



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

September 21, 2023

**Via Electronic Mail & Certified Mail**

[hector.rodriguez790@gmail.com](mailto:hector.rodriguez790@gmail.com)

Mr. Héctor Rodríguez Valle  
Site Owner  
P.O. Box 1239  
Hormigueros, Puerto Rico 00660

Ms. Sonia N. Rivera López  
Site Owner  
P.O. Box 1239  
Hormigueros, Puerto Rico 00660

Mr. Héctor Rodríguez Valle  
President  
Transporte Rodríguez Asfalto, Inc.  
Owner/Operator  
P.O. Box 1239  
Hormigueros, Puerto Rico 00660

**Re: Administrative Compliance Order  
Construction of TRA Recycling Plant in Aguada, Puerto Rico  
Docket Number CWA-02-2023-3105  
NPDES ID: PRU598765**

Dear Mr. Rodríguez Valle and Ms. Rivera López:

The United States Environmental Protection Agency (“EPA”), Region 2, has made findings that Héctor Rodríguez Valle, Sonia N. Rivera López and Transporte Rodríguez Asfalto, Inc. (collectively, “Respondents”) are in violation of Sections 301(a) and 402(p) of the Clean Water Act (“CWA” or the “Act”), 33 U.S.C. § 1251 *et seq.* The findings of violations resulted from EPA’s ongoing investigations, including the National Pollutant Discharge Elimination System (“NPDES”) Stormwater Reconnaissance Inspection<sup>1</sup> that an EPA official performed at the construction site where TRA Recycling Plant will be built in Aguada, Puerto Rico (“Site”).

---

<sup>1</sup> The Inspection was performed on September 13, 2023, and Transporte Rodríguez Asfalto, Inc. was represented by Luis O. Serrano Irizarry and Juan Barroso.

Enclosed please find a copy of the Administrative Compliance Order (“Order”), Docket Number CWA-02-2023-3105, issued pursuant to Section 309(a) of the CWA, 33 U.S.C. §1319(a), which details these findings of violation. A copy of the NPDES Stormwater Reconnaissance Inspection is included in Attachment 1 of the Order.

Within three (3) calendar days upon receipt of the Order, Mr. Rodríguez Valle, Mrs. Rivera López and a corporate official from Transporte Rodríguez Asfalto, Inc. shall complete the acknowledgment of receipt included as Attachment 2 of the Order and return it via email to José A. Rivera at [rivera.jose@epa.gov](mailto:rivera.jose@epa.gov), who is the designated EPA official for this matter. Please be informed that any other documents to be submitted to EPA as part of the Order shall be sent to the designated EPA official by email.

Notice is given that pursuant to paragraph 76 of the Order, EPA is offering Respondents an opportunity to confer with EPA regarding the ordered provisions of the Order. Respondents are strongly encouraged to confer with EPA as soon and present their action plan to address the findings of violations of the Act, which are very serious and warrants immediate actions at the Site.

Failure to comply with the enclosed Order may subject Respondents to civil and/or criminal penalties pursuant to Section 309 of the Act. Failure to comply with the Order may also subject Respondents to ineligibility for participation in work associated with Federal contracts, grants, or loans.

If you have any questions regarding this matter, please contact Mr. Rivera at (787) 977-5842, or via email at [rivera.jose@epa.gov](mailto:rivera.jose@epa.gov).

Sincerely,

**CARMEN**

**GUERRERO PEREZ**

Digitally signed by  
CARMEN GUERRERO PEREZ  
Date: 2023.09.21 17:22:11  
-04'00'

Carmen R. Guerrero Pérez

Director

Caribbean Environmental Protection Division

Enclosures

cc: Angel Meléndez, DNER/WQA (via email w/ enclosure)  
Luis O. Serrano, Transporte Rodríguez Asfalto, Inc. (via email w/ enclosure)

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2**

In the Matter of:

**HÉCTOR RODRÍGUEZ VALLE**

Owner  
P.O. Box 1239  
Hormigueros, Puerto Rico 00660

and

**SONIA N. RIVERA LÓPEZ**

Owner  
P.O. Box 1239  
Hormigueros, Puerto Rico 00660

and

**TRANSPORTE RODRIGUEZ ASFALTO, INC.**

Owner/Operator  
P. O. Box 1239  
Hormigueros, Puerto Rico 00660

**RESPONDENTS**

**CONSTRUCTION OF TRA RECYCLING PLANT**

PR-419 Road, Km. 11.05 (Intersection with Road PR-2, Km. 139.7)  
Cerro Gordo Ward, Aguada, Puerto Rico)  
Coordinates: Latitude 18.327106° N; Longitude -66.149497° W

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

**ADMINISTRATIVE  
COMPLIANCE ORDER**

**DOCKET NUMBER  
CWA-02-2023-3105**

**I. STATUTORY AUTHORITY**

1. This Administrative Compliance Order (“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 Clean Water Act (“CWA” or the “Act”), 33 U.S.C. § 1319(a).
2. The Administrator of EPA has delegated the authority to take this action to the Regional Administrator of Region 2, who in turn, has delegated such authority to the Director of the Caribbean Environmental Protection Division (“CEPD”).

3. 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.
4. Section 402 of the CWA, 33 U.S.C. § 1342, authorizes the Administrator of 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.
5. Section 402 of the Act, 33 U.S.C. § 1342, authorizes the Administrator to promulgate regulations for the implementation of the NPDES program.
6. Section 402(p)(2)(B) of the Act, 33 U.S.C. § 1342(p)(2)(B), requires NPDES permits with respect to a storm water discharge associated with industrial activity.
7. Pursuant to Section 402(p)(3)(A) of the Act, 33 U.S.C. § 1342(p)(3)(A), permits for storm water discharges associated with industrial activity shall meet all applicable provisions of Sections 301 and 402 and of the CWA, 33 U.S.C. §§ 1311 and 1342.
8. The Administrator of EPA has promulgated regulations, 40 C.F.R. §§ 122.26(a)(1)(ii) and 122.26(b)(14), which require operators to obtain an NPDES permit for storm water discharges associated with industrial activity.
9. Pursuant to 40 C.F.R. § 122.21(a)(1), any person who discharges or proposes to discharge pollutants, and who does not have an effective permit, must submit a complete NPDES permit application to EPA.
10. Pursuant to 40 C.F.R. § 122.1(b)(1), the NPDES program requires permits for the discharge of pollutants from any point source into waters of the United States.
11. Pursuant to 40 C.F.R. § 122.21(c)(1), any person proposing a new discharge shall submit an application at least 180 days before the date on which the discharge is to commence, unless permission for a later date has been granted by the Director. Facilities described under 40 C.F.R. §§ 122.26(b)(14)(x) or (b)(15)(i) shall submit applications at least 90 days before the date on which construction is to commence.
12. Pursuant to 40 C.F.R. § 122.26(c)(1)(ii), an operator of an existing or new stormwater discharge that is associated with industrial activity solely under 40 C.F.R. § 122.26(b)(14)(x) or is associated with small construction activity solely under 40 C.F.R. § 122.26(b)(15), is exempt from the requirements of 40 C.F.R. § 122.21(g) and 40 C.F.R. § (c)(1)(i). Such operator shall provide a narrative description of:
  - a. the location (including a map) and the nature of the construction activity;
  - b. the total area of the site and the area of the site that is expected to undergo excavation during the life of the permit;

- c. proposed measures, including best management practices, to control pollutants in stormwater discharges during construction, including a brief description of applicable State and local erosion and sediment control requirements;
  - d. proposed measures to control pollutants in stormwater discharges that will occur after construction operations have been completed, including a brief description of applicable State or local erosion and sediment control requirements;
  - e. an estimate of the runoff coefficient of the site and the increase in impervious area after the construction addressed in the permit application is completed, the nature of fill material and existing data describing the soil or the quality of the discharge; and
  - f. the name of the receiving water.
13. Pursuant to 40 C.F.R. § 122.26(b)(14)(x), operators are required to obtain a NPDES permit for storm water discharges associated with construction activity.
14. Pursuant to 40 C.F.R. § 122.26(b)(14)(x), construction activity, including clearing, grading and excavation, are considered a category engaging in industrial activity.
15. The CWA and applicable implementing regulations contain the following relevant definitions and requirements implementing NPDES regulations:
- a. “Best Management Practices” (“BMPs”) means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of “waters of the United States.” BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage. 40 C.F.R. § 122.2.
  - b. “discharge of a pollutant” means any addition of any pollutant or combination of pollutants to navigable waters from any point source. Section 502(12) of the Act, 33 U.S.C. § 1362(12), and 40 C.F.R. § 122.2.
  - c. “facility” or “activity” means any NPDES point source or any other facility or activity (including land or appurtenances thereto) that is subject to the regulations of the NPDES program. 40 C.F.R. § 122.2.
  - d. “navigable waters” means the waters of the United States, including the territorial seas. Section 502(7) of the Act, 33 U.S.C. § 1362(7).
  - e. “owner” or “operator” means the owner or operator of any facility or activity subject to regulation under the NPDES program. 40 C.F.R. § 122.2.
  - f. “person” means an individual, corporation, partnership, association, State, municipality, commission, or political subdivision of a State, or any interstate body. Section 502(5) of the Act, 33 U.S.C. § 1362(5), and 40 C.F.R. § 122.2.

- g. “pollutant” means, among others, solid waste, dredged spoil, rock, sand, cellar dirt, sewage, sewage sludge and industrial, municipal and agricultural waste discharged into water. Section 502(6) of the Act, 33 U.S.C. § 1362(6), and 40 C.F.R. § 122.2.
  - h. “construction activity” including clearing, grading and excavation, except operations that result in the disturbance of less than five acres of total land area. Construction activity also includes the disturbance of less than five acres of total land area that is a part of a larger common plan of development or sale if the larger common plan will ultimately disturb five acres or more. 40 C.F.R. § 122.26(b)(14)(x).
  - i. “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. Section 502(14) of the Act, 33 U.S.C. § 1362(14), and 40 C.F.R. § 122.2.
  - j. “site” means the land or water area where any “facility or activity” is physically located or conducted, including adjacent land used in connection with the facility or activity. 40 C.F.R. § 122.2.
  - k. “waters of the United States” means the territorial seas, waters which are currently used, were used or may be susceptible to use in interstate or foreign commerce, including waters which are subject to the ebb and flow of the tide, tributaries, lakes, ponds, impoundments of jurisdictional waters and wetlands. 40 C.F.R. §§ 120.2 and 122.
16. Pursuant to 40 C.F.R. § 450, EPA issued the “Construction and Development Point Source Category” regulations applicable to discharges associated with construction activity required to obtain NPDES permit coverage pursuant to 40 C.F.R. §§ 122.26(b)(14)(x) and (b)(15).
17. On January 18, 2022, pursuant to Section 402(p)(2)(B) of the CWA, 33 U.S.C. § 1342(p)(2)(B), EPA re-issued the NPDES Construction General Permit for Stormwater Discharges from Construction Activities (“2022 CGP”). The 2022 CGP became effective on February 17, 2022, and expires on February 16, 2027.
18. The 2022 CGP defines the following terms as follows:
- a. “borrow areas” as the areas where materials are dug for use as fill, either onsite or off-site;
  - b. “commencement of construction activities” as the initial disturbance of soils (or ‘breaking ground’) associated with clearing, grading, or excavating activities or other construction-related activities (e.g., stockpiling of fill material; placement of raw materials at the site);
  - c. “construction activities” as earth-disturbing activities, such as the clearing, grading, and excavation of land, and other construction-related activities (e.g., stockpiling of fill material; placement of raw materials at the site) that could lead to the generation of pollutants. Some of the types of pollutants that are typically found at construction sites are:

sediment; nutrients; heavy metals; pesticides and herbicides; oil and grease; bacteria and viruses; trash, debris, and solids; treatment polymers; and any other toxic chemicals;

- d. “construction site” or “site” as the land or water area where construction activities will occur and where stormwater controls will be installed and maintained. The construction site includes construction support activities, which may be located at a different part of the property from where the primary construction activity will take place, or on a different piece of property altogether.
  - e. “earth-disturbing activity” as actions taken to alter the existing vegetation and/or underlying soil of a site, such as clearing, grading, site preparation (e.g., excavating, cutting, and filling), soil compaction, and movement and stockpiling of top soils;
  - f. “exposed soils” as soils that as a result of earth-disturbing activities are left open to the elements;
  - g. “general contractor” as the primary individual or company solely accountable to perform a contract. The general contractor typically supervises activities, coordinates the use of subcontractors, and is authorized to direct workers at a site to carry out activities required by the permit;
  - h. “operator” as any party associated with a construction project that meets either of the following two criteria:
    - 1) the party has operational control over construction plans and specifications, including the ability to make modifications to those plans and specifications (e.g., in most cases this is the owner of the site); or
    - 2) the party has day-to-day operational control of those activities at a project that are necessary to ensure compliance with the permit conditions (e.g., they are authorized to direct workers at a site to carry out activities required by the permit; in most cases this is the general contractor of the project).
  - i. “run-on” as sources of stormwater that drain from land located upslope or upstream from the regulated site in question;
  - j. “stabilization” as the use of vegetative and/or non-vegetative cover to prevent erosion and sediment loss in areas exposed through the construction process.
19. The 2022 CGP established requirements and conditions, including among others, the development of a Storm Water Pollution Prevention Plan (“SWPPP”); submittal of Notice of Intent (“NOI”) forms; design, installation, and maintenance of storm water controls (i.e., “Best Management Practices”) and pollution prevention controls; performance and documentation of inspections; and implementation and documentation of corrective actions.
20. Part 1.4 of the 2022 CGP required all operators associated with a construction site seeking 2022 CGP coverage, who meet the eligibility requirements in Part 1.1 of the 2022 CGP, to submit to

EPA a complete and accurate electronic Notice of Intent (“eNOI”) prior to commencing construction activities.

21. Parts 1.4.1 and 7 of the 2022 CGP require operators associated with a construction site to develop a Stormwater Pollution Prevention Plan (“SWPPP”) before submitting an eNOI for coverage under the 2022 CGP.
22. Part 1.4.3 and Table 1 of the 2022 CGP requires operators of new site to submit an eNOI for 2022 CGP coverage at least fourteen (14) calendar days before commencing construction activities.
23. Part 2.1.3 of the 2022 CGP requires permittees to complete installation of storm water controls by the time each phase of construction activities has begun.<sup>1</sup>
24. Section 309(a)(3) of the Act, 33 U.S.C. § 1319(a)(3), provides that “[w]henever on the basis of any information available . . . the Administrator finds that any person is in violation of [CWA Sections 301 and 308], or is in violation of any permit condition or limitation implementing any of such sections in a permit issued under [Section 402 of the Act, the Administrator] shall issue an order requiring such person to comply with such section...”
25. Section 309(a)(5)(A) of the Act, 33 U.S.C. § 1319(a)(5)(A), 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.”
26. EPA is the agency within the Commonwealth of Puerto Rico with authority to administer the NPDES program. EPA maintains enforcement authority for violations of the CWA and its implementing regulations pursuant to Section 309 of the CWA, 33 U.S.C. § 1319.

## **II. FACTUAL FINDINGS**

27. Héctor Rodríguez Valle and Sonia N. Rivera López are the owners of two (2) contiguous parcels of land located at PR-419 Road, Km. 11.05 (Intersection with Road PR-2, Km. 139.7) Cerro Gordo Ward, Aguada, Puerto Rico (the “Site”).<sup>2</sup>
28. The size of the Site is approximately 9.7 acres (“10 cuerdas”).
29. Transporte Rodríguez Asfalto, Inc. (“TRA” or “Respondent TRA”) is engaged in the development and construction activities at the Site.
30. The President of TRA is Héctor Rodríguez Valle.
31. The construction activities at the Project include among other things, earth movement activities (i.e., grading); installation of utilities (i.e., power lines, potable water); construction of entrance

---

<sup>1</sup> Refer to <https://www.epa.gov/npdes/stormwater-discharges-construction-activities> for information, guidance and documents concerning stormwater discharges from construction site and the 2022 CGP.

<sup>2</sup> Approximate coordinates of the Site are Latitude 18.327106° N and Longitude -66.149497° W.

and internal road; construction of a stormwater runoff collection, conveyance and discharge system; construction of the recycling plant building; and vehicles and trucks parking lots.

32. By letter dated June 5, 2023, EPA issued a Request for Information letter (the “RFI Letter”) to Respondent TRA requesting information about the Site pursuant to the authority vested in the Administrator of EPA by Section 308(a) of the CWA, 33 U.S.C. § 1318(a).
33. By letter dated July 17, 2023, Respondent TRA submitted a partial response (the “1<sup>st</sup> Response”) to the RFI Letter.
34. By letter dated July 28, 2023, Respondent TRA submitted a supplemental response to the RFI Letter (the “2<sup>nd</sup> Response”). The 2<sup>nd</sup> Response included the information in the 1<sup>st</sup> Response and additional information that was pending submittal.
35. By electronic email dated August 3, 2023, an EPA official sent an email to Respondent TRA (the “August 2023 email”) indicating the following:
  - a. the 1<sup>st</sup> Response and 2<sup>nd</sup> Response were reviewed and found to be incomplete, EPA specified which information and documents that were requested were not provided and which explanations were not included; and
  - b. EPA requested an update on the status of their construction activities at the Project and securing NPDES stormwater permitting coverage under the 2022 NPDES Construction General Permit, including development of the Stormwater Pollution Prevention Plan.
36. By letter dated August 11, 2023, Respondent TRA submitted its response to the August 2023 email including additional documents and clarifying certain information (the “3<sup>rd</sup> Response”).
37. EPA learned during its review of the 1<sup>st</sup> Response, 2<sup>nd</sup> Response, and 3<sup>rd</sup> Response, among other information, that:
  - a. Respondent TRA mobilized to the Site on or about January 30, 2023;
  - b. Respondent TRA began earth movement activities at the Site on or about February 1, 2023;
  - c. Respondent TRA ceased earth movement activities at the Site on or about April 29, 2023;
  - d. the total area of surface soil to be disturbed at the Site is approximately 13 acres;
  - e. Respondent TRA has not filed for nor obtained NPDES permit coverage for the Project;
  - f. a SWPPP has not been prepared for the Site; and
  - g. a segment of the Cañas River is adjacent of the Site.

38. On September 13, 2023, an EPA official performed a NPDES Stormwater Reconnaissance Inspection (the “Inspection”) of the Site. EPA met with Eng. Luis O. Serrano Irizarry, Project Manager, and Eng. Juan Barroso, Environmental Consultant, at the entrance of the Site.
39. The findings of the Inspection were included in an inspection report (the “Inspection Report”). **Attachment 1** of this Order includes a copy of the Inspection Report. The findings include, among other things, the following:
- a. the Site has three (3) outfalls;
  - b. a segment of the Cañas River is adjacent of the Site;
  - c. the owners had not applied for and obtained NPDES permit coverage for the storm water discharges associated with construction activity from the Site into waters of the United States;
  - d. slopes instability, especially those located at the upper west side of the Site;
  - e. landslides in several locations at the Site;
  - f. erosion and sediment controls were not installed and/or maintained;
  - g. most of the Site’s disturbed areas and areas where gradings had been conducted lacked soil stabilization;
  - h. concentrated stormwater flows from run-on and runoff sources towards one discrete area north of the Site;
  - i. stormwater run-on into the Site lacked runoff management to divert flows away from exposed soils; and
  - j. the Puerto Rico Planning Board (“Planning Board”) issued a cease-and-desist order to Héctor Rodríguez Valle and/or Transporte Rodríguez Asfalto, Inc. on April 28, 2023, which resulted in the cease of construction activities at the Site.<sup>3</sup>
40. The Inspection Report includes EPA’s review of the National Climatic Data Center’s online meteorological database (the “NCDC Review”) for three climatological stations located in Rincón and Aguadilla, Puerto Rico. The purpose of the NCDC Review was to learn about the storm events of 0.10 inches or greater that had occurred at or near the Project, which will cause the discharge of pollutants (storm water associated with construction activities) from the Site into Cañas River.

---

<sup>3</sup> Under the case number OCO-2023-SQR-013155, *Junta de Planificación vs. Transporte Rodríguez Asfalto, Inc., et al*, the Planning Board determined that Respondents were in violation of various legal requirements, including Article 14.3 of Law 161-2009, which provides (in Spanish) “[R]iesgo de peligro grave, inminente e inmediato a la salud or seguridad de las personas o el medio ambiente.” (In English, “immediate and imminent risk of serious danger to the health and security of persons or environment”).

41. The NCDC Review revealed numerous storm events of 0.10 inches or more were recorded at the three stations during the period between February 2023 and August 2023.
42. By email dated September 14, 2023, a Respondent TRA submitted to EPA additional information concerning the topography of the Site and a cease-and-desist order issued by the Planning Board to Respondent TRA on April 28, 2023.

### **III. CONCLUSIONS OF LAW AND FINDINGS OF VIOLATIONS**

43. Respondents are subject to the provisions of the Act, 33 U.S.C. § 1251, *et seq.*, and the applicable NPDES regulations found at 40 C.F.R. Part 122.
44. Respondents are a “person” pursuant Section 502(5) of the Act, 33 U.S.C. § 1362(5), and 40 C.F.R. § 122.2.
45. The Project is a “new site”, as defined in Appendix A of the 2022 CGP.
46. The Project is a “facility”, as defined in 40 C.F.R. §§ 122.2.
47. The Project is a “construction activity”, as defined in 40 C.F.R. § 122.26(b)(14).
48. Sediments from construction activities at the Project are “pollutants” pursuant to Section 502(6) of the Act, 33 U.S.C. § 1362(6), and 40 C.F.R. § 122.2.
49. The Project’s outfalls are “point sources” pursuant to Section 502(14) of the Act, 33 U.S.C. § 1362(14), and 40 C.F.R. § 122.2.
50. At all relevant times to this Order, Héctor Rodríguez Valle and Sonia N. Rivera López are the “owners” of the Site, as defined in 40 C.F.R. § 122.2.
51. At all relevant to this Order, Respondent TRA is the “owner and operator” of the Project, as defined in 40 C.F.R. § 122.2 and 2022 CGP, and are responsible for and engaged in the development and construction activities at the Site. Respondent TRA has had and continues to have operational control over construction plans, site drawings and specifications, stormwater conveyances, and control designs, including the ability to make modifications to such at the Project.
52. Respondents were and are required to apply for and obtain NPDES permit coverage for the Project’s discharges of pollutants into waters of the United States pursuant to Section 402(p) of the CWA, 33 U.S.C. § 1342(p), and its implementing NPDES regulations at 40 C.F.R. Part 122.
53. Respondents did not submit an eNOI for the construction activities at the Project under the 2022 CGP, nor an individual NPDES permit application under 40 C.F.R. § 122.26(c)(1)(ii).
54. Respondents discharged and continue to discharge stormwater from a construction activity containing “pollutants” from the Project into Cañas River.

55. Cañas River flows into Culebrina River, which in turn flows into territorial sea.
56. Cañas River, Culebrina River and territorial sea are waters of the United States pursuant to Section 502(7) of the CWA, 33 U.S.C. § 1362(7), and 40 C.F.R. § 122.2.
57. Respondents discharges of storm water from construction activities containing pollutants from the Site into waters of the United States without a NPDES permit constitute a violation of Sections 301(a) and 402(p) of the Act, 33 U.S.C. §§ 1311(a) and 1342(p), and the applicable NPDES regulations; therefore, Respondents are subject to an enforcement action under Section 309(a) of the Act, 33 U.S.C. § 1319(a).

#### IV. ORDERED PROVISIONS

In consideration of the Findings of Fact and Conclusions of Law above, EPA has determined compliance with the following ordered provisions is consistent with the authority in Section 309 of the CWA, 33 U.S.C. § 1319.

58. **Within three (3) calendar days upon receipt of the originals of this ORDER by electronic mail (“email”)**, an authorized representative of Respondents shall complete the acknowledgment of receipt included as an Attachment of this Order and return it via email to José A. Rivera, Lead Environmental Engineer, Clean Water Act Team, Multimedia Permits and Compliance Branch, Caribbean Environmental Protection Division, U.S. Environmental Protection Agency, Region 2, at [rivera.jose@epa.gov](mailto:rivera.jose@epa.gov). Also, Respondents shall mail, by certified mail (or its equivalent), the signed acknowledgement of receipt to José A. Rivera to the address specified in paragraph 75, below.
59. **Immediately upon receipt of this Order by email and pursuant to Section 301(a) of the Act, 33 U.S.C. § 1311(a)**, Respondents shall cease the discharge of any pollutant, including storm water run-off associated with construction activities, from the Project into waters of the United States, and construction activities related thereto (i.e., clearing, grading and excavation), except with authorization and in compliance with the requirements and conditions of the 2022 CGP or other NPDES permit for which Respondents obtained coverage.
60. **Within seven (7) calendar days upon receipt of this Order by email**, Respondents shall submit a written certification stating that they had complied with paragraph 59, above. The certification shall be submitted to the Team Leader, Clean Water Act Team, Multimedia Permits and Compliance Branch, Caribbean Environmental Protection Division, EPA Region 2 to the email [rivera.jose@epa.gov](mailto:rivera.jose@epa.gov).

#### IMMEDIATE CORRECTIVE ACTIONS

61. **That as soon as possible but no later than seven (7) calendar days of receipt of this Order by email**, Respondents shall commence to provide soil stabilization, erosion controls and flow management to the slopes identified in Pictures 10, 11, and 16-23 of the Inspection Report, and shall consequently continue to implement such controls until their completion.

62. Prior to commencement of installation of soil stabilization, erosion controls and storm water flow management to the slopes identified in Pictures 10, 11, and 16-23 of the Inspection Report, Respondents shall identify areas of the Site for stockpiling and shall provide and maintain erosion and sediment controls for any soil stockpile resulting from such activities.
63. Respondent shall not use any overburden soil resulting from earth movement activities associated with soil stabilization, erosion controls and flow management for any construction activity, including grading the Site. In the event Respondents determine to transport any overburden soil from the Site to an off-site location(s), Respondents shall document such activities and submit the documentation to EPA under paragraph 74 of this Order.
64. Respondents shall document the activities required under paragraphs 61 and 62, above, and shall report such to EPA following the requirements in paragraph 74 of this Order. Such documentation shall include the dates and times when the activities were conducted, and for the events that activities were not taken (e.g., rain events).
65. Respondents shall submit photographic documentation and notification of the completion of the soil stabilization and erosion controls to the slopes identified in Pictures 10, 11, and 16-23 of the Inspection Report within three (3) calendar days of the completion of such activities to Mr. Jose A. Rivera at [rivera.jose@epa.gov](mailto:rivera.jose@epa.gov).

#### PLAN OF ACTION

66. **Within thirty (30) calendars days of receipt of this Order by email**, Respondents shall prepare and submit for review, a Plan of Action (“POA”). Respondents shall include in the POA, at a minimum, a detailed description of actions to be taken to prevent pollutant from the Site to reaching Cañas Rivera, including an implementation schedule, to the address the following:
  - a. soil stabilization measures for all bare soils at the Site;
  - b. Site’s perimeter controls;
  - c. management of run-on flowing from adjacent properties into the Site;
  - d. management of run-off flowing thru the site, including runoff velocity dissipation and diversion;
  - e. erosion and sediment controls, and BMPs (see Part 2 of the 2017 CGP); and
  - f. sediment track-out controls into the concrete swales located along the boundaries of the Site with PR-419 Road and PR-2 Road.
67. The POA shall be reviewed and signed by a professional engineer experienced in the design and inspections of storm water management controls, erosion and sediment controls and soil stabilization practices authorized in the Commonwealth of Puerto Rico.

68. The tasks in the POA shall be undertaken as quickly as possible, but in no case the completion date of all required activities shall be beyond **sixty (60) calendar days calendars days of receipt of this Order by email.**
69. Respondent shall not use any overburden soil resulting from earth movement activities associated with the implementation of the POA for any construction activity, including grading the Site. In the event Respondents determine to transport any overburden soil from the Site to an off-site location(s) that result from the implementation of the PAO, Respondents shall document such activities and submit the documentation to EPA under paragraph 74 of this Order.
70. Respondents shall document their implementation of the PAO and submit such documentation as required in paragraph 74 of this Order.

#### INSPECTION REPORT

71. **Within forty-five (45) calendar days upon receipt of this ORDER by email,** Respondents shall submit an answer to the Inspection Report included as an attachment to this Order.

#### NPDES PERMITTING FOR THE PROJECT

72. **That in the event that Respondents elects to continue conducting construction activities at the Site,** including earth movement activities, and in order to bring Respondents into compliance with Sections 301(a) and 402(p) of the Act, 33 U.S.C. §§ 1311(a) and 1342(p), and implementing regulations, Respondent shall:
- a. prepare and submit to EPA, for review, a Project-specific SWPPP in accordance with Part 7 of the 2022 CGP; and
  - b. prepare and submit an eNOI for the Project in accordance with Part 1.4 of the 2022 CGP or submit an NPDES individual permit application in accordance with 40 C.F.R. § 122.21 (Duty to Apply) seeking coverage for its construction activities at the Site.
73. Once Respondents obtain coverage under a NPDES permit for its construction activities at the Site, Respondents must immediately comply with all applicable NPDES regulatory and permit requirements (e.g., 2022 CGP) in addition to the requirements included in this Order. Coverage under an NPDES shall not supersede the requirements of this Order.

#### PROGRESS REPORTS

74. **Until Termination of this Order,** Respondents shall prepare and submit bi-weekly Progress Reports (“PR”) that describe the current status and progress of the actions that Respondents have taken to comply with the provisions of this Order. Respondents shall:
- a. submit each PR to EPA on the fifteenth (15<sup>th</sup>) and thirtieth (30<sup>th</sup>) day of the month following the month that is the subject of the report; and
  - b. indicate in the PR, at a minimum, the following:

- 1) the specific activities undertaken by Respondents relating to the completion of work required under this Order, including, but not limited to, the expected date for “substantial completion,” defined as the date when the project is sufficiently completed such that it can be used to accomplish the purposes for which it was intended, and identification of those requirements which have been accomplished since the previous PR, including the dates of substantial completion of any of the remedial actions, capital improvements, or any other actions identified in this Order;
- 2) any impediments Respondents encountered in meeting the compliance schedules, the steps that Respondents have taken to overcome such impediments, and the steps that Respondents will take to overcome such impediments, including the anticipated dates by which such steps will be taken; and
- 3) a cost report detailing the monthly expenses incurred as of the date of the PR.

If Respondents have already submitted a deliverable to EPA, Respondents shall reference that deliverable in the PR and its date of submission, instead of submitting another copy of that deliverable to EPA.

## **V. GENERAL PROVISIONS**

73. Any questions concerning this Order should be directed to José A. Rivera, Lead Environmental Engineer, Clean Water Act Team, Multimedia Permits and Compliance Branch, Caribbean Environmental Protection Division, at (787) 977-5842 / [rivera.jose@epa.gov](mailto:rivera.jose@epa.gov). For information about the stormwater program, Respondents may review EPA’s web site at <https://www.epa.gov/npdes/stormwater-discharges-construction-activities>.
74. Any documents to be submitted by Respondents as part of this Order shall be sent by email and by certified mail (or its equivalent), shall be signed by an authorized representative for each Respondent (see 40 C.F.R. § 122.22), 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.”
75. All information required to be submitted by Respondents under this Order shall be sent by email and by certified mail (or its equivalent) to the following addresses:

Ángel Meléndez, Manager  
Water Quality Area  
San José Industrial Park  
1375 Ave. Ponce de León  
San Juan, Puerto Rico 00926  
Email: [angel.melendez@drna.pr.gov](mailto:angel.melendez@drna.pr.gov)


and

José A. Rivera  
Lead Environmental Engineer  
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](mailto:rivera.jose@epa.gov).

76. Within seven (7) calendar days from the effective date of this Order, Respondents shall have the opportunity to confer regarding the ordered provisions of this Order with the following EPA Region 2 official: José A. Rivera, Lead Environmental Engineer, Clean Water Act Team, Multimedia Permits and Compliance Branch, Caribbean Environmental Protection Division at (787) 977-5842 / [rivera.jose@epa.gov](mailto:rivera.jose@epa.gov).
77. Respondents have the right to seek immediate federal judicial review of the Order pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706. Section 706, which is set forth at <http://uscode.house.gov/download/pls/05C7.txt>, provides the grounds for such review.
78. This Order does not constitute a waiver from compliance with, or a modification of, the effective terms and conditions of the Act, its implementing regulations, the 2022 CGP, 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 Act. 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 Act.
79. Notice is hereby given that failure to comply with the terms of an Order issued under Section 309(a)(3) of the Act may result in Respondents' liability for civil penalties for each violation of up to \$64,618 per day pursuant to Section 309(d) of the Act, 33 U.S.C. §1319(d), as modified by 40 C.F.R. Part 19. Upon suit by EPA, the United States District Court may impose such penalties if, after notice and opportunity for hearing, the Court determines that Respondents have violated the Act, as described above.
80. 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.

81. This Order shall become effective upon the date of execution by the Director, Caribbean Environmental Protection Division.

Dated: September 21, 2022

Signed:  Digitally signed by  
CARMEN GUERRERO PEREZ  
Date: 2023.09.21 17:14:07  
-04'00'

---

**CARMEN R. GUERRERO PÉREZ**  
Director  
Caribbean Environmental Protection Division  
U.S. Environmental Protection Agency, Region 2

Attachments