore denied.
16. This paragraph sets forth legal conclusions to which no response is required.
To the extent further response is required, Respondent is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations stated in this paragraph, and the allegations are therefore denied.
17. This paragraph sets forth legal conclusions to which no response is required.
To the extent further response is required, Respondent is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations stated in this paragraph, and the allegations are therefore denied.
18. This paragraph sets forth legal conclusions to which no response is required.
To the extent further response is required, Respondent is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations stated in this paragraph, and the allegations are therefore denied.
19. This paragraph sets forth legal conclusions to which no response is required.
To the extent further response is required, Respondent is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations stated in this paragraph, and the allegations are therefore denied.
20. This paragraph sets forth legal conclusions to which no response is required.
To the extent further response is required, Respondent is without knowledge

- or information sufficient to form a belief as to the truth or falsity of the allegations stated in this paragraph, and the allegations are therefore denied.
21. This paragraph sets forth legal conclusions to which no response is required. To the extent further response is required, Respondent is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations stated in this paragraph, and the allegations are therefore denied.
22. This paragraph sets forth legal conclusions to which no response is required. To the extent further response is required, Respondent is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations stated in this paragraph, and the allegations are therefore denied.
23. This paragraph sets forth legal conclusions to which no response is required. To the extent further response is required, Respondent is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations stated in this paragraph, and the allegations are therefore denied.

II. JURISDICTIONAL STATEMENTS

24. Respondent admits the allegations contained in this paragraph.
25. Respondent admits the allegations contained in this paragraph.
26. Respondent denies the allegation contained in this paragraph. The project consisted on the development of a 1.041 acre parcel of land.
27. This paragraph sets forth legal conclusions to which no response is required. To the extent further response is required, Respondent is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations stated in this paragraph, and the allegations are therefore denied.
28. Respondent admits the allegations contained in this paragraph.
29. This paragraph sets forth legal conclusions to which no response is required. To the extent further response is required, Respondent is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations stated in this paragraph, and the allegations are therefore denied.
30. Respondent admits the allegations contained in this paragraph.
31. Respondent denies the allegation contained in this paragraph. The construction activities commenced June 17, 2018.
32. Respondent admits the allegations contained in this paragraph.
33. Respondent denies this allegation as he was an "operator" of the Project.

34. Respondent denies this allegation, he did not have day-to-day operational control over the construction activities being conducted at the Project.
35. Respondent denies this allegation, at the time of the Complaint, he did not have control over the design, installation and maintenance of storm water controls in the Project construction site.
36. This paragraph sets forth legal conclusions to which no response is required. To the extent further response is required, Respondent is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations stated in this paragraph, and the allegations are therefore denied.
37. Respondent denies this allegation, as he never discharge storm water containing pollutants into the Atlantic Ocean.
38. This paragraph sets forth legal conclusions to which no response is required. To the extent further response is required, Respondent is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations stated in this paragraph, and the allegations are therefore denied.
39. This paragraph sets forth legal conclusions to which no response is required. To the extent further response is required, Respondent is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations stated in this paragraph, and the allegations are therefore denied.
40. This paragraph sets forth legal conclusions to which no response is required. To the extent further response is required, Respondent is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations stated in this paragraph, and the allegations are therefore denied.

III. FINDING OF VIOLATIONS

41. Respondent re-alleges paragraphs 1 – 40, above.
42. Respondent admits the allegations contained in this paragraph.
43. Respondent admits the allegations contained in this paragraph.
44. Respondent admits the allegations contained in this paragraph.
45. Respondent is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations stated in this paragraph, and the allegations are therefore denied.
46. Respondent admits the allegations contained in this paragraph.
47. Respondent admits the allegations contained in this paragraph.

48. Respondent is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations stated in this paragraph, and the allegations are therefore denied.
49. Respondent is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations stated in this paragraph, but its content is based on information that is subject to discovery, and the allegations are therefore denied.
50. Respondent is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations stated in this paragraph, but its content is based on information that is subject to discovery, and the allegations are therefore denied.
51. Respondent admits the allegations contained in this paragraph.
52. Respondent is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations stated in this paragraph, but its content is based on information that is subject to discovery, and the allegations are therefore denied.
53. Respondent is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations stated in this paragraph, but its content is based on information that is subject to discovery, and the allegations are therefore denied.
54. This paragraph sets forth legal conclusions to which no response is required. To the extent further response is required, Respondent is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations stated in this paragraph, and the allegations are therefore denied.
- a.
- 1) Respondent is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations stated in this paragraph, and the allegations are therefore denied.
 - 2) This paragraph sets forth speculative scientific conclusions to which Karimar Construction, Inc. was not provided with the data utilized to reach said conclusions, therefore Respondent denies this allegation. Karimar Construction, Inc. denies it

discharged stormwater containing pollutants, the project was issued a state permit for the control and prevention of erosion and sedimentation from the local Environmental Quality Board. The majority of the rain water diverts to the neighboring lot. There is a buffer zone of sand between the lot and the Atlantic Ocean that absorbs any material that is not contained by the silt fence that was installed at the project. The project was subject to monthly inspections by the Environmental Quality Board, whom can attest to the measures taken to prevent such events.

- 3) Respondent is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations stated in this paragraph, and the allegations are therefore denied.

b.

- 1) This paragraph sets forth speculative scientific conclusions to which Karimar Construction, Inc. was not provided with the data utilized to reach said conclusions, therefore Respondent denies this allegation.
- 2) This paragraph sets forth speculative scientific conclusions to which Karimar Construction, Inc. was not provided with the data utilized to reach said conclusions, therefore Respondent denies this allegation. Karimar Construction, Inc. denies it discharged stormwater containing pollutants, the project was issued a state permit for the control and prevention of erosion and sedimentation from the local Environmental Quality Board. The majority of the rain water diverts to the neighboring lot. There is a buffer zone of sand between the lot and the Atlantic Ocean that absorbs any material that is not contained by the silt fence that was installed at the project. The project

was subject to monthly inspections by the Environmental Quality Board, whom can attest to the measures taken to prevent such events.

55. Respondent is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations stated in this paragraph, and the allegations are therefore denied.

IV. Notice of Proposed Order Assessing a Civil Penalty

This paragraph sets forth legal conclusions to which no response is required, also this paragraph sets forth speculative calculations as to the penalty to be imposed which Karimar Construction, Inc. was not provided with the data utilized to reach said conclusions, therefore Respondent denies this allegation. The EPA has loosely applied alleged storm events of 0.25 inches or more to predict when and where the alleged stormwater runoff from the Project occurred, these predictions are not accurate and cannot be relied upon. The predictions have been misapplied and is not calibrated to Project conditions as there is a buffer zone of sandy soil that spans 20 meters between the Project and the Atlantic Ocean. The EPA fails to take into account the very high infiltration capacity of the Espinal Sans Serie. The EPA neglects to take into account the pervious nature of the soils on the neighboring sites that water naturally flows to and its natural infiltration. Also it is important to distinguish that Karimar Construction, Inc. has always complied with state and federal rules and regulations regarding the construction business. This project was fitted with a silt barrier that was required and constantly inspected by the Environmental Quality Board. The Environmental Quality Board determined that these prevention methods were satisfactory to comply with their bylaws for Prevention of Erosion and Sedimentation. Karimar Construction, Inc. has been a contractor for municipalities and local government, it has also worked with the federal government as a contractor for various projects.

V. PROCEDURES GOVERNING THIS ADMINISTRATIVE LITIGATION

1. Filling An Answer

Respondents affirmatively allege that in their belief their Answers and Responses submitted herein are in accordance with 40 C.F.R. § 22.15.

2. **Request for Hearing**

Respondents acknowledge their opportunity to request a hearing pursuant to Part 22 of the Rules in the Administrative Procedures Act, and request a hearing.

3. **Informal Settlement Conference**

Respondents affirmatively advise the hearing officer that they will request an informal Settlement Conference.

VI. AFFIRMATIVE DEFENSES

1. The Complaint fails to state a claim upon which relief can be granted because civil penalties cannot be imposed unless there is a material violation of the CWA, and as set out herein, Respondents have not violated the CWA. *United States v. Bay-Houston Towing Co., Inc.*, 197 F.Supp.2d 788 (E.D. Mich. 2002).
2. The EPA lacks authority to assess a penalty under 33 U.S.C. § 1319(g) because it cannot establish any violation of the Clean Water Act as a result of Respondent's actions or omissions. *See United States v. Bay-Houston Towing Co., Inc.*, 197 F.Supp.2d 788 (E.D. Mich. 2002).
3. Respondents activities have not resulted (and did not a result) in the discharge of pollutants to waters of the United States.
4. Respondent has created no danger to health and public safety or human welfare, nor any danger to the environment.
5. Respondents at all times acted in good faith. *See United States v. Bay-Houston Towing Co., Inc.*, 197 F.Supp.2d 788 (E.D. Mich. 2002).
6. The EPA cannot establish that Respondents were the source of any of the pollutant allegedly discharged in to waters of the United States.
7. The absence of harm has not adequately been considered as a mitigating factor in connection with the penalty assessment.
8. The Complaint is barred in whole or in part by the doctrines of waiver and/or estoppel.
9. The Complaint fails to state a claim upon which relief can be granted against Respondent.
10. The proposed penalty is excessive, inappropriate and unwarranted, and Complainant has not provided adequate explanation as to how the penalty amount was calculated.
11. Complainant's allegations are barred by laches.
12. Complainant's allegations are barred by the applicable statute of limitations.

13. Complainant's allegations are not supported by substantial evidence.

14. Complainant's penalty assessment constitutes an abuse of discretion.

**RESERVATION OF RIGHT TO AMEND ANSWER AND ADD AFFIRMATIVE
DEFENSES**

Respondent reserves the right to amend this answer and to add further affirmative defenses, including those which may become apparent through discovery and development of this case.

WHEREFORE, Respondents respectfully request that the Complaint in the instant case be dismissed in its entirety and that no civil penalties be imposed on them.

Dated this 4 of November, 2020.

Respectfully submitted,

By: 
Reinaldo Jose Franqui Escandón, Esq
Puerto Rico State Bar No. 20,130
84-2 Calle Progreso
Aguadilla, PR 00603
Telephone (787) 819-0001
Email rfranqui@gmail.com


**Attorney for Respondent
Karimar Construction, Inc.**

CERTIFICATE OF SERVICE

I, the undersigned, certify that on the 4nd day of November, 2020 I sent by overnight delivery the original and one true copy of this Answer to Complaint, Affirmative Defenses and Request for Hearing to the Regional Hearing Clerk, Unites States Environmental Protection Agency, Region 2, 290 Broadway, 16th floor, New York, New York 10007-1866.

I further certify that on the same date noted I sent by certified mail, return receipt requested, a true and correct copy of the signed Answer to Complaint, Affirmative Defenses and Request for Hearing to the following representatives of the EPA:

Suzette M. Melendez-Colon, Esq.
Office of Regional Counsel, Caribbean Team
U.S. Environmental Protection Agency, Region 2
Citi View Plaza II, Suite 7000
Guaynabo, Puerto Rico 00968

By: 
Reinaldo José Franqui Escandón, Esq



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Product	Qty	Unit Price	Price
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Total			\$26.35

First-Class Mail® Large Envelope Guaynabo, PR 00968 Weight: 0 lb 2.80 oz Estimated Delivery Date Sat 11/07/2020 Certified Mail® Tracking #: 70201810000077595088 Return Receipt Tracking #: 9590 9402 6079 0125 6257 20	1		\$1.40
			\$3.55
			\$2.85
Total			\$7.80

Grand Total: \$34.15

Credit Card Remitted \$34.15

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Approval #: 087900
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11/04/2020

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See Reverse for Instructions