



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
CARIBBEAN ENVIRONMENTAL PROTECTION DIVISION
CITY VIEW PLAZA II BUILDING, 7TH FLOOR
ROUTE 165 GUAYNABO, PUERTO RICO 00968

March 8, 2023

VIA REGULAR MAIL

José Guillermo Araujo
Vice President
Argos Puerto Rico Corporation
P. O. Box 1477
Vega Alta, Puerto Rico 00692-1477

**Re: Argo's Portland Cement Manufacturing Facility in Dorado, Puerto Rico
Administrative Order on Consent
Docket Number CWA-02-2023-3107
NPDES Permit Number PR0001163**

Dear Mr. Araujo:

This refers to the Administrative Order on Consent (AOC), Docket Number CWA-02-2023-3107, developed between Argos Puerto Rico Corp. (Argos) and the U.S. Environmental Protection Agency (EPA). Enclosed please find a copy of the executed AOC, which incorporates the injunctive relief agreed by Argos and EPA.

If you have any questions regarding this AOC, please contact Mr. José A. Rivera, Team Leader, Clean Water Act Team, at (787) 977-5842, or by email at rivera.jose@epa.gov.

Sincerely,

JOSE
FONT

Digitally signed
by JOSE FONT
Date: 2023.03.08
17:11:02 -04'00'

Carmen R. Guerrero Pérez
Director
Caribbean Environmental Protection Division

Enclosure

cc: Ángel Meléndez, DNER/WQA (via e-mail w/ enclosure)
Myrna Pacheco, Argos (via e-mail w/ enclosure)

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2**

IN THE MATTER OF:

ARGOS PUERTO RICO CORP.

P. O. Box 1477

Vega Alta, Puerto Rico 00692-1477

Facility Name

Portland Cement Manufacturing Facility

PR-385 Road, Km. 26.7, Espinosa Ward

Dorado, Puerto Rico 00646

NPDES Permit Number PR0001163

RESPONDENT

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

**ADMINISTRATIVE
ORDER ON CONSENT**

**DOCKET NUMBER
CWA-02-2023-3107**

A. PRELIMINARY STATEMENT

1. Pursuant to the Clean Water Act (the “CWA” or “the Act”), 33 U.S.C. § 1251, et seq, the United States Environmental Protection Agency (“EPA”) hereby issues this Administrative Order on Consent (“AOC” or “Order”) to Argos Puerto Rico Corp. (“Respondent” or “Permittee”), who enters into this Order voluntarily.
2. This Order is issued pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency (“EPA”) pursuant to Section 309(a) of the CWA, 33 U.S.C. § 1319(a).
3. The Administrator of EPA has delegated the authority to take these actions to the Regional Administrator of Region 2, who in turn, has delegated such authority to the Director of the Caribbean Environmental Protection Division (“CEPD”).

B. LEGAL AUTHORITY

4. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), makes it unlawful for any person to discharge any pollutant from a point source to waters of the United States, except, among other things, with the authorization of, and in compliance with, a National Pollutant Discharge Elimination System (“NPDES”) permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

5. Section 402 of the CWA, 33 U.S.C. § 1342, defines the National Pollutant Discharge Elimination System (“NPDES”) as the national program for, among other things, issuing and enforcing discharge permits.
6. Section 402 of the CWA authorizes the Administrator to promulgate regulations for the implementation of the NPDES requirements.
7. Section 402 of the CWA, 33 U.S.C. § 1342, authorizes the Administrator of the EPA to issue an NPDES permit for the discharge of any pollutant, or combination of pollutants, subject to certain requirements of the CWA and conditions which the Administrator determines are necessary.
8. Pursuant to the CWA, EPA promulgated regulations known as “EPA Administered Permit Programs: the National Pollutant Discharge Elimination System”, which is codified at 40 C.F.R. Part 122, as amended.
9. Pursuant to Section 402(p)(2)(B) of the CWA, 33 U.S.C. § 1342(p), and the NPDES regulations at 40 C.F.R. §§ 122.2 and 122.26(b)(14), NPDES permits are required for storm water associated with industrial activity from any conveyance which is used for collecting and conveying storm water and which is directly related to manufacturing, processing or raw materials storage areas at an industrial plant.
10. Section 502 of the CWA and 40 C.F.R. § 122 include definitions, terms, and requirements applicable to the NPDES program and permits. In addition, the following definitions and “terms” apply in this Order:
 - a. “Non-structural BMP” means best management practices that generally consist of processes, prohibitions, procedures, and schedules of activities that prevent pollutants associated with industrial activity from contacting with storm water discharges and authorized non-storm water discharges. They are considered low technology, cost-effective measures, and do not involve construction and installation, and usually work by changing behavior, persuasion and/or economic instruments;
 - c. “Structural BMP” means the fixed, permanent physical structures and equipment requiring planning, design construction and maintenance that are designed to remove pollutants from storm water runoff, reduce downstream erosion, provide flood control and promote groundwater recharge; and
 - d. “Substantial Completion” means, when used in reference to the construction project required under this Order, the date, as certified by a Licensed Engineer in charge of the construction project who is authorized to conduct the engineering profession in the Commonwealth of Puerto Rico, when the Structural BMP or construction project or specified part thereof is sufficiently completed in accordance with the design drawings and specifications, such that the project or specified part thereof can be used to accomplish the purposes for which it was intended.

11. Pursuant to 40 C.F.R. § 122.21(a)(2)(i), all applicants for EPA-issued NPDES permits must submit applications on EPA permit application forms. More than one application form may be required from a facility depending on the number and types of discharges or outfalls found there.
12. Pursuant to the NPDES regulations at 40 C.F.R. § 122.1(b)(1), “[t]he NPDES Permit Program requires permits for the discharge of any pollutant from any point source into waters of the United States.”
13. Pursuant to NPDES regulations at 40 C.F.R. § 122.41(a), the permittee shall comply with all conditions of the permit. Any permit noncompliance constitutes a violation of the CWA and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or denial of a permit renewal application.
14. Pursuant to NPDES regulations at 40 C.F.R. § 122.41(e), the permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of the permit. Proper operation and maintenance also include adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit.
15. Pursuant to NPDES regulations at 40 C.F.R. § 122.41(l)(2), the permittee shall give advance notice to the Director of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.
16. Pursuant to the CWA, EPA promulgated regulations known as “Cement Manufacturing Point Source Category”, which is codified at 40 C.F.R. Part 411. Subpart C (Materials Storage Piles Runoff Subcategory) of such regulations applies to discharges resulting from the runoff of rainfall which derives from the storage of materials including raw materials, intermediate products, finished products and waste materials which are used in or derived from the manufacture of cement under either Subcategory A or B [40 C.F.R. § 411 Subpart A or Subpart B].
17. Pursuant to 40 C.F.R. §§ 122.26(b)(14) certain categories of facilities are considered to be engaging in “industrial activity”.
18. Pursuant to C.F.R. §§ 122.26(b)(14)(i) and (ii), cement manufacturing facilities are considered to be engaging in industrial activity.
19. On January 15, 2021, EPA re-issued the NPDES Multi-Sector General Permit for Storm Water Discharges Associated with Industrial Activity (“MSGP”) for the Commonwealth of Puerto Rico, as authorized under Section 402 of the CWA.
20. The MSGP became effective on March 1, 2021.

21. On September 29, 2021, EPA modified the MSGP. The MSGP modification became effective on September 29, 2021.
22. The MSGP expires on February 28, 2026.
23. Among others, the MSGP establishes requirements for eligibility (Part 1, compliance measures and effluent limits (Part 2), inspections (Part 3), monitoring (Part 4), corrective actions and additional implementation measures (Part 5), Storm Water Pollution Prevention Plans (Part 6), reporting and record-keeping (Part 7); sector-specific requirements (Part 8); and permit conditions (Part 9).
24. Part 1.3 of the MSGP indicates that a facility operator who seeks coverage under the MSGP must submit a complete and accurate Notice of Intent (“NOI”) form in order to obtain authorization to discharge storm water associated with industrial activity.
25. Parts 1.2.1.1 and 5 of the MSGP require the development of a Storm Water Pollution Prevention Plan (SWPPP) prior to submitting a NOI form for coverage under the MSGP.
26. Section 309(a) of the CWA, 33 U.S.C. § 1319(a), authorizes the Administrator to issue an order requiring compliance or commence a civil action when any person is found to be in violation of Section 301 of the CWA, 33 U.S.C. § 1311, or in violation of any permit condition or limitation in a permit issued under Section 402 of the CWA, 33 U.S.C. § 1342.
27. Section 309(a)(5)(A) of the CWA provides that “[a]ny order issued under [CWA Section 309] shall state with reasonable specificity the nature of the violation and shall specify a time for compliance . . . taking into account the seriousness of the violation and any good faith efforts to comply with applicable requirements.”
28. EPA is the agency within the Commonwealth of Puerto Rico authorized to administer the federal NPDES program. EPA maintains enforcement authority for violations of the CWA and its implementing regulations under Section 309 of the CWA, 33 U.S.C. § 1319.

C. FINDINGS OF FACT AND CONCLUSIONS OF LAW

29. Respondent is a for profit corporation organized under the laws of the Commonwealth of Puerto Rico; and a “person” pursuant to Section 502(5) of the CWA, 33 U.S.C. § 1362(5), and 40 C.F.R. § 122.2.
30. Respondent owns and operates a portland cement manufacturing facility at PR-385 Road, Km. 26.7, Espinosa Ward, Dorado, Puerto Rico 00646 (the “Facility”).
31. Respondent’s Facility is a “facility,” as defined in 40 C.F.R. § 122.2.
32. The Standard Industrial Classification code that best describe the operations at the Facility is 3421 (Hydraulic Cement).

33. Respondent's operations and activities at the Facility are an "industrial activity" pursuant to Section 402(p) of the CWA, 33 U.S.C. § 1342(p), and 40 C.F.R. §§ 122.26(b)(14)(i) and (ii).
34. Respondent discharged and continues to discharge "pollutants", as defined in Section 502 of the CWA and 40 C.F.R. § 122.2, from the Facility through Outfall 001, which is a "point source" pursuant to Section 502(14) of the CWA, 33 U.S.C. § 1362(14), and 40 C.F.R. § 122.2, into an open ditch tributary of Honda Creek, a "water of the United States" pursuant to Section 502(7) of the Act, 33 U.S.C. § 1362(7), and 40 C.F.R. § 122.2.
35. Respondent also discharged and continues to discharge storm water associated with industrial activity, as defined in 40 C.F.R. §§ 122.26(b), from the Facility through Outfall 001.
36. The EPA under the authority of Section 402 of the CWA, 33 U.S.C. § 1342, issued on June 11, 2019, the NPDES permit number PR0002263 (the "Permit"), which authorizes Respondent to discharge runoff treated in settling ponds via Outfall 001, under the conditions and limitations prescribed in the Permit.
37. The Permit became effective on August 1, 2019 and will expire on July 31, 2024.
38. Pursuant to Part II.A of the Permit, the discharge through Outfall 001 is composed of discharge wastewater coming from vehicles cleanup station, mobile equipment repair workshop, water truck cement tank-truck washing station, general cleaning, storm water runoff from the Facility, and offsite storm water runoff from the nearby community treated in settling ponds system.
39. The Permit requirements include, but are not limited to, compliance with effluent limitations, monitoring, and reporting requirements.
40. Part II.A, Table A of the Permit establishes effluent characteristics, effluent limitations, and monitoring requirements.
41. Part II.B, Table B of the Permit establishes interim effluent limitations and monitoring requirements for enterococci at Outfall 001. For the period between August 1, 2019 and July 31, 2022, the permittee was required to perform monitoring for enterococci at Outfall 001. The Permit does not include an interim effluent limitation for enterococci at Outfall 001.
42. Part II.C, Table C of the Permit establishes final effluent limitations and monitoring requirements for enterococci at Outfall 001. During the period between August 1, 2022 and July 31, 2024, the permittee shall maintain compliance with the final effluent limitation for enterococci at Outfall 001. The final average monthly effluent limitations for enterococci are 35 colonies/100 ml and 130 of the 90th percentile of the samples.
43. Part III.A.3 of the Permit requires Respondent to submit to EPA monitoring results on Discharge Monitoring Results ("DMRs"). DMRs must be submitted to EPA no later than the 28th day of the month following the completed period.

44. Pursuant to Part III.A.4 of the Permit, for bacterial monitoring, the Permittee must report on the DMRs the calculated geometric mean and percentage of individual samples that exceeded the single-sample maximum criterion. The geometric mean must be calculated on the basis of five grab samples taken within the calendar month and as described in Attachment A of the Permit. The Permittee must report on an attachment to the DMR the analytical results of each of the five individual sample measurements, the calculated geometric means using these individual samples, and the percentage of individual samples that exceed the single sample maximum criterion.
45. Part IV.B.1.13.a of the Permit includes special conditions concerning interim and final effluent limits at Outfall 001 for enterococci.
46. Part IV.B.1.13.c of the Permit establishes that the Compliance Plan (“CP”) consist of a series of alternatives which result will be evaluated, and based on these results, it will advance or not with the following proposed alternative.
47. Part IV.B.1.13.c.3 of the Permit establishes Alternative III: Diversion of waters to Canal de Guarisco, which requires Respondent to conduct by July 31, 2021 and perform studies for:
 - a. design and construct a closed canal that allows diverting the storm water runoff coming from the Guarisco community and take them out of the Facility without being affected by the runoff coming from the Facility or failing that;
 - b. divert the storm water runoff coming from the facility towards the channel of Honda Creek. Before the implementation of this alternative:
 - i. conduct studies of storm water catchment to obtain the maximum flow rate on the basis of which the capacity of the channel will be designed, or to obtain the maximum flow rate of Honda Creek to manage the storm water runoff from the Facility, as well as the possible impacts of this action to the natural systems and communities established along Honda Creek
 - ii. submit a report with the results and conclusions of the implementation of the studies of storm water catchment to the EQB's Water Quality Area, not later than thirty (30) days from the conclusion of the studies
 - iii. in the case that the Permittee determines to implement the action described in the term "a" of this alternative, the Permittee shall submit the design of the canal to the EQB's Water Quality Area for evaluation and approval.
 - iv. in the case that the Permittee determines to implement the action described in the term "b" of this alternative, the Permittee shall consult with EPA's Region 2 Clean Water Division if this action requires an NPDES permit for the discharge of storm water associated with industrial activities. If this is the case, the Permittee must request and obtain the corresponding permit before starting the discharge.

In the case that Respondent determines that it is not necessary to implement the next alternative [Alternative IV], the Facility [Respondent] shall comply with the final effluent limit established for enterococci by August 1, 2021.

48. Attachment A of the Permit includes definitions applicable to terms and conditions of the Permit.
49. Attachment B.1 of the Permit requires Respondent to comply with all conditions of the Permit. Any permit non-compliance constitutes a violation of the CWA and is grounds for enforcement action.
50. Pursuant to Section 309(a) of the CWA, 33 U.S.C. § 1319(a), on June 3, 2021, EPA and Argos entered into an Administrative Order on Consent, Docket Number CWA-02-2021-3109 (the “2021 Order”).
51. The 2021 Order required Respondent, among others, to:
 - a. comply with compliance deadlines concerning the implementation of the CP, as provided in Attachment 2 of the 2021 Order;
 - b. submit, no later than September 30, 2022, the Bacteriological Monitoring Plan Report, as provided for in Attachment 2 of the 2021 Order;
 - c. submit, no later than July 15, 2021, a detailed explanation of the rationale that renders the implementation of CP’s Alternative III unnecessary, as provided for in Part IV.B.1.13.c of the Permit;¹
 - d. submit, no later than August 31, 2022, an implementation schedule for CP’s Alternative III, as provided for in Part IV.B.1.13.c of the Permit;²
 - e. achieve compliance with effluent limitation for enterococci by January 1, 2023;
 - f. and submit Progress Reports.
52. Between June 30, 2021 and February 9, 2023, Respondent submitted documents (e.g., Final Monitoring Study Report known as “QAPP Report” and Progress Reports)³ providing information and updates on Respondent’s actions to comply with the 2021 AOC.
53. On September 26, 2022, an EPA official performed an NPDES Focused Compliance Inspection (the “Inspection”) of the Facility pursuant to Section 308(a) of the CWA, 33 U.S.C. § 1318(a). The findings of the Inspection were included in an Inspection Report, dated November 22, 2022.

¹ In the event that Respondent determines that it is not necessary to implement CP’s Alternative III.

² In the event that Respondent determines that it is necessary to implement CP’s Alternative III.

³ An interim QAPP report was submitted to EPA on August 15, 2022.

54. By letter dated November 22, 2022 (the “November 2022 Letter”), a copy of the Inspection Report was submitted to Respondent, and an invitation to confer with EPA concerning EPA’s findings of non-compliance with two ordered provisions of the 2021 Order.⁴
55. By letter electronic mail addressed to officials from the Puerto Rico Department of Environmental and Natural Resources (“DNER”) and EPA, Respondent submitted the Bacteriological Monitoring Plan Report, dated October 28, 2022.
56. By letters dated December 5 and 16, 2002, Respondent submitted responses to the Inspection Report and November 22 Letter. Respondent indicated, among others, the following:
 - a. That it has determined that the implementation of CP’s Alternative III is necessary and based its rationale on the Bacteriological Monitoring Plan.
 - b. That Respondent is seeking approval from EPA to advance to Alternative III, as defined in the Permit.
 - c. That in anticipation of the approval, Respondent has developed a Basis of Design for the closed canal that allows diverting the stormwater runoff coming from the Guarisco Community, and that the Basis of Design is an internal study to determine the most effective manner of routing the stormwater to the channel of Honda Creek. A copy of the Basis of Design was included.
57. On December 21, 2022, officials from Respondent and EPA conferred concerning the Inspection Report and November 22 Letter, and Respondent’s proposed actions and commitment to implement CP’s Alternative III. On January 20, 2023, officials from Respondent and EPA conferred to further discuss Respondent’s implementation of CP’s Alternative III.
58. Respondent submitted DMRs to EPA for the monthly monitoring period between August 1, 2019 and December 2023. Respondent reported exceedances of the Permit’s effluent limitations for such period. **Attachment 1** of this Order includes a summary of the reported exceedances.
59. As detailed above, Respondent remains in non-compliance with Permit’s effluent limitations and implementation of the CP.
60. Based upon Paragraphs 29 to 59 above, Respondent failed to comply with Sections 301(a), 309 and 402 of the CWA, 33 U.S.C. §§ 1311(a), 1319, and 1342, and applicable implementing regulations, by not complying with certain conditions and requirement of the Permit and 2021 Order.
61. Respondent is subject to the provisions of the CWA, 33 U.S.C. § 1251, et seq., the applicable NPDES regulations found at 40 C.F.R. § 122, and the Permit issued under Section 402 of the CWA, 33 U.S.C. § 1342.

⁴ Compliance Plan’s Alternative III by September 1, 2022; and Compliance Plan’s Alternative IV by October 31, 2022.

62. Respondent's failure to comply with certain Permit provisions may constitute a violation of Sections 301(a) and 402 of the CWA, 33 U.S.C. § 1342; therefore, Respondent is subject to an enforcement action under Section 309 of the Act, 33 U.S.C. § 1319.
63. Respondent's failure to comply with certain provisions of the 2021 Order may constitute a violation of Section 309 of the CWA, 33 U.S.C. § 1342; therefore, Respondent is subject to further enforcement action under Section 309 of the CWA, 33 U.S.C. § 1319.
64. Pursuant to Section 309(a) of the Act, 33 U.S.C. § 1319(a), EPA has enforcement authority to issue this Order to address Respondent's violations of the Permit, issued pursuant to Section 402(p) of the CWA, 33 U.S.C. § 1342(p).

D. CONSENT

65. Respondent and EPA have negotiated this Order in good faith, and is fair, reasonable, and consistent with the goals of the CWA.
66. Respondent, without admitting liability for the violations asserted in this Order or the factual allegations set forth therein, admits that EPA has authority under Section 309(a) of the CWA to issue this Order and agrees to be bound by this Order.
67. Respondent waives any rights to contest the allegations and its right to appeal the final Order.
68. The Ordered Provisions (Part E) of this Order shall be binding upon Respondent, its officers, directors, agents, servants, authorized representatives and successors and assigns.
69. The Ordered Provisions of contained in the 2021 Order are superseded by the Ordered Provisions contained hereinafter.

NOW THEREFORE, without admission by Respondent of the non-jurisdictional allegations in the Order and upon consent of EPA and Respondent, it is hereby **ORDERED** as follows:

E. ORDERED PROVISIONS

In consideration of the Legal Authority, Findings of Fact and Conclusions of Law, and Findings of Violations, and pursuant to the authority in Section 309 of the CWA, 33 U.S.C. § 1319, EPA has determined that compliance with the following requirements is reasonable, and Respondent so agrees.

EPA HEREBY ORDERS AND RESPONDENT HEREBY CONSENTS THAT:

70. **Except as otherwise indicated in this Order**, Respondent shall comply with the CWA, its NPDES implementing regulations, and the Permit.
71. Respondent shall continue to operate and maintain a surface aerator from 10 to 12 hours daily, and purchase and retain spare parts at the Facility. Respondent shall take immediate action to repair and place it into operation in case on malfunction.

72. Respondent shall implement structural BMPs and non-structural BMPs at the Facility to address any discharge of floatable materials and debris, prevent cements products from reaching the storm sewer collections and conveyance system, and provide erosion and sediment controls within areas associated with industrial activities. Respondent shall report these activities in the Monthly Progress Reports, as provided for in paragraph 82 of this Order.
73. **Within thirty (30) calendar days of the effective date of this Order**, Respondent shall replace or repair the existing septic system (holding tank) near the cafeteria.
74. **Within sixty (60) calendar days of the effective date of this Order**, Respondent shall prepare an engineering design and specifications for the construction of a closed canal to divert the storm water runoff coming from the Guarisco Community and take them out of the Facility without being affected by the runoff coming from the Facility. Refer to Part IV.B.13.c.3.a (Alternative III: Diversion of waters to Canal de Guarisco) of the Permit.
75. **Within sixty (60) calendar days of the effective date of this Order**, Respondent shall submit the design of the canal to the Water Quality Area of DNER for evaluation and approval.
76. **Within seven (7) calendar days upon DNER's approval of the canal**, Respondent shall provide notification to EPA about the entity that will be performing the construction of the canal, their contact information, a copy of the contract document and the construction schedule. Such notification shall be to the following electronic mails: rivera.jose@epa.gov and rodriguez.nancy@epa.gov.
77. That prior to any construction activity (e.g., mobilization, clearing and grubbing) of the canal, Respondent shall secure any required permits and endorsements for the construction of the canal by Federal, Commonwealth and Municipal entities. Respondent shall indicate and include a copy of all required permits and endorsements in the applicable Progress Reports, as required in paragraph 82 of this Order.
78. **Within fourteen (14) calendar days upon DNER's approval of the canal**, Respondent shall initiate the construction of the canal and provide notification that construction has started to the following electronic mails: rivera.jose@epa.gov and rodriguez.nancy@epa.gov.
79. **Within thirty (30) calendar days upon DNER's approval of the canal**, Respondent shall substantially complete construction of the canal and provide notification to the following electronic mails: rivera.jose@epa.gov and rodriguez.nancy@epa.gov.
80. **Within forty (45) calendar days upon DNER's approval of the canal**, Respondent shall complete construction of the canal and provide notification to the following electronic mails: rivera.jose@epa.gov and rodriguez.nancy@epa.gov. Such construction shall include flow velocity dissipation at the end of the canal and soil stabilization to all areas in which earth movement was conducted for the construction of the canal, including construction supporting areas (e.g., construction material storage, construction office trailer).

81. Upon construction of the canal, Respondent may opt to seek coverage under the MSGP for its storm water discharges associated with industrial activity through Outfall 001 for the industrial activities identified in 40 C.F.R. § 122.26(b)(14). Before seeking coverage under the MSGP, Respondent must consult with a CEPD NPDES permitting official for further guidance and determination of Facility's eligibility for coverage under the MSGP and termination of the Permit.
82. Until Termination of this Order, Respondent shall prepare and submit Monthly Progress Reports ("MPR") on the 15th day of the month describing the status and progress of the actions taken to comply with the provisions of this Order. Respondent shall:
 - a. Submit the first MPR on April 15, 2023, and every 30 days thereafter (e.g., May 15, 2023);
 - b. MPR shall include, at a minimum, the following:
 - i. The actions taken during the reporting period.
 - ii. Description of any non-compliance with this Order, including a statement describing the non-compliance, its underlying causes, and a proposed new date(s) to rectify non-compliance with this Order.
 - iii. A cost report detailing the expenses incurred during the reporting period

If Respondent submits a deliverable to EPA during the compliance filing dates of this Order, Respondent does not have to re-submit such deliverable in future Monthly Progress Reports.

F. GENERAL PROVISIONS

83. Respondent may, if so desires, assert a business confidentiality claim covering all or part of the cost report information required to be submitted under this Order. A business confidentiality claim may be asserted by placing on (or attaching to) the information, at the time it is submitted, a cover sheet, stamped or typed legend, or other suitable form of notice employing language such as "trade secret" or "proprietary" or "company confidential." Information covered by such a claim will be disclosed by EPA only in accordance with and by means of procedures set forth in Sub-part B, 40 C.F.R. Part 2.

If no such claim accompanies the information contained in the submittal when it is received by EPA, it may be made available to the public by EPA without further notice to Respondent. You should read the above-cited statutory and regulatory provisions carefully before asserting a business confidentiality claim, since certain categories of information are not properly the subject of such a claim. Allegedly confidential portions of otherwise non-confidential documents should be clearly identified by you. If Respondent desires confidential treatment of information only until a certain date or until the occurrence of a certain event, Respondent's response should state so.

84. Any questions concerning this Order should be directed to Mr. José A. Rivera, Team Leader, Clean Water Act Team, Multimedia Permits and Compliance Branch, Caribbean Environmental Protection Division, at (787) 977-5842, or by email at rivera.jose@epa.gov. Any legal questions

concerning this Order should be directed to Mr. Eduardo J. González, Eduardo J. González, Lead Attorney Advisor, Water and General Law Branch, Office of Regional Counsel, at (212) 637-3223, or by email at gonzalez.eduardoj@epa.gov.

85. All documents to be submitted by Respondent as part of this Order shall be sent by electronic mail to:

Ángel Meléndez
Manager
Water Quality Area
Puerto Rico Department of Natural and Environmental Resources
P. O. Box 11488
San Juan, Puerto Rico 00910
Email: angelmelendez@jca.pr.gov

and

José A. Rivera, BSCE
Team Leader
Clean Water Act Team
Multimedia Permits and Compliance Branch
Caribbean Environmental Protection Division
U.S. Environmental Protection Agency, Region 2
City View Plaza II, Suite 7000
48 RD. 165 Km. 1.2
Guaynabo, Puerto Rico 00968-8069
Email: rivera.jose@epa.gov.

86. Pursuant to 40 C.F.R. § 122.22, all information or documents required to be submitted by Respondent shall be signed by an authorized representative of Respondent, and shall include the following certification:

“I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

87. Respondent waives any and all claims for relief and otherwise available rights to administrative or judicial review of any issue of law or fact, or any other provision, set forth in this Order, including, but not limited to, any right of judicial review of this Order under the Administrative Procedure Act, 5 U.S.C. §§ 701-708.

88. Notwithstanding any other provision of this Order, Respondent reserves its rights to contest liability in any subsequent action filed by EPA to seek penalties for a violation of this Order, and reserves its rights to contest liability in any subsequent action for any violations EPA has alleged in this Order. Respondent reserves all defenses to any action asserted or taken by EPA under its reservations in this Order or otherwise.
89. This Order does not constitute a waiver from compliance with, or a modification of, the effective terms and conditions of the CWA, its implementing regulations, or any applicable permit, which remain in full force and effect. This Order is an enforcement action taken by EPA to ensure swift compliance with the CWA. Issuance of this Order shall not be deemed an election by EPA to forego any civil or criminal actions for penalties, fines, imprisonment, or other appropriate relief under the CWA.
90. Notice is hereby given that should EPA commence an action in a United States District Court for a violation of any Ordered Provision of this Order, Respondent may be subject to:
- a. civil penalties up to \$64,6180 per day under Section 309(d) of the CWA, as modified by 40 C.F.R. Part 19, pursuant to Section 309(d) of the CWA, 33 U.S.C. § 1319(d); and/or
 - b. injunctive relief, pursuant to Section 309(b) of the CWA, 33 U.S.C. § 1319(b), as imposed by the Court.
91. If any provision of this Order is held by a court of competent jurisdiction to be invalid, any surviving provisions shall remain in full force and effect.

G. DELAY OF PERFORMANCE/FORCE MAJEURE

92. “*Force Majeure*,” for purposes of this Order, is any event entirely beyond the control of Respondent or any entity controlled by Respondent that delays or prevents performance of any obligation under this AOC, notwithstanding Respondent’s best efforts to avoid the delay. The best-efforts requirement includes using best efforts to anticipate any such event and to minimize the delay caused by any such event to the greatest extent practicable. Examples of events that are not *force majeure* events include, but are not limited to, increased costs or expenses of any work to be performed under this Order, Respondent’s financial or business difficulties, and normal inclement weather.
93. Unless otherwise specified, if any event may occur or has occurred that may delay the performance of any obligation under this Order, whether or not caused by a *force majeure*, Respondent shall notify, in writing, by telephone and/or electronic mail, the EPA contact identified in paragraph 84 of this Order, within four (4) business days of when Respondent knew or reasonably should have known that the event might cause a delay. Within fifteen (15) calendar days thereafter, Respondent shall provide in writing the reasons for the delay, the anticipated duration of the delay, the measures taken or to be taken to prevent or minimize the delay, and a timetable by which those measures will be implemented. Respondent shall exercise its best efforts to avoid or minimize any delay and any effects of a delay. Failure to comply with the notice requirement of this paragraph shall preclude Respondent from asserting any claim of force majeure.

94. If EPA agrees that an actual or anticipated delay is attributable to *force majeure*, the time for performance of the obligation shall be extended by written agreement of the parties. An extension of the time for performing an obligation directly affected by the *force majeure* event shall not, of itself, extend the time for performing a subsequent obligation. The time of performance of any subsequent obligation that is directly impacted by an extension of time granted for an obligation due to a *force majeure* event shall be extended at the request of the Respondent. EPA will review Respondent's request and will provide a new set of compliance date(s) in writing, if deemed necessary.
95. Respondent shall have the burden of demonstrating, by a preponderance of the evidence, that the actual or anticipated delay has been or will be caused by a *force majeure* event, that the duration of the delay was or will be warranted under the circumstances, that Respondent did exercise or is using its best efforts to avoid and mitigate the effects of the delay, and that Respondent complied with the requirements of this section.

H. TERMINATION AND SATISFACTION

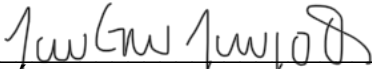
96. After Respondent has complied with all the Ordered Provisions of this Order, Respondent may serve upon Clean Water Act Team Leader a Request for Termination. The Request for Termination shall:
- a. state the actions Respondent has taken at the Facility to comply with this Order,
 - b. include a Final Compliance Report including all necessary supporting documentation to demonstrate compliance with this Order; and
 - c. be signed and certified in accordance with Paragraph 86, above.
97. Following receipt by EPA of Respondent's Request for Termination, within thirty (30) calendar days or at another mutually agreed upon time, EPA and Respondent shall confer informally concerning the Request and any disagreement that EPA and Respondent may have as to whether Respondent has satisfactorily complied with the requirements for termination of this Order. If EPA agrees, it will close-out this Order by informing Respondent in writing of such decision. However, the determination to close-out this Order shall be solely in the discretion of EPA.
98. Any violation of this Order may be grounds for EPA to terminate this Order in its sole discretion.

I. EFFECTIVE DATE AND EFFECT OF CONSENT

99. This Order shall become effective upon the date of execution by the undersigned Director, Caribbean Environmental Protection Division, Region 2, EPA.
100. Each undersigned signatory to this Order certifies that he is duly and fully authorized to enter into or ratify this Order and all applicable terms and conditions set forth herein.

- 101. Respondent and EPA shall bear their own costs of this Order, including attorneys' fees.
- 102. Respondent hereby consents to the issuance of this Order and agrees to be bound thereby.
- 103. Nothing in this Order limits Respondent's obligations to comply with the requirements of all applicable federal and Commonwealth of Puerto Rico laws and regulations.

FOR ARGOS PUERTO RICO CORP.:



JOSE GUILLERMO ARAUJO
Vice President
Argos Puerto Rico Corp.
P. O. Box 1477
Vega Alta, Puerto Rico 00692-1477

Dated: Feb / 27 / 2023

FOR UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION 2:

JOSE FONT  Digitally signed by JOSE FONT
Date: 2023.03.08 17:36:05
-04'00'

CARMEN R. GUERRERO-PÉREZ
Director
Caribbean Environmental Protection Division
Environmental Protection Agency, Region 2
City View Plaza II, Suite 7000
48 RD. 165 Km. 1.2
Guaynabo, Puerto Rico 00968-8069

Dated: _____

**ATTACHMENT 1
REPORTED EFFLUENT LIMITATIONS EXCEEDANCES**

Monitoring Period	DMR Received Date	DMR Code - Parameter	Units	Limit Sample Type	Quality or Concentration	Permit Effluent Limitation	Reported Exceedance in DMR	Lateness Submittal of <u>DMRs</u>
Aug-2019	09/27/2019	00080 - Color	Platinum Cobalt Unit	Grab	Concentration Maximum	15	35	
Aug-2019	09/27/2019	00300 - Oxygen, Dissolved	Milligrams per Liter	Grab	Concentration Minimum	5	3.9	
Sep-2019	10/28/2019	00530 - Solids, Total Suspended	Milligrams per Liter	Grab	Concentration Maximum	50	89.6	
Oct-2019	12/2/2019	00300 - Oxygen, Dissolved	Milligrams per Liter	Grab	Concentration Minimum	5	3.35	4 Days Late
Dec-2019	01/27/2020	00080 - Color	Platinum Cobalt Unit	Grab	Concentration Maximum	15	30	
Feb-2020	03/25/2020	00300 - Oxygen, Dissolved	Milligrams per Liter	Grab	Concentration Minimum	5	4.6	
Feb-2020	03/25/2020	00310 - BOD ₅	Milligrams per Liter	Grab	Concentration Maximum	5	6	
Feb-2020	03/25/2020	00400 - pH	Standard Units	Grab	Concentration Maximum	9	9.06	
May-2020	06/27/2020	00080 - Color	Platinum Cobalt Unit	Grab	Concentration Maximum	15	20	
Jun-2020	07/28/2020	00300 - Oxygen, Dissolved	Milligrams per Liter	Grab	Concentration Minimum	5	4.9	
Jul-2020	08/28/2020	00300 - Oxygen, Dissolved	Milligrams per Liter	Grab	Concentration Minimum	5	4.9	
Jul-2020	08/28/2020	00310 - BOD ₅	Milligrams per Liter	Grab	Concentration Maximum	5	8	
Jul-2020	08/28/2020	00400 - pH	Standard Units	Grab	Concentration Maximum	9	9.4	
Jul-2020	08/28/2020	00530 - Solids, Total Suspended	Milligrams per Liter	Grab	Concentration Maximum	50	59.7	
Sep-2020	10/28/2020	00300 - Oxygen, Dissolved	Milligrams per Liter	Grab	Concentration Minimum	5	2.53	
Sep-2020	10/28/2020	00310 - BOD ₅	Milligrams per Liter	Grab	Concentration Maximum	5	15	
Oct-2020	11/30/2020	00300 - Oxygen, Dissolved	Milligrams per Liter	Grab	Concentration Minimum	5	2.5	2 Days Late
Nov-2020	12/28/2020	00310 - BOD ₅	Milligrams per Liter	Grab	Concentration Maximum	5	10	
Dec-2020	02/4/2021	00310 - BOD ₅	Milligrams per Liter	Grab	Concentration Maximum	5	12	7 Days Late

**ATTACHMENT 1
REPORTED EFFLUENT LIMITATIONS EXCEEDANCES (contd.)**

Monitoring Period	DMR Received Date	DMR Code - Parameter	Units	Quality or Concentration	Limit Sample Type	Limit	Reported Value	Late Submittal of DMR
Apr-2022	5/26/2022	38260 - Surfactants (MBAS)	Micrograms per Liter	Concentration Maximum	GR	100	129	
Apr-2022	5/26/2022	00300 - Oxygen, dissolved	Milligrams per Liter	Concentration Minimum	GR	4	3.4	
Jul-2022	8/30/2022	00080 - Color (PT-CO units)	Color - Platinum Cobalt Unit	Concentration Maximum	GR	22	30	2 Days Late
Aug-2022	9/28/2022	00310 - BOD, 5-day, 20 deg. C	Milligrams per Liter	Concentration Average	GR	10.2	14	
Aug-2022	9/28/2022	61211 - Enterococci	Number per 100 Milliliters	Concentration Average	GR	35	1236	
Aug-2022	9/28/2022	00080 - Color (PT-CO units)	Color - Platinum Cobalt Unit	Concentration Maximum	GR	22	30	
Aug-2022	9/28/2022	61211 - Enterococci	Number per 100 Milliliters	Concentration Maximum	GR	130	2420	
Aug-2022	9/28/2022	00300 - Oxygen, dissolved	Milligrams per Liter	Concentration Minimum	GR	4	3.5	
Sep-2022	10/28/2022	61211 - Enterococci	Number per 100 Milliliters	Concentration Average	GR	35	198	
Sep-2022	10/28/2022	61211 - Enterococci	Number per 100 Milliliters	Concentration Maximum	GR	130	2419	
Oct-2022	11/28/2022	61211 - Enterococci	Number per 100 Milliliters	Concentration Average	GR	35	141	
Oct-2022	11/28/2022	61211 - Enterococci	Number per 100 Milliliters	Concentration Maximum	GR	130	238	